



A teacher's duty of care

Dennis Sleigh examines the concept of duty of care as it relates to schools and teachers

Many teachers worry about the impact the law might have on their lives, and such concern is valid. After all, the safety of our pupils is paramount and the law is there to protect them from others who might harm them – and this includes harm from teachers. However, if we learn what the relevant laws really say, we will be consoled, not concerned, and we will know that if we act with common sense, we will be well protected. The present series of articles, of which this is the first, aims to help teachers grasp some key issues and thereby to affirm us in our work.

As teachers, we often share a common nightmare about someone being hurt while under our care, and then suing us for damages. We've all heard cases where this happens, and teachers might legitimately wonder whether it could happen to us. The short answer, of course, is: Yes, it could happen to us, but rather than being terrified by the prospect, we would be better off to learn our true responsibilities, to act sensibly, and to protect not only ourselves but all those in our care.

Defining duty of care

In learning these responsibilities, a phrase that constantly arises is *duty of care*, and if we can appreciate the implications of this phrase, we

will perhaps sleep better at night, so just what does duty of care mean?

In brief, *teachers have a duty of care, or a responsibility to help all those who are linked to us in the teacher-student relationship.*

This duty is just what it sounds like – a duty or a responsibility binding the teacher to care for the student. It was commonly described as the care that would be taken by a reasonable parent, but courts today seem to question this yardstick, given the size of our “family”.

A better description of the care required, certainly with large groups, would be that the level of care should be that reasonably expected of a caring professional. In many cases, this might be somewhat more than is expected of a parent, and certainly some hazards that might be accepted at home might be unreasonable at school. Reflect a little on the activities that you have seen parents accepting – perhaps that you yourself have accepted – and then ask yourself: Would I allow my students to do this? Often, the answer will be no, simply because we are dealing with much larger groups of children where innocent actions can rapidly escalate into dangerous ones.

A simple example might be allowing children to climb trees. As a parent, I had no problem with my own children climbing trees, as long as

I knew the trees were safe and I was around to keep an eye on things. However, I wouldn't let a class of infant children do the same because the situation would be far less manageable, with countless variables to consider.

It is not always easy to know what constitutes a professional standard, but if schools engage in sensible dialogue the levels very quickly emerge, and the whole staff can know that they are following comparable standards. If the court were to call for the advice of a well-respected and experienced teacher to assess whether our actions were professional, would we be found wanting? That is what a professional standard really means.

Incidentally, the duty of care owed by a teacher to a student arises because the educational authority has, in line with government policy, asserted control over the student, demanding attendance at school. When the state insists that parents commit their children to compulsory education, parents are legitimately entitled to demand that their offspring be protected.

In a later article, I will discuss the question of negligence and explain that the duty of care must exist if a case of negligence is to be proven against a person. If a person were sued because someone was hurt, the case could be sustained only if there was a duty of care owed to the victim;

no duty of care would mean no negligence case could be taken. However, as teachers we *do* owe a duty of care to our students so this loophole is not relevant.

It must also be noted that this discussion relates only to *legal* obligations. There are also other obligations to consider, simply because we linked to all about us. As John Donne so beautifully expressed it, “No man is an island...” and we all have a moral obligation to others but this wider issue is not part of the current discussion.

Granted that we owe a duty of care to our students, what does this mean in reality? Are we obliged to look after them so carefully that no harm can ever befall them? Should we wrap them in cotton wool? Are we responsible if they have an accident? In this and the next article, some of these matters will be teased out.

Factors influencing the duty of care

Despite the occasional claim that “The law’s an ass”, the laws that govern our lives are usually based on common sense. As we explore the idea of duty of care, we will see that this is normally the case, and the points raised here will generally strike most people as quite reasonable.

Thus it will be no surprise that the duty of care varies with the circumstances. If we are caring for a group of young children, more care is expected than if we are teaching senior students. Indeed, if we tried to apply to our matriculation students the same level of care we usually show to our school-entry pupils, the seniors would soon tell us where to go. However, the age of those in our care is not the only factor to be considered.

The group’s ability is also important, as is the situation in which the teacher and students find themselves. If a teacher were to take a very experienced group of 14-year-old swimmers to a beach, the level of care needed here may well be lower than if the group consisted of 17-year-old non-swimmers. In the same way, a teacher taking a Year 1 class on a nature walk in the school grounds, picking up different types of leaves, would exercise a different level of care to that required if the teacher was taking a group of Year 8 students through a tropical rain forest in search of ecological data.

The previous history of the group is another important consideration. If my class usually acts in a sensible manner, I could justify briefly leaving the classroom if a serious reason occurred. However, if my class are known to be serial delinquents even when the teacher is present, it would be much harder to justify leaving them unattended for even a few moments.

In this article, I am limiting myself to the matter of physical safety, or protection from physical harm. Later, I will raise another topic: protecting students from intellectual harm. That is more complex and perhaps more worrying. Meanwhile, our emphasis on physical harm

brings us logically to a discussion of safe premises.

Because of our duty of care, we cannot allow children to play on faulty playground equipment or to use unsafe sporting gear. If the only cricket gear we have in the school is splintered and damaged, it will not be a strong defence when someone gets hurt by this equipment to say “We had nothing else.”

If our school oval is a regular drinking spot for underage locals on weekends, for example, and they leave behind broken bottles, our duty of care demands that we do something to remove this risk to the safety of our students. It is not enough to shrug our shoulders and say “These local hoodlums should know better!”

The principal of a large school cannot be expected to know every instance of dangerous equipment – the faulty power point, the slippery step, the wobbly seat or the damaged baseball bat – and so it is up to staff to keep the authorities well informed. Sensible schools have strategies to ensure that danger is anticipated and then removed; these strategies depend on the full co-operation of every mature member of the school community playing a part by passing on relevant information. It goes without saying that the authorities must then act on this information, or their guilt is further compounded when someone suffers.

There was an interesting case some years ago where system authorities were warned of a potential danger to certain students (those with long, thin necks) playing rugby. The expert medical advice was not widely disseminated and when a student was seriously hurt in a collapsing scrum, the system authorities were the ones who incurred the wrath of the courts, not the teachers or coaches who had not been advised of this danger.

Anticipate problems

Teachers are professionals who are well trained and generally experienced in dealing with children. Therefore, if an unpleasant situation arises, where someone gets hurt because of lack of foresight on our part, we cannot say: “I didn’t know that this was likely to happen.” As professionals, we are expected to use our knowledge and wisdom in anticipating likely problems and preventing incidents from occurring. That is the price of being a professional – and it explains why more care is expected from teachers than from, say, teachers’ aides.

This raises a dilemma: as teachers we are interested in helping our charges develop as human beings. We cannot hope to do this if we wrap them up in cotton wool. Indeed, one English judge (Justice Hilbury in 1938) pointed out that if we wrap young boys up in cotton wool, some of them will probably choke on the stuff! We must therefore balance the prudent care we take of our students and the opportunities for growth that we give them.

Some things for us to remember

- a) All teachers owe a duty of care to their pupils. We cannot contract out of this obligation, passing the buck to others. It is part of our position as teachers.
- b) The more responsible our role in the school, the wider our responsibility for the good of the children. Society rightly expects its leaders to be vigilant in carrying out their duty.
- c) Taking the care of a reasonable parent (or of a reasonable professional) means allowing children to take risks, but also ensuring that the risks are not too great. It is a question of balance – and we must do the balancing.
- d) Teachers are professionals who should be able to draw on our training and experience to help us anticipate likely problems and counteract them wisely.
- e) The level of care expected of us will vary with the circumstances. Some important factors to consider are:
 - 1 age of our students
 - 2 their ability levels
 - 3 the hazards involved in any exercise
 - 4 the previous history of the group

Changing attitudes

Society’s expectations change over time. The teacher who could blithely throw a stick of chalk at a dozing student in another age should know that today such actions would be seen as grossly irresponsible. Likewise, no teacher today would countenance arranging a boxing match to sort out a disagreement between students. The increased awareness of health risks, perhaps best exemplified by today’s very negative attitude towards smokers, should warn us clearly that today’s professionals must face higher expectations and must be better informed. If reliable information is reasonably available we must heed it. There will be little satisfaction in saying we were unaware that standards have changed. Professionals are called upon to act professionally.

Teaching is a glorious profession, with many high points; however, there are risks involved in performing our duty and these can undermine even the best of a teacher’s experiences. To balance these risks, we must be well informed, prudent and responsible. If we are, our chances of falling foul of the law are greatly reduced and our students will be better off.



Dennis Sleight is a writer and school principal. He is co-author of *Australian Teachers and the Law* and a regular contributor to *Education Today*