

# Nathalia Primary School

## Supervision and Duty of Care Policy

### Purpose of this policy

To explain the nature of the legal duties owed by teachers and school staff towards students.

### Legal background

“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.

### Standard of care required by schools

Principals and teachers are held to a high standard of care in relation to students. The duty requires principals 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.

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. 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.

The important issue in all cases will be what precautions the school could reasonably be expected to have taken to prevent the injury from occurring. 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.

### Duty of care to students outside the school

A number of cases have established that, in some circumstances, a school's duty (and therefore the Department's duty) will extend beyond school hours and outside of school grounds. The duty will be extended to outside school hours and premises when the relationship between the school and the student requires it *in the particular circumstances*.

- In 1977 the High Court found a school authority **liable** for an injury sustained by a student in the playground 15 minutes before school began for the day (*Geyer v Downs*). In that case the principal was aware that children were coming onto the grounds before school, and had instructed that children who did so were to read or talk quietly. The Court took the view that in so doing, the principal had brought the school-student relationship into existence and therefore created a duty to ensure that there was adequate supervision before school.
- In 1996, a non government school in NSW (*Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman*) was **found liable** for an injury to a primary student at an unsupervised bus stop approximately 350 metres from the school and located outside a government secondary school. In that case, the school was aware that a large group of students regularly caught the bus from outside the neighbouring secondary school, and that there was a risk of harm. Moreover, a teacher from the primary school witnessed the incident but did not intervene. The Court found that the teacher-student relationship was still in existence at the time of the injury, and therefore the school authority had a duty of care.
- In 2001, a school in NSW (*re Graham v NSW*) was **found not liable** for injuries to a student with a disability who was hit by a motor vehicle when crossing a busy road a kilometre from school, when walking to school by herself. The allegation against the school was that it should have provided a bus, but the New South Wales Court of Appeal held that the school had discharged its duty by informing the parent at the start of the year that the bus service was no longer being provided, and that the parent should make appropriate arrangements.

Whether the duty extends outside of school grounds therefore depends on all the circumstances of each individual case, and the school's knowledge of any dangers.

It is important that schools clearly inform parents when playground supervision will be provided and that no formal supervision of the playground occurs outside those hours. Similarly, some risks outside of school (as in Graham's case) will involve informing parents of bus arrangements and leaving it to parents to make appropriate arrangements for transporting their children to and from school.

There will be other situations in which schools will be under a duty to take reasonable steps. For example, a known bully on a school bus may require the school to suspend or refuse to transport the bully. If the danger to students is beyond the control of the school, reasonable steps may involve contacting police or issuing warnings to parents.

### Negligent advice: teachers

Teachers are frequently called upon to advise students. When doing so teachers should:

- limit their advice to students to areas within their own professional competence and given in situations arising from a role specified for them by the principal
- ensure that the advice they give is correct and in line with the most recent available statements from institutions or employers. Careers teachers and coordinators at senior levels should keep contemporaneous notes of advice given to individuals
- avoid giving advice in areas unrelated to their role or where they may lack expertise.

## Supervision of Students

### Principals must:

- arrange for student supervision according to school needs
- ensure staff are aware of their responsibilities to supervise students during school times as well as before and after school.

Note: School authorities in breach of their duty of care may be liable for injuries to students.

In schools there must be clearly allocated specific responsibilities to staff members to undertake student supervision, as determined by the needs of the school, to protect students from reasonably foreseeable risks of injury including hazard that:

- are known
- could have been foreseen and prevented.

Note: This duty extends to intervention in single sex areas by a teacher of the other gender, if required.

Supervision responsibilities before and after school

This table identifies supervision responsibilities.

Who	Are responsible for
<b>Parents/ guardians</b>	the care and supervision of students: <ul style="list-style-type: none"><li>• travelling to and from school</li><li>• outside the times of school supervision before and after school.</li></ul>
<b>Principals</b>	See: Student Collection within <a href="#">Related policies</a> ensuring: <ul style="list-style-type: none"><li>• school supervision is provided for a minimum of 10 minutes before and after school</li><li>• parents/guardians are regularly informed about supervision available before and after school</li><li>• sufficient teachers are available to supervise the departure of students at the end of the school day</li><li>• teachers supervising departures are not called away for other duties without alternate supervision being arranged</li></ul> <p>Note: More supervision may be required:</p> <ul style="list-style-type: none"><li>• before or after school, based on local circumstances</li><li>• for primary students, particularly prep students.</li></ul>

### Supervision in specific circumstances

This table lists supervision requirements/considerations for specific circumstances.

Circumstance	Guidelines
<b>Recess and lunch times</b>	Students must be supervised during recess and lunch. For students who seek to leave school premises during lunch or recess, procedures must be in place that incorporate: <ul style="list-style-type: none"><li>• written parent/guardian requests for students under 18</li></ul>

Circumstance	<p>Guidelines</p> <ul style="list-style-type: none"> <li>• short and long term lunch passes.</li> </ul> <p>Principals decide how much supervision to provide for formal cross-age tutoring programs based on:</p> <ul style="list-style-type: none"> <li>• the age and maturity of students</li> <li>• size of the group</li> <li>• nature of the activities</li> <li>• the location within the school.</li> </ul>
<b>Cross age tutoring</b>	
<b>Outside school grounds</b>	<p>Primary students must be supervised at all times. The degree of supervision to be provided for secondary students leaving the school during school hours to engage in educational, sport or other activities is a matter for local decision. Deciding on the level of supervision needs to balance safety with school programs where students are encouraged to undertake activities outside the school either individually or in small groups.</p>
<b>Swimming Pools</b>	<p>Students must be supervised at all times while using a swimming pool (including if a swimming pool is owned by a school, privately or by the municipal council). Visiting speakers do not have the authority to supervise students in schools.</p>
<b>Visiting Speakers/Instructors</b>	<p>Teachers must supervise their students during a presentation from a guest speaker.</p> <p>Note: This includes instructors providing religious instruction in schools.</p>
Supervision before and after school - Principal Considerations	

This table describes additional supervisory considerations at the beginning and end of the school day, for principals.

To deal with	<p>Principals may organise supervision of entry and exit points that considers:</p> <ul style="list-style-type: none"> <li>• the entry or exit points that are, or should be, used</li> <li>• road traffic conditions</li> <li>• designated pick up and drop off areas</li> <li>• whether any entry or exit points should be: <ul style="list-style-type: none"> <li>- locked</li> <li>- designated as out of bounds</li> <li>- supervised.</li> </ul> </li> </ul>
<b>school entry and exit points</b>	
<b>contract buses</b>	<ul style="list-style-type: none"> <li>• should arrange supervision of the arrival and departure of school contract buses that takes into account the: <ul style="list-style-type: none"> <li>- number of students</li> <li>- age of students</li> <li>- times of the arrival and departure</li> <li>- proximity of the pick-up and drop-off points in relation to the school grounds</li> <li>- behaviour of students on the bus and when boarding or alighting.</li> </ul> </li> <li>• may consider: <ul style="list-style-type: none"> <li>- working with bus contractors to develop an efficient timetable including possible staggered arrival and departure times to accommodate supervision</li> <li>- a code of behaviour or conduct for students who use school contract buses</li> <li>- using a buddy system for younger students</li> <li>- using bus captains or monitors.</li> </ul> </li> </ul>

To deal with **public transport**

Principals

- are not obliged to supervise students using public transport, but may decide to provide supervision based on:
  - the proximity of the school to the public transport stop
  - known risks to students using that transport
  - unruly or antisocial student behaviour.
- are authorised to suspend or expel students whose misbehaviour between home and school reflects discredit on the school while travelling to and from school.

**Safety and welfare of students learning with an external provider**

Katunga Primary School will take into consideration measures necessary for student and staff safety and welfare including the safety of the students learning with an external provider (this is when the school contracts with another school, a registered training organization or an organization not registered as an education and training provider.)

**prep students using transport**

See: Student Engagement within [Related policies](#) should consider:

- additional supervision
- providing parents/guardians with bus information at parent orientation meetings
- maintaining a roll of prep students who use public transport
- establishing a 'marshalling point' for prep students from which they can be guided to buses
- guiding prep students to buses which stop at the school at the end of the day.

**Parent/guardian support**

This table describes strategies schools can use to encourage parents/guardians to support supervision before and after school.

To assist schools to **ensure student safety when travelling to and from school**

Parents/guardians can be encouraged to consider:

- whether their child is old and experienced enough to use public transport
- how they can help educate their child in traffic safety
- whether their child will need to cross busy roads to walk or catch transport.

**Ensure the safety of younger students or students with disabilities**

- Consider that greater measures may need to be taken.

**maintain student rolls setting out students' usual travel arrangements**

always let the school know when students' usual travel arrangements are to change, even temporarily.

**maintain preferred or mandatory points of exit for students at the end of the day**

- use these exits
- make sure that students are familiar with these exits and use them.

To assist schools to

Parents/guardians can be encouraged to obey parking regulations, speed limits and other traffic controls to:

**apply traffic controls at the beginning and end of the school day**

- help to create a safe environment at exits to schools
- show respect to neighbours who live close to the school.

**to provide adequate supervision for students entering or exiting the school at the beginning and end of the school day**

avoid talking to teachers who are supervising entry or exits or school buses about their child's progress and should arrange another time for this discussion.

One-teacher schools

This table identifies responsibilities in one teacher schools.

Who	Responsibility
<b>Teachers</b>	<ul style="list-style-type: none"><li>• Owe the same duty of care to students as teachers in larger schools.</li><li>• Must supervise students during recess and lunch times or make other arrangements.</li><li>• Must obtain permission to leave the school regularly during lunch time by:<ul style="list-style-type: none"><li>- obtaining a statement of approval from the school council</li><li>- applying to the regional director, providing details of alternative arrangements proposed and the council's approval statement.</li></ul>Note: Permission must be renewed annually.</li><li>• May visit their residence during lunch time without obtaining regional director permission if it is attached to the school.</li></ul>
<b>School councils</b>	<ul style="list-style-type: none"><li>• Records in their minutes the arrangements made for the supervision of students during a teacher absence.</li><li>• Review the procedure for teacher absences on a regular basis, preferably annually.</li><li>• Nominates at least one of its members who lives in close proximity to the school to act as a contact person if the teacher is ill or unexpectedly delayed in arriving at the school.</li></ul>
<b>Council nominees</b>	<p>Once informed of the teacher's absence:</p> <ul style="list-style-type: none"><li>• immediately go to the school to act as supervisor:<ul style="list-style-type: none"><li>- until a relief teacher arrives, or</li><li>- contact the regional office if a relief teacher cannot be engaged. Telephone all families to inform them that the teacher is not in attendance, so that the parents/guardians may collect their children from the school.</li></ul></li></ul>