



Duty of care¹

Duty of care owed by teachers

Every teacher has a 'duty of care' towards every student under his or her supervision, by virtue of the conditions of the teacher's employment, and by virtue of the common law principals of negligence.

Generally speaking a teacher owes a student a duty to take reasonable care to protect him or her from foreseeable risk of injury. This duty may be manifested in many ways including;

- The duty to supervise the students so that they comply with rules and practises designed for their own safety and that of other students;
- The duty to design and implement appropriate programmes and procedures to ensure the safety of the students;
- The duty to ensure that school buildings, equipment and facilities are safe;
- The duty to warn students about dangerous situations or practices.

The list is not exhaustive. Basically, the duty is to do what is reasonable in a given situation. The question of what is reasonable in a given instance will be decided by the court in the event of litigation, but it is for the individual teacher, the principal and the department to comply with the objectively reasonable practise.

Common law negligence

In order for a liability in negligence to be established, it must be proved that:

- A duty of care was in the circumstances;
- The duty was breached, because of an act or omission on the part of the person owing the duty;
- A loss or injury is suffered as result of the breach;
- The type of loss or injury suffered was a reasonably foreseeable consequence of the act or omission.

The standard of care owed to a student will vary according to the circumstance. If the standard of care required in a particular situation is not met and a student suffers loss or injury, a liability in the common law tort of 'negligence' will arise.

¹ This information was extracted from Section 1 of the Administrative instructions & Guidelines

If such liability established, a parent or student may make a claim for 'damages', which is financial compensation for all foreseeable loss (both economical and non-economical) arising from the negligence.

The Minister is vicariously liable for claims (except where such claims arise from the serious and wilful misconduct of a teacher), which means that any common law claims will be issued against the Minister as employer generally rather than against an individual teacher or the school.

Indemnities

It is not possible for school's "to contract out of" liability for the welfare of its students. Therefore permission notes or consent forms should not include clauses which ask parents to sign away their child's rights to sue for negligence, or to accept that the school cannot be held responsible in any way for an accident of injury.

Parents should be made aware of the everyday risks associated with activities, particularly where there is to be no direct supervision. To let them know the risks without causing needless concern, parents should be sent a circular with a detachable acknowledgement slip to the effect that the parent has read the circular, is acquainted with the risks involved appreciates the educational/recreational/social values of the activity in question and consents to the child participating.

In appropriate cases, ie. where the child is old enough or mature enough to appropriate fully the risks involved,, the child should also sign the acknowledgement slip.

School service officers undertaking teaching duties

School services officers must not accept personal responsibility for nay portion of the formal learning program or the wider school curriculum. They may have delegated to them a wide range of tasks consistent with the award and their classification provided that a teacher assumes personal oversight and ultimate responsibility.

Teachers cannot delegate the duty of care which they owe to students. School services officers may be left in charge of students for short periods but responsibility for the students' health, safety and welfare rests with the supervising or controlling teacher.

School services officers can only be liable for "positive" acts of negligence and the Minister is vicariously liable, as the employer, if such acts are committed in the course of employment. The minister can only deny liability where the action of the school services officer constitutes and wilful misconduct.