



# Teachers and the law: accidents

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**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.**

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## Accident reports

In the event of an accident, you may be required to provide a statement, either by way of a report in the school-based incident report on OneSchool, or in response to a request from the Department of Education.

If you believe you could be held liable for the accident in any way, no statement should be provided without first contacting the Union. In such cases, the Union will provide advice on the content of the proposed statement, to ensure your rights are protected.

This procedure will not cause undue delay in the provision of a statement, and you should simply advise that you are seeking legal advice before providing a statement.

If no statement is requested, it is advisable to keep a record of the circumstances of the accident for your own purposes, as an action for damages may be commenced some years after the event. Students have until the age of 18 years, nine months (i.e. nine months after attaining the age of majority) to initiate a claim for damages.

## To and from school

Although there is no general duty of care in relation to students when they are travelling between home and school and after leaving school and arriving home, there are some circumstances which may lead a duty of care to arise. If teachers at a school become aware of a dangerous situation and take no action (such as drawing it to the attention of parents) then they may be held to have failed to act in a situation where their knowledge gave rise to a duty of care.

You should seek assistance from the Union over any concerns arising from students' activities, or risks involved in travel to or from school, or early arrival at school. Those matters are generally

dealt with between the school and parents, via the principal.

## Departmental policies

The Department of Education has consolidated its policies in a [Policy and Procedure Register](#) (DoE PPR).

It is important that you are aware of the DoE PPR, as it contains advice relating to the care and safety of students. Failure to follow this advice may leave it open to the department to determine that you have not been "endeavouring to carry out assigned duties in a conscientious and diligent manner".

Failure to carry out departmental instructions, or to act on the advice given, may be evidence of negligence. However, it does not necessarily follow from failure to comply with the directions and advice that you have been negligent, as the policies and procedures would be only one of the many factors to be taken into account by courts.

The normal tests of negligence would apply in the event of an accident to a student in one of these areas. You should be aware that you are not liable to compensate injured students merely because you happen to be teaching at a time when an accident occurs. It is necessary for an injured student suing in the courts to establish that you had a duty of care, that there had been a breach of the duty of care, and that any such breach of the duty of care caused or contributed to the student's injury.

Principals should include in their induction programs at the beginning of each year reference to the DoE PPR.

## Duty of care

Teachers have a duty of care towards their students as the State, by law, removes students from the protection and control of their parents during school hours. Therefore, the State must

take over those obligations of which their parents have been deprived, including the obligation to take reasonable care for the safety of the students.

The duty of care owed by a teacher requires you to take such measures which, in the circumstances, are reasonable to prevent physical injury to the students. This duty of care is not one to ensure against injury, but to take reasonable care to prevent it. You must take reasonable steps to protect students against risks of injury which you should reasonably have foreseen.

The responsibility of care is always, therefore, a question of what is reasonable in the circumstances, in relation to the skill appropriate to your professional status, the nature of the danger and the age and responsibility of the child.

Ultimately, the question of whether a teacher has or has not been negligent is the decision of a judge or jury, taking a broad view of all the relevant circumstances and in the light of experience of life generally.

The standard of care required of a teacher is, however, that of a professional, with knowledge gained as a professional through years of training and experience. It is important, therefore, that you exercise your professional judgement in any situation where a duty of care exists.

## 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.

## Effect on employment

In conclusion, it should be mentioned that a teacher's failure to exercise reasonable care and skill in discharging their duties is a breach of the contract of employment and may result in disciplinary action by the employer. Disciplinary action is not 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' liability in negligence to students – Queensland Government schools".