



Student Duty of Care Policy

BACKGROUND

Duty of care is a legal concept that has its origins in the common law principle of negligence. Student duty of care not only underpins, but to a large extent drives, many of Garden College policies and practices.

This policy attempts to explain, in plain English:

- What “duty of care” owed to students means,
- The impact of civil liability laws,
- How teaching staff may discharge their duty of care to students; and
- The circumstances in which non-teaching staff, external providers and volunteers may owe students a duty of care.

CIVIL LIABILITY LAWS

The Commonwealth and all Australian States and Territories have enacted civil liability laws that apply in relation to claims for damages resulting from negligence.

These laws limit liability in certain circumstances including, in broad terms:

- The College does not owe a duty of care to warn of an “obvious risk”; and
- The College will not be liable for harm suffered as a result of the materialisation of an “inherent risk”.

The existence of civil liability laws means that issues of liability for student care claims in Australia will ultimately be determined by a complex mixture of legislation and common law (judge’s decisions).

GUIDELINES FOR IMPLEMENTATION

Garden College and its teachers owe a duty to take care of students whilst they are involved in College activities or are present for the purposes of a College activity. This duty of care is non-delegable.

The duty is to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen. This requires not only protection from known hazards, but also protection from harm that could foreseeably arise and against which preventative measures can be taken.

The standard of care required is that of a 'reasonable' teacher. This means that the duty of care owed is the duty one would expect from a hypothetical teacher with normal skills and attributes exercising their professional judgement. The duty owed to students is not an absolute duty to ensure that no harm will ever occur, but a duty to take reasonable care to avoid harm being suffered.

Individual circumstances will determine what constitutes reasonable care. The following issues may be considered in assessing the reasonableness of the level of care in any circumstance:

- The student’s age, experience, and capabilities – Younger students require more care than mature students,
- Physical and intellectual impairment – Students with disabilities are exposed to higher levels of risk of injury than students without a disability,

- Medical condition – Special care must be taken to protect students with known, or ought to be known, medical conditions which expose them to a higher risk of injury (e.g. asthma or epilepsy)
- Behavioural characteristics – The level of care is increased where students are known to behave in a manner that increases the risk of injury;
- The nature of hazards present – Increased care is required if the College activity has an inherently high level of risk of injury or the activity takes place in a hazardous environment.
- Any conflicting responsibilities the College or teacher may have; and
- Normal practices and procedures within the College.

These factors should be considered when planning student activities.

TEACHERS RESPONSIBILITIES

A teacher's duty of care is not confined to the geographic area of the College activities, or to activities occurring outside the College where a student is acting on teachers' instructions. The duty also applies to situations both before and after school where a teacher be deemed to have "assumed" the teacher-pupil relationship and to virtual environments.

- Take account of the diversity of all children, including (but not limited to) the needs of Aboriginal & Torres Strait Islander children, culturally/linguistically diverse backgrounds, children with disabilities and children who are vulnerable.
- Teachers must always be active and vigilant. The courts recognise that accidents happen in school and a teacher will have breached the duty of care if the following occurs:
 - The injury was reasonably foreseeable, i.e. not completely unexpected.
 - The injury occurred because the teacher did not carry out their responsibilities in a sufficiently careful manner.
- Adhere to the 'Staff Code of Conduct' expected behaviours when interacting with the student to maintain a child safe environment.
- Teachers on any form of duty both on and off school premises can be implicated if they have failed to undertake their duty as a result were not able to top any harm to a student.
- Providing a course of instruction to students by delivering meaningful lessons using a range of teaching techniques and materials.
- Assessing students regularly and fairly and recording each student's progress.
- Diagnosing an individual student's ability and providing an appropriate course of action.
- Knowing the theoretical basis for teaching.
- Maintaining discipline in the classroom and other school areas.
- Maintaining professional knowledge.
- Having an interest in extracurricular activities – in the playground, at sporting activities and providing pastoral care.
- Being responsible for their own conduct.
- Arriving on time to scheduled timetabled duties.
- Being on time to supervise the line-up of students when the bell rings.
- Always supervising students and never leaving students unattended in the classroom.
- Instructing students who are not wearing school uniforms and hats etc.

- Always stopping dangerous play and paying attention to students at all times.
- Asking for Principal approval before leaving the College during time release.
- Always providing students with adequate supervision on a school excursion or incursion.
- Never giving advice in areas outside their role, where they may lack expertise.
- A teacher owes a duty of care to his or her students to take reasonable steps to protect them from reasonably foreseeable injuries.
- Teacher's duty can be summarised by stating that the duty can involve taking reasonable care to:
 - Adequately supervising students
 - Protect students from dangerous situations and activities
 - Maintain safe premises and equipment and protect students from bullying and violence
- Schools and teachers have a duty of care to students whenever the school is exercising control over the students' actions. This includes:
 - In classrooms, laboratories, computer rooms, library and anywhere where curricula or co-curricular activities are taking place
 - In outdoor and indoor play areas.
 - During sports and physical education activities.
 - When students are moving around the school.
 - During excursions, incursions and school campus.
- Teachers should take extra care to avoid allegations of both sexual and physical abuse. This could be avoided by following the recommendations shown. Furthermore, teachers should avoid allegations of non-physical abuse which can involve psychological abuse from belittling, embarrassing or giving a student inappropriate punishment.

SCHEDULING YARD DUTY

The timetable is required to produce a Yard Duty Schedule to ensure that all areas of the school are monitored by teachers during students' breaks, before and after school. The Daily Organiser and Principal or his/her delegate have the prime role of ensuring that teachers attend and perform their duties in accordance with the instructions published for each yard duty area.

PROCEDURE FOR STUDENT AUTHORISED DEPARTURE (EARLY LEAVE)

No students can leave the school grounds without the presence of the parent or an official guardian. The Parent/Guardian must sign the early leave receipt at the Front Office. The receipt will be handed to the classroom teacher and a copy kept in the Admin Office. The attendance code will be updated by admin personnel accordingly.

ACTIONS FOR UNAUTHORISED DEPARTURE

The teachers are required to check the roll within 5 minutes of the commencement of the class. The classroom teacher will report any students missing from class immediately to the admin office staff to follow up. The office staff will follow a set procedure to locate the student. The procedure will involve informing the Principal and appropriate coordinators an announcement over the school PA system and a thorough search of the buildings and school grounds. Phone call the parents/guardians to ascertain the next appropriated to involving emergency services. The College treats truancy very seriously and offending students will be dealt with according to the policy.

COMMUNICATING WITH PARENTS

The College has a number of mechanisms in which communication is related to parents, year level parent information evenings are provided annually at the beginning of each school year where updated student policies/procedures and expectations are provided in the student/parent presentations.

- Any update on student-related policies or procedures is sent via the post to parents depending on the scope of changes information evening are organised accordingly.
- Newsletters
- College website
- Social Media – Facebook
- Letters – the College send letters by mail or through the students to notify parents of upcoming events, excursions, incursions, camps, information evenings, assemblies, changes in policies and procedures, Progress notifications, Behaviour notifications.
- SMS – SMS/Text messages are used to remind parents of events such as Parent/Teacher interviews, Public Holidays, Religious Festival best wishes, Student Lateness and Student absenteeism.
- Phone call – all staff members are encouraged to communicate with the parents on a regular basis and to make positive phone calls on a regular basis.
- Scheduled meetings – regular meetings are held between the staff and parents.
- Parent Teacher Interviews.
- Information & Professional Learning evenings/sessions.

The College has bilingual staff for support when required.

LAW/LEGAL PROFESSIONALS RECOMMENDATIONS

- Make it an absolute rule never to be left alone with a child of either sex no matter what their age is. It is best always to have as many children with you as possible.
- In rendering first aid to the student, take care to see that another member of the staff and/or senior students are present. If the injured child is female and if there is a woman on the staff, under no circumstances should a male teacher attend to her injury and first aid administered to male children should always be administered in the presence of a responsible witness (es).
- Never detain a single child if there are no other staff members available.
- Never allow yourself to be alone with a child or two children in the school building before school or after school.
- A habit can grow up having senior students perform various tasks in the classroom or around the College. It is much safer not to allow children to develop a privileged position as this can result in a dangerous situation for the teacher.
- If you have to discuss a personal problem with the student, and this may particularly apply in small schools where students are in various stages of maturity, ensure that a discussion of this kind takes place in a conspicuous situation in the playground, that is, out of hearing but in sight of as many people as possible. (Legal obligations of a teacher DOC 56/61 by Drew Hopkins).
- Avoid at all times conveying children in your own car even where parents have given their consent. This situation can provide an opportunity for allegations of inappropriate conduct.
- Also, should the child be injured due to your negligence you may be liable for such injuries.
- If you are involved in coaching small groups, especially of the opposite sex always have another adult present and wherever possible conduct the coaching session in a public place.

PROCEDURES FOR REPORTING INCIDENTS

- The College has a designated form on Sentral for reporting incidents by staff members. These incidents can be related to students, colleagues, occupational health and safety or any other matter. All incident reports are tracked by the Principal to ensure that all reports have been dealt with satisfactorily.
- Students have designated forms to report an incident and have the choice on whom they wish to submit to. All parents and students at the beginning of each year are provided with all personal work emails for any communication.
- Based on the nature of the incident or allegations relevant staff member will inform and provide Support and inform the relevant authorities such as Work Safe, Child Protection and Police.
- All serious allegations/incidents including school response will be kept secure and retained with the Principal.
- The Principal in consultations with the school counsellor and relevant staff members will protect any child that may be connected to any form of child abuse/allegation.

EMPOWERING STUDENTS TO REPORT

- Children who have shown the courage to disclose any child abuse or mention any wrongdoing of those who are responsible for their care must be dealt with very sensitively and supported throughout.
- Students of Garden College will be made aware of their right through visual displays and by sharing the staff 'Code of Conduct'. "Interactions with Students" section to raise the concern of not only their responsibilities but expectations of school staff when interacting with them.

NON-TEACHING STAFF, VOLUNTEERS & EXTERNAL PROVIDERS

When non-teaching staff, volunteers and external providers agree to perform tasks that require them personally to care for Students (in the absence of a member of the teaching staff), they will also owe a duty to take such measures as are reasonable in all the circumstances to protect students from risks of harm that reasonably ought to be foreseen.