



Teachers' liability in negligence to students – Queensland Government schools

This document is issued for general guidance only. It does not constitute professional advice. The issues with which it deals are complex and the document necessarily deals only with general principles. No reader should rely on this document for the purpose of making a decision as to action but should seek the appropriate advice from the Union on the particular circumstances of that reader. The Union accepts no responsibility for the consequences should any person act in reliance on this document without obtaining the appropriate advice from the Union.

Teachers' duty of care

Teachers and their employers undertake the care, control and supervision of young people in a wide variety of circumstances, ranging from the normal classroom situation to activities such as sports, swimming, travelling to various places outside the school grounds and the handling of potentially dangerous chemicals. As trained professionals, teachers are considered capable of caring for and controlling large numbers of young people, and are expected to exercise the level of care and skill of a professionally trained teacher in carrying out their duties.

A duty of care arises in relation to the use of equipment and premises, but in most cases involves taking reasonable steps to minimise the risk of students being injured by their own conduct or by the conduct of other students. There is certainly an element of protecting students from the consequences of their own immaturity.

In the laboratory, at the swimming pool, on the sporting field, travelling to museums, libraries, concerts and other activities held outside the school grounds, the duty of care will exist and must be discharged, taking into account all of the circumstances involved.

To discharge this duty of care, it is necessary to exercise the degree of skill and care which a reasonable teacher in the same situation would exercise.

Principles of negligence

The basic principle in negligence cases is that liability to pay damages will arise where three elements are established by the person seeking damages, namely:

- that there is a duty of care in the situation under consideration;

- that there has been a breach of duty, that is, a failure to take care regarded by the law as reasonable in the circumstances; and
- that damage or injury has been caused by or contributed to by that breach.

These three basic principles of negligence must apply before a claim for damages can be commenced.

The duty of teachers is to take reasonable steps to minimise the risk of injury, not to guarantee that no injury will be suffered. It would clearly be impossible to discharge a duty to guarantee that no student could ever be injured and most unjust to seek to impose such a duty on teachers.

In looking at the question of the duty of care owed by the teacher to the child, the court will ask these questions:

- Should the teacher as a reasonable person have foreseen that such an accident was likely to happen?; and
- Did the teacher take sufficient precautions to prevent it occurring?

A teacher will not be liable for damages for an injury to a student merely because an injury occurred while the student was in the teacher's care.

The *Public Service Act 2008* (Qld) (“**the Act**”) provides that State employees will not incur civil liability for engaging in conduct in an official capacity. Instead, liability automatically attaches to the State (see section 26C of the Act). In practical terms, this means that the target of a damages action will generally be the State or the department rather than the individual teacher.

The department may only recover a contribution from a teacher if it is found that a teacher acted in a way that was not in good faith and which was grossly negligent.

Employer's liability

If a teacher, having a duty of care, has failed to discharge that duty and a student has been injured as a result, then the employer of that teacher will be liable in damages, if the teacher has been engaging in conduct in an official capacity.

To take the simplest example, the employer will be liable to the student for the negligence of a teacher if the negligence occurred in a normal classroom situation.

The employer, though liable to the student, may then seek reimbursement from the teacher for payments made as a result of the teacher's conduct.

The State, however, recognises that its employees (particularly teachers) have difficult and delicate duties and functions and that, in the diligent carrying out of these duties and functions, they are exposed to claims for damages.

The State, therefore, has legislated for the automatic protection from liability of State employees by way of the Act.

Of particular note to teachers are the following principles:

1. Teachers do not incur civil liability for engaging in conduct in an official capacity. Instead, liability automatically attaches to the State; BUT
2. The State may recover a contribution from the teacher if the conduct that is the subject of the claim was *not in good faith and grossly negligent*.

The State will have the onus of proof to show that the teacher had not acted in good faith and with gross negligence.

Even where the teacher is found not to have acted in good faith and to have been grossly negligent, the court retains a discretion as to the amount the State may recover.

The court may order the teacher to pay an amount the court considers "just and equitable in the circumstances".

Non-school activities

It is possible for teachers to place themselves in a situation where they are found to have breached their duty of care, but where the court holds that the employer is not liable. The distinction is whether the teacher was acting within the scope of their employment or was involved in an activity with students which is not part of their employment.

There are of course many activities outside the normal school day routine which are part of the school's activities, and there will be no doubt that teachers are acting within the scope of their employment in many of these situations. Teachers should be careful, however, not to place themselves in situations where there is a

possibility that the school might assert, if proceedings later arose as a result of an accident, that this was in fact a private arrangement between the teacher and a number of students rather than a school activity.

Teachers can obtain some protection in relation to this situation by ensuring that they complete risk assessment forms as required by their school's policy and ensuring that parental permission forms are sent home, signed and returned before the commencement of any out of school activity. It is essential that teachers comply with the school's policy in relation to excursions and extracurricular activities.

Insurance

If you are concerned about protecting your financial position, you are, of course, able to seek advice from Queensland Teachers' Union Officers in relation to the insurance possibilities which are open to you, as the Union has investigated this matter closely in recent years.

Given the effect of the Act, insurance will be of very limited application.

Effect on employment

In conclusion, it should be mentioned that it is possible a teacher's failure to exercise reasonable care and skill in discharging their duties may amount to a breach of the contract of employment and may result in disciplinary action by the employer. Disciplinary action will not be an issue when teachers exercise their professional judgement wisely and comply with relevant departmental policies, guidelines and directions.

For further information on this topic see the legal information statement entitled "Teachers and the law: accidents".