

# Duty of Care Policy

## Purpose

The staff of Preston North East Primary School have a duty of care to the students of the school. The school must take reasonable measure to ensure the safety of students within its care and prevent avoidable injuries.

## Definitions

“Duty of care” is an element of the tort of negligence. In broad terms, the law of negligence provides that if a person suffers injury as the result of the negligence of another, they should be compensated for the loss and damage which arises from the negligent act or omission.

In order to successfully bring a claim in negligence for compensation for an injury, a person must establish, on the balance of probabilities, that:

- a duty of care was owed to the person harmed at the time of the injury
- the risk of injury was foreseeable
- the likelihood of the injury occurring was more than insignificant
- there was a breach of the duty of care or a failure to observe a reasonable standard of care
- this breach or failure was a cause of the injury.

The fact that a duty of care exists does not of itself mean that a school will be liable for an injury sustained by a student. In order for the student to succeed in a negligence claim, all of these elements must be established.

## Policy Context

The Principal and teachers of Preston North East are held to a high standard of care in relation to students. The duty requires the principal and teachers to take all reasonable steps to reduce risk, including:

- provision of suitable and safe premises
- provision of an adequate system of supervision
- implementation of strategies to prevent bullying
- ensuring that medical assistance is provided to a sick or injured student
- managing employee recruitment, conduct and performance.

The duty is *non-delegable*, meaning that it cannot be assigned to another party.

Whenever a teacher-student relationship exists, teachers have a special duty of care. This has been expressed as: "a teacher is to take such measures as are reasonable in the circumstances to protect a student under the teacher's charge from risks of injury that the teacher should reasonably have foreseen." (*Richards v State of Victoria*).

The nature and extent of the duty will vary according to the circumstances. Younger students and students with a disability may require extra support and care than older students. For example, the standard of care required will be higher when taking a group of preps for swimming lessons than when teaching a group of year 12s in the classroom.

Preston North East Primary School will take all reasonable steps to prevent injury from occurring to a student. This will involve consideration of the following factors:

- the probability that the harm would occur if care were not taken
- the likely seriousness of the harm
- the burden of taking precautions to avoid the risk of harm
- the social utility of the activity that creates the risk of harm.

The school will ensure that students (and visitors to the school) will not come to injury due to the state of the school premises or due to the omission of maintenance or the school buildings and grounds.

### **Evaluation**

The School Council will monitor the implementation of this policy and review it as part of its policy schedule..

**This Policy was Last Reviewed at School Council in May 2017**