



Duty of Care

Purpose:

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

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 a negligent act or omission of another, the injured person should be compensated for loss and damage flowing from that negligence.

To successfully bring a compensation claim in negligence a person must establish, on the balance of probabilities, that:

- a duty of care was owed to them at the time of the injury
- the risk of injury was reasonably 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; and this breach or failure caused or contributed to the injury, loss or damage suffered

The fact that a duty of care exists does not 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 reasonable steps to minimise the risk of reasonably foreseeable harm, including:

- ensuring the school complies with the seven Child Safe Standards
- 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. Generally, teachers are expected to take such measures as are reasonable in the circumstances to protect a student under their charge from reasonably foreseeable risks of injury.

The nature and extent of this 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:

- identifying the risk of harm
- 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.
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Implementation:

Duty of Care

- Teachers have a positive or pro-active (duty of care) to protect a student from reasonably foreseeable harm while the teacher is on duty.
- At all times when administering first aid, it should be done within the limits of competency and skills and with reasonable care.
- When there is a serious injury or illness, the teacher and principal are obliged to carry out appropriate first aid but not diagnose or treat the person. This is the competency of medical practitioners or medical emergency personnel (Catholic Schools Operational Guide)
- The school ensures that students with ongoing medical conditions have procedures in place that allow them to manage their condition
- The principal will regularly evaluate the effectiveness of the implementation of procedures and provide further training or clarification/modification of procedures and requirements.

Training

- All staff will undergo Level 1 recognised first aid training. This is updated at least every 3 years.
- A minimum of 2 teachers will have Level 2 recognised first aid training All staff undergo additional training in relation to CPR and Anaphylaxis (see Anaphylaxis Policy).
- All staff will be trained to assess and manage an asthma emergency and complete the free one-hour Asthma Education session at least every three years.
- Staff will be provided training in management of other conditions such as diabetes and epilepsy whenever a student is identified.
- A register is maintains of all first aid officers, listing first aid qualifications and renewal date.
- Staff review procedures in first aid, anaphylaxis and CPR at least twice per year.
- Induction on procedures and location on student medical conditions will be conducted annually for emergency teachers and when new teachers begin.
- A record of training in first aid (and level), CPR and anaphylaxis and other specific training will be recorded on the Staff First Aid and Other Required Training Register that is kept and updated in the school document management system.

- The principal will analyse the training needs annually or as required and ensure that staff are current with school, diocesan and legislation requirements.

First Aid Area

- The school has a dedicated first aid area. Students and staff or visitors will be cared for in this space until arrangements for them to be collected are made.
- The first aid area will be unlocked available for use at all times. This area is not to be used for any other purpose.
- A staff member will be designated to purchase and maintain the first-aid supplies, first aid kits, ice packs and oversee the general upkeep of the room.
- All staff are responsible for keeping the room clean and tidy at all times.
- Student photos and medical requirements will be displayed in the first aid area
- First aid area and cleaner's room have information and necessary resources to clean up any spills such as blood or vomit.
- The first aid area have access to parent and emergency contact numbers as well as services such as Nurse- On-Call.

First Aid Treatment

- Injuries or illnesses that occur during class time will be managed by the class teacher (where possible) or referred to the administration office or learning support officers as required. Another student will accompany the injured/sick student to the office/first aid area.
- Each class will have a first aid kit. It is the responsibility of the class teachers to ensure that kit is up to date with the necessary supplies.
- Yard duty teacher will carry a first aid kit and a communication device and treats minor injuries that occur on the yard (see Duty of Care Policy)
- All injuries (not minor) or illnesses that occur during recess times will be referred to the allocated staff member in the first aid room (see Duty of Care Policy for procedures).
- Any student with injuries involving blood must have the wound covered at all times. Procedures needs to be put in place to ensure that any blood spillage is properly cleaned and managed
- Medication (of any kind) will not be given to children without the permission of parents/guardians.
- All staff members have the authority to call an ambulance immediately in an emergency. If the situation and time permit, a staff member may confer with others before deciding on an appropriate course of action.

Offsite Activities (see also Duty of Care Policy)

- Off-site activities will have at least one Level 2 first aid trained staff member at all times and school staff with Level 1 training. The nature of the activity and location will need to be taken into account (see Duty of Care: Supervision of Students Policy).
- A comprehensive first aid kit will accompany all offsite activities, along with a mobile phone.
- All students attending offsite will have provided a signed medical form providing medical detail and giving teachers permission to contact a doctor or ambulance should instances arise where their child requires treatment. Copies of the signed medical forms will be taken on all offsite activities. Staff trained in managing anaphylaxis will be included in all off site activities.
- Student requiring medications during the offsite activity will require a copy of their medication plan with relevant details (see medications). This plan and the medication must be given to the designated person who will store and administer any medication required during the offsite activity. A record of its administration must be kept and entered onto the school's Medication Administration Record after the offsite activity has concluded.

Specific Student Medical Requirements

Medications

- The principal will designate suitably trained staff (Administration and Learning Support Officers) to be responsible for the appropriate storage and administration of prescribed and non-prescribed medication to students.
- Teachers are required to send students to the office at the required time so that the medicine can be administered.
- All student medications must be in the original containers, must be labelled, must have the quantity of tablets confirmed and documented, and must be stored in either the locked office first aid cabinet or office refrigerator (or staffroom refrigerator), whichever is most appropriate.
- All medication administered is recorded by the person administering the Medication Administration Record (see Appendix A).
- All completed Medication Administration Record Forms and details relating to students, their prescribed medication, dosage quantities and times of administering will be kept and recorded in a confidential official loose-leaf medication register.
- Parents will be encouraged, if appropriate, to consider whether they can administer medication outside the school day, such as before and after school and before bed.

Asthma

- All children, with a documented asthma management plan, will have access to Ventolin (or similar) and a spacer at all times.
- Asthma management plans for each student will be available in the first aid room and student classroom.
- Teachers will need to provide a duplicate plan for specialist teachers, if learning is not in child's classroom.

Anaphylaxis (see Anaphylaxis Policy)

- All staff will undertake the Australasian Society of Clinical Immunology and Allergy (ASCIA) e-training course. This is valid for 2 years.
- Two staff members will undertake the Course in Verifying the Correct Use of Adrenaline Auto-injector Devices This course is valid for 3 years.
- A staff anaphylaxis briefing will be conducted twice-yearly.
- EpiPens will be stored for quick and easy access in the first aid area. They should ideally be stored in a cool dark place at room temperature, between 15 and 25 degrees Celsius and not in a refrigerator.
- An anaphylaxis Risk Assessment form will be completed annually

Documentation and Communication

- A confidential up-to-date register that can be accessed in the first aid room will be kept of all injuries or illnesses experienced by students who require first aid treatment (not minor)
- Parents of all children who receive first aid treatment (not minor) will receive a completed form indicating the nature of the injury, any treatment given, and the name of the staff member providing the first aid.
- In the case of serious injuries/illnesses, the parents/guardians will be contacted so that professional treatment may be organised. Any injuries to a child's head will be reported to parents/guardian as soon as possible.
- Any student who is collected from school by parents/guardians as a result of an injury, or who is administered treatment by a doctor/hospital or ambulance officer as a result of an injury, or where a staff member considers the injury to be a concern will be reported to the Principal
- At the commencement of each year, requests for updated first aid information will be sent home including requests for any asthma, diabetes, anaphylaxis and epilepsy management plans.

- Parents will be reminded of the policies and practices used by the school to manage first aid, illnesses and medications throughout the year.
- General organisational matters relating to first aid will be communicated to staff at the beginning of each year.
- Policy will be available on school website and school app.

Care of Ill Students

- Students who become ill whilst at school will be cared for in the classroom or in the first aid room (depending on the nature of the illness).
- Parents of ill children will be contacted to take their child home. In the case of students, if parents / carers cannot be contacted then those listed as emergency contacts for that student will be called.
- If contact cannot be made with parents/emergency contact or they cannot come within a reasonable time to collect their child, the child will be cared for in the first area. The school will refer the child to external medical providers if required. This may include the use of an ambulance. It is the parent responsibility to cover the cost of the ambulance or to have ambulance insurance.
- It is an expectation and a responsibility that parents or an emergency contact does collect a child who is feeling ill.
- Parents who collect ill students must sign the child out of the school through the school office.

First Aid Kits

First aid supplies in the first aid room as well as in portable first aid kits will be consistent with the *School Policy and Advisory Guide* (DET). The school provides portable first aid kits for:

- Each learning space (stored in cupboard with first aid sign)
 - Yard duty teachers (stored in first aid room)
 - For offsite activities (stored in first aid room)
- Yard duty and classroom kits will include:
 - At least two pairs of single use nitrile gloves
 - sterile saline sachets or ampoules for irrigating eyes and minor wounds
 - gauze and band aids
 - a resuscitation face mask
 - first aid guide book
- Offsite activity kits will have required supplies depending on the nature of the activity and will include epipens

Reporting Obligations to WorkSafe

Schools must report the following types of health and safety incidents to WorkSafe:

- death
- employees or persons who require either:
 - medical treatment by a doctor (e.g. fractures, administration of a drug or medical treatment)
 - immediate treatment as an in-patient in a hospital

WorkSafe must be notified immediately by calling 132 360 and then in writing within 48 hours using one of the following forms:

- Online Incident Notification Form
- Incident Notification form

The administration office will assist teachers in this process.

Implementing Critical Incident Process

If a student or any other person in the school community has suffered a serious injury or has died in the school environment, it is important that the impact on others is treated as a critical incident and appropriate process will be implemented.

Risk Management

The first aid coordinator and risk management leader in conjunction with the principal will identify any risk management issues and follow the processes for risk management to ensure that risks are recorded, monitored and minimised.

References:

- St Francis Xavier Primary Student Care and Health Policy
- St Francis Xavier Primary SunSmart Policy
- St Francis Xavier Primary Anaphylaxis Management Policy
- St Francis Xavier Primary Emergency Management Plan
- CECV Child Safety Commitment Statement
- Victorian Department of Education and Training Duty of Care
- St Francis Xavier Primary Complaints and Grievances Policy
- St Francis Xavier Primary Duty of Care-Supervision of Students
- St Francis Xavier Primary Behaviour Management Policy
- St Francis Xavier Primary Child Safety: Reporting Obligations