

4 MARCH 2010

RISKY BUSINESS: RISK MANAGEMENT OFF-CAMPUS

OFF-CAMPUS EDUCATION

Imagine the squeals of delight from 20 excited grade 5 students as their teacher announces: "Pack your sleeping bags, thermal underwear and hiking boots – we're going on a camp!"

In 2010, a holistic education for students at primary and secondary schools involves the teaching of a range of subjects in varying educational styles. These styles include outdoor education and off-campus activities. Schools commonly incorporate camps or excursions in their curriculum and some schools have rural campuses where students board for a number of terms for outdoor-based education, generally aimed at giving students a sense of confidence, leadership, teamwork, responsibility and self-reliance. But with outdoor education comes a myriad of risks that are not otherwise present in classroom teaching.

As one New South Wales judge said "...society accepts that certain recreational activities may be provided for young children, and even encouraged, albeit that they involve risks of serious injury"¹. Despite this, *1 Ohlstein BHT Ohlstein & 3 Ors v E & T Lloyd t/as Otford Farm Trail Rides* [2006] NSWCA 226 at 6, per Ipp JA

taking students off-campus is undeniably a risky business. Therefore, it is imperative that teachers and schools be aware of the risks associated with off-campus activities and be equipped to deal with them so as to guard against injury to students and subsequent actions in negligence against schools and teachers.

NEGLIGENCE

What is negligence?

An action in negligence may be brought against a school when there has been a breach of a duty of care. The action is a civil claim for compensation or damages for the injury suffered as a result of the breach of duty of care.

Three fundamental points must be established to succeed in an action in negligence against a school or teacher:

1. The school or teacher must owe a duty of care to the student.
2. That duty of care must be breached.
3. That breach must cause the student to suffer loss or damage.



ARTICLE

What does it mean to owe a duty of care?

A duty of care arises where two parties are in a relationship of “proximity” and where the negligent acts or omissions of one party detrimentally affect the other. The duty exists in a school environment when students are engaged in any type of school-related activity, be it during class, extra-curricular activities, sports, camps or excursions, or in the playground before or after school².

There are situations where certain relationships give rise to higher levels of responsibility. The relationship between teacher and student falls into this category because, in the eyes of the law, school authorities and teachers are considered to be in a position of control and students in a position of vulnerability.

The courts have held that the responsibility includes a positive duty to act to ensure against risk of injury³. This has been characterised as follows:

*“[It is] the need of a child of immature age for protection against the conduct of others, or indeed 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.”*⁴

A school cannot delegate its duty of care to any single employee. If a school is found to be responsible for a student suffering an anaphylactic shock, the school cannot exonerate itself by passing blame onto an individual teacher.

² *Geyer v Downs* (1977) 138 CLR 91

³ *Commonwealth v Introvigne* (1982) 150 CLR 258

⁴ *Richards v State of Victoria* (1969) VR 136 at 138-139, per Winneke J

Similarly, where an off-campus activity is run by an external organisation, the school cannot delegate its responsibility to ensure the safety of its students to that organisation. A school will remain liable for a student who is injured even if no school employee was involved with running the activity and even if the activity did not occur on school premises.⁵

Has the duty of care been breached?

To determine whether a school or a teacher has breached their duty of care, a court will consider whether the school or teacher failed to take steps to guard against foreseeable risks that a reasonable person would have taken in the same circumstances, namely in the planning and implementation of the off-campus activity. A school or teacher will be measured against a “reasonable person” who, as described by law, is a fictitious teacher who takes appropriate safety measures against risks that may arise in any given situation.

Has loss or damage been suffered?

A school or teacher will be liable in negligence where the breach of their duty of care caused the injury suffered by the student. The courts recognise that accidents happen which are not necessarily anyone’s fault. Therefore, schools and teachers will not be liable for every injury that is sustained by a student during an off-campus activity. It must be proven that the breach of the duty caused the injury to the student.

For example, if a teacher fails to ensure that student X is wearing a life vest for a river boating trip and student X trips over a tree root on the river bank and breaks her ankle, the school or teacher will not be found negligent for that breach. This is simply because the failure to ensure that student X was wearing a life vest did not cause student X to break

⁵ *De Beer v The State of New South Wales and Anor* [2009] NSWSC 364

her ankle.

CASE EXAMPLES

Death on Camp

In a widely publicised incident of a school’s breach of its duty of care, a 13 year old boy, Nathan Francis, died of anaphylaxis while on a cadet camp with a private school cadet unit on 29 March 2007.⁶

Parents of the students attending the camp had been notified in writing that their sons were not to bring food to the camp because of the large amounts of time and money that had already been devoted to the menu. Parents were also required to advise the cadet unit in writing about any medical conditions of their sons attending the camp. Mrs Francis replied in writing that her son was severely allergic to peanuts.

On the camp, children were provided with an army ration pack. Different packs contained different meals. The pack provided to Nathan contained a beef satay meal with peanut and on the first day of camp Nathan ingested a mouthful of the beef satay. Despite being administered with an epi pen, Nathan was unconscious within half an hour. By the time he reached the Royal Children’s Hospital by ambulance helicopter he was dead.

The school failed in its duty of care because appropriate measures were not taken to prevent Nathan from being exposed to risks to his health and safety. The cadet camp failed to use the information provided to it regarding the cadets’ allergies. As a consequence it failed to isolate cadets with pre-existing medical conditions and/or notify food allergies at the time of the distribution of the ration packs.

⁶ *Comcare v Commonwealth of Australia* [2009] FCA 700



Injury on Camp

In 2004, another incident occurred off-campus when a Year 10 student attended a three day trekking and camping exercise in the Flinders Ranges in South Australia and was hospitalised for two weeks with serious burns.⁷ The governing authority for the school supplied camping equipment, including portable gas stoves and canisters.

On the first night of the camp, the 15 year old student screwed a gas canister into a gas stove apparatus. The canister began to release gas and covered the student in a fine mist. The student dropped the canister and the gas ignited, engulfing him in a ball of fire. The student was hospitalised for two weeks with serious burns.

The governing authority was prosecuted for breach of the Occupational Health, Safety and Welfare Act 1986 (SA) and pleaded guilty. The evidence showed that neither the student nor the other student with whom the injured student was to share the camp stove had been instructed about how to assemble the stove and attach the gas canister. There were some printed instructions on the packaging of the canister but no instructions had been given about keeping the canister away from ignition sources.

The school was convicted and fined \$19,125.00. The court allowed a 15% discount because of the school's action in pleading guilty and taking appropriate preventative measures subsequent to the incident.

TIPS FOR REDUCING RISK DURING OFF-CAMPUS ACTIVITIES

The obvious lesson to be learned from the death of Nathan Francis is that schools need to make appropriate use of the information provided

⁷ *Markas v Catholic Diocese of Port Peri* [2009] SAIRC 23

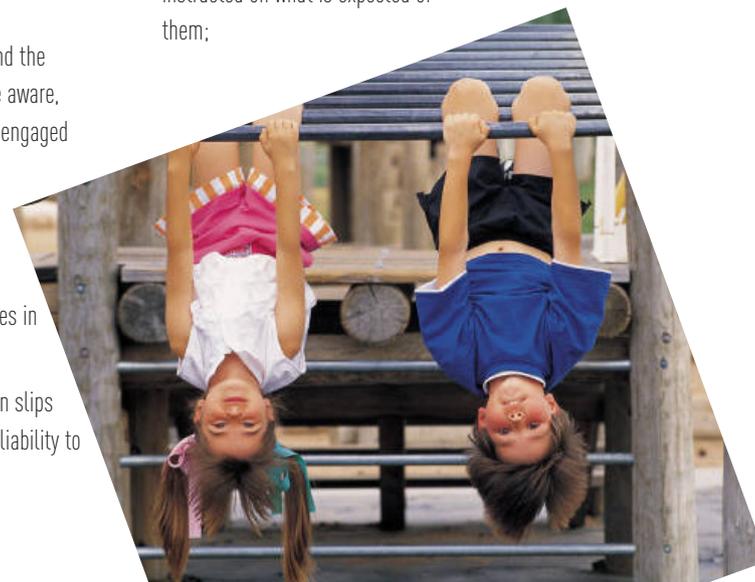
by students and parents regarding pre-existing or known medical conditions. Schools should use that information to assist with the risk of the child being exposed to allergies through the supply of food. With severe food allergies, it is prudent that schools be vigilant and remove products with allergens known to trigger allergic reactions.

In the case of the injury to the student caused by the exploding canister, after the incident the school developed a procedure for the use of camp stoves and canisters as well as a training program for students. Trained adults were required to supervise the assembly of camp stoves and the installation of the gas canisters. Clearly, it is prudent to ensure that students are instructed on the use of any potentially harmful equipment and supervised by trained adults when such equipment is being installed or used.

Before undertaking any activity which involves taking students off-campus, in order to minimise risk, schools should:

- (a) obtain written consent from parents for students to attend the camp. It would be useful if parents/guardians were made aware, before giving consent, of the activities their child will be engaged in;
- (b) be aware of the food allergies of students;
- (c) be aware of the medical needs of students;
- (d) incorporate knowledge of medical needs and food allergies in the planning of the activity;
- (e) not attempt to include exemption clauses into permission slips – a school or teacher is not able to contract out of their liability to students;

- (f) plan and organise the camp with great detail – over-planning is better than under-planning;
- (g) have risk management processes in place to assess and identify risks and plan responses to these;
- (h) monitor, follow and have recourse to the finalised plans while engaged in the activity and be aware of the movements of all students during each day of the camp/excursion;
- (i) have adequate knowledge of and be familiar with the camp/excursion site – the duty of care owed by teachers and schools to their students remains in place even if the camp or excursion site is controlled by a third party. This is particularly important for the bushfire-prone areas;
- (j) ensure students are constantly supervised and instructed on what is expected of them;



- (k) ensure students are instructed in the use of equipment;
- (l) tailor the activities on the camp to suit the age and physical abilities of the students without being exclusionary to any student;
- (m) ensure students are educated on any risks and dangers;
- (n) ensure students and staff have access to first aid kits;
- (o) ensure access to telephones or radios to make emergency calls for help; and
- (p) know the address of the camp/excursion site and its exact location on the land in order to advise the relevant authority in an emergency – police, ambulance etc – of their location.

The above list is by no means complete. These precautions are largely common sense. It is unfortunate, however, that these basic actions are at times not carried out, which can lead to negligence on the part of a school or teacher and subsequent injury to a student.

FINAL THOUGHTS

For the most part, schools and teachers do a fine job of maintaining a safe learning environment for their students in the classroom and beyond. It would be a significant loss if the fear of litigation prevented outside activities from occurring. However, off-campus education requires constant risk management. This is why it is important that schools and their teachers ask two simple questions when off-campus:

1. Am I taking reasonable care to ensure the safety of my students?
2. Am I guarding against foreseeable risks to my students?

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