MANAGEMENT

DUTY OF CARE POLICY

GENERAL STATEMENT
Concord School recognises the need for all staff to take reasonable steps to reduce the risks to the safety and wellbeing of students and to provide a safe working environment with adequate supervision of students.

RATIONALE
To explain the nature of the legal duties owed by school staff towards students. The school is aware of the need to implement all principles relating to “duty of care” while students are in the care of the school; i.e. from the time of leaving home until returning home. Student safety is of paramount importance.

BROAD GUIDELINES
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).

IMPLEMENTATION
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, for example during camps.

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.

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.

RESOURCES
Personal Liability of School Employees
SERS Insurance Claims and Settlement Process
Volunteer Workers

EVALUATION
Informal feedback from students, staff and parents/carers
Policy review within three year cycle