



TEACHER AIDE DUTY OF CARE



WHAT IS DUTY OF CARE?

Schools 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.

If you owe a “duty of care” towards someone, this basically means you owe some type of obligation to a person not to cause harm to them through your negligent conduct.

In certain relationships, there is automatically a duty of care owed from one person to another.

Examples include:

- A doctor owes a duty of care to his patients
- An employer owes a duty of care to his employees
- A teacher/teacher aide owes a duty of care to their students

One case described this duty of care as follows:

“... the need of a child of immature age for protection against the conduct of others or indeed of himself, which may cause injury coupled with the fact that during school hours the child is beyond the control and protection of his parent and is placed under the control of the schoolmaster, who is in a position to exercise authority over him and afford him, in the exercise of reasonable care, protection from injury.”

The duty of care owed by a teacher aide requires that a teacher aide takes such measures, which in all the circumstances are reasonable, to prevent injury to the students.

This duty of care is not one to insure against injury, but to take reasonable care to prevent it.

The responsibility for care is always, therefore, a question of what is *reasonable* in the circumstances. It takes into account such things as the skill appropriate to the teacher aide status, the nature of the risk of injury and the age and the responsibility of the child.

But don't panic! If you diligently carry out your duties with the appropriate level of care and skill and generally take a commonsense approach to performance of your duties then you will have satisfied the common law duty to take reasonable care to prevent foreseeable injury to the students.

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 that 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 materially contributed to by that breach.

These three basic elements of negligence must be established before a claim for damages can be sustained.

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

In any situation, teacher aides must use their commonsense. First of all, statutory provisions, gazetted regulations and lawful instructions must be obeyed, but thereafter the teacher aide must use commonsense.

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

- Should the teacher aide as a reasonable person have foreseen that such an accident was likely to happen?
- Did he/she take sufficient precautions to prevent it from occurring?

VICARIOUS LIABILITY

Under the doctrine of vicarious liability, the employer (the Department of Education) is also liable for any civil wrong committed by its employees while acting in the course of their employment.

An injured student has the choice of suing the Department alone, or the staff member or both.

In general, the injured student will sue both the Department and the staff member concerned.

The crown, however, recognises that Crown employees (particularly teachers and teacher aides) 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 Crown therefore has established policy in relation to Crown acceptance of legal liability for its employees. Of particular importance to staff are the following points from that statement of policy:

The Crown will accept full and sole responsibility for all claims including the cost of defending or settling them, in cases where the Crown employee concerned has diligently and conscientiously endeavored to carry out assigned duties.

Where the Crown pays any money in settlement of any claim which has arisen as the result of a Crown employee endeavoring to carry out assigned duties in a conscientious and diligent manner, the Crown will not seek to exercise any claim for contribution from such employee. (Reference DOEM LL-06)

In brief:

- The concept of a “duty of care” relates to the law of negligence.
- The every day meaning of negligence equals carelessness
- However, there needs to be more than mere carelessness in law to amount to negligence.

Negligence in law requires:

- 1) a duty of care;
- 2) a breach of that duty and
- 3) damage to result from that breach

BREACH OF DUTY

This generally involves a failure to take reasonable care in the circumstances.

Differing standards of care are required according to the situation. For example, more care need to be taken (or there may be a higher standard of care required) when a teacher aide is caring for special needs, children or young children, than if the teacher aide were supervising Year 10 students.

REDUCING THE RISKS

What can you, as a teacher aide, do?????

- ❖ Adhere to policies and procedures
- ❖ Keep records (tactfully) of any unusual events. Notes should be taken at a time as close as possible to the event, noting dates, times and persons present;
- ❖ If there appears to be a risk - report it. For example if there is a broken piece of equipment, report this;
- ❖ And again, use common sense.

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