



## POLICY FACT SHEET - DUTY OF CARE FOR STUDENTS

### **DUTY OF CARE:**

The College, the Board, Council and teachers owe a general duty of care to take reasonable care to ensure that their acts or omissions do not cause foreseeable injury to students.

During the time students are at the College or involved in College-related activities, they are in the College's care. Where a College exercises authority over students, the duty of care will arise regardless of whether the relevant authority is on College grounds or within school hours.

However, there must be a balance between supervising students so that the College and teachers adequately discharge their duty of care, and allowing the students some degree of autonomy so that they can learn a certain degree of responsibility. This balance generally depends on the age of the students – the older the student, the more autonomy the school and teachers should afford the student - but often the balance is fine.

### **Bus and playground duty**

#### **Public transport**

The duty of care imposed on the College and its teachers is not confined to school hours.

This extended duty will apply where students use public transport to arrive at or leave the College if the transport is near College grounds or if the transport is organised by the College.

There is no strict rule regarding the proximity the public transport stop has to be to the College to bring the area within the school's duty of care. However, there is judicial authority which states that a bus stop 150 metres from school grounds was not within the school's duty of care to prevent injury to a student who fell at that bus stop.

Therefore, if a public bus stop is directly in front of or next to school grounds, then it is likely that College staff will have to monitor that bus stop as well as the path that students take to arrive at the bus stop (such as a road intersection) in order to discharge the College's duty of care to its students.

If transport is arranged by the College, then the College owes a duty of care to the students using that transport which includes the process of getting on and off the bus as well as the time spent on the bus.

### **Supervision at the bus stop and on the playground**

Can the supervision of students at bus stops or in the playground be delegated to teacher aides?

There does not appear to be a difficulty with this practice, so long as the teacher aides are employed or engaged (including volunteers) by the College and are adequately trained.

Whether a teacher, teacher aide or volunteer supervises at a bus stop or in the playground does not change the fact that in both circumstances it is the College that is responsible for the students.

Therefore, if a student sustains an injury and it is determined that the supervisor appointed by the College (being a teacher, school administrator, teacher aide or volunteer) failed to exercise the reasonable standard of care expected of that person, then the College is liable for that breach and the subsequent loss arising from the student's injury.

Additionally, if a supervisor acts outside their scope of employment or engagement (for example, by acting in complete disregard of instructions provided by the College or being reckless), then the supervisor might be held



personally responsible for the loss, either directly or by the College seeking contribution or an indemnity from the supervisor.

### **Sports Coaches and Volunteers**

The College will **not** always be liable to a student who is injured while playing sport for the College, during school hours or on College grounds. Many sports are inherently dangerous and it would be inequitable for the College to always be liable for all injuries suffered by a student while playing sport. The law assumes a participant in a sport accepts a reasonable degree of risk when choosing to participate in that sport.

However, the College and anyone employed or engaged by the College (including a coach or a volunteer) does have a responsibility to take all reasonable measures to prevent injury to the students which the College should reasonably have foreseen. Clearly, the risk of injury to students is higher in sports than in the classroom. Accordingly, a higher standard of care is imposed on the College in respect of sports. That standard requires the College to take reasonable precautions to minimise risks as much as is possible, including by warning students of any risks present in the particular sport.

The College will be liable for the negligence of a coach or instructor engaged by the College. This is a duty of care that cannot be delegated to the coach or instructor. A case for negligence against the College would be even stronger if it is found that the coach or instructor involved was not properly trained by the College as to the risks to the students in carrying out the relevant activities.

Again, if a coach or volunteer acts outside the scope of their employment or engagement with the College by, for example, deliberately not following instructions given by the College then the College could arguably seek an indemnity from that person if the injured student sued the College.

### **Golf coaching program**

The College runs a golf program at the Brookwater Golf Course using a professional golfer. The students are dropped off at the golf course using transport arranged by the College, during school hours and are then picked up by their parents or guardians at the end of the activity. The students wear school uniform during the program and there is no teacher present during the activity.

This is the type of activity for which the College owes its student a duty of care, because it has been organised by the College, is run during school hours and, until the program starts, there is a teacher present. That duty of care remains non-delegable despite the fact that the program occurs outside College grounds and without the presence of College staff. Accordingly, the duty cannot be shifted to the golf course or the professional golfer in the instance that a student is injured during the program.

However, if a student is injured during the golf program and it is due to the negligence of the golf course or the professional golfer, the College can seek to be indemnified by the other party by joining that other party into any proceedings or claims made by the injured student. It would have to be shown that "but for" the act or omission of the other party (being the owners of the golf course or the golf professional), the student would not have sustained the relevant injury or the severity might not have been as great.

### **Leadership development program**

Students attend leadership programs run by the Ipswich City Council on Council premises. College teachers drop off and pick up the students attending the program, which is also run during school hours with the students wearing school uniform.

This scenario is very similar to the golf program discussed above. The College has a non-delegable duty of care to those students when dropping them off and picking them up but also for the duration of the program. However, if an injury is sustained by a student while they are attending the program and it is due to the negligence of, say, someone running the leadership program, then the College could seek to be indemnified by the other party if a claim is brought against the College by the student.



### **Recommendations**

In respect of sports, golf and leadership programs, it is advisable for a College staff member to attend those programs with the students to help ensure the safety of those students and thereby assist in discharging the College's duty of care. However, staffing and budgetary constraints limit this ideal situation.

More practical steps that the College could consider include:

- Requiring parents to sign a 'consent' form if their children are involved in activities which are not conducted on College grounds and by people who are not employees of the College, so that the parents give their informed consent on the basis that there will not be any College staff members at the activity. While this does not remove the College's liability, it does assist in parent management by keeping parents properly informed. It may also protect the College if there is ever any complaint by a parent that they did not understand the circumstances of a particular activity in which their child was participating.
- Ensuring that coaches or volunteers involved in assisting students with extracurricular activities are appropriately trained and qualified and that they are aware of the risks to students in undertaking the activities.
- In turn, ensuring that the College, through its staff members, coaches or volunteers, informs students of any risks which are relevant to a particular activity.
- Ensuring that all staff members driving students to and from activities have current drivers' licenses as well as current insurance and registration for the vehicle that they are driving.
- Where programs are run outside the College grounds, ensuring that those places, such as the Brookwater Golf Course, have adequate public liability insurance for the activities being undertaken on the premises.