Where There's Blame, There's a Claim

Duty of care and negligence in schools

John Houlihan
Education Law Consultant

'Duty of care' is a familiar term in our vernacular, but its full import and mechanics are not always clearly understood. This article outlines the scope of this legal concept and provides insights into what schools and teachers can do to discharge this duty and avoid negligence claims.

Law

A dynamic approach to supervision in the school community is the best way of discharging a school's duty of care, avoiding accidents, and mitigating negligence claims. The greater proportion of recent school negligence cases adjudicated by our courts have been dismissed due to an irrefutable level of vigilant supervision that ensured a duty of care was sufficiently discharged. But such claims are best avoided because, regardless of the outcome, the defence of negligence claims is both expensive and stressful.

The tort of negligence is defined as the failure to exercise the appropriate care that is expected under specific circumstances. To succeed in a negligence claim, the plaintiff must prove that the defendant owed him or her a duty of care and breached this duty. The plaintiff must also have suffered a loss or damage and must prove that the defendant's breach caused it.

So what exactly does 'duty of care' mean? The infamous case of *Donoghue v. Stevenson* established the baseline definition, which has endured for nearly a century. Duty of care essentially requires us to take reasonable care to avoid acts or omissions which we could foresee may cause harm to people with whom we have a 'proximate relationship'.

Two distinct legal concepts emerge here: foreseeability and proximity. Foreseeability requires us to anticipate, as a reasonable probability, that someone could get injured by our carelessness. The greater the degree of foreseeability, the more likely we may be found negligent in the event of an accident.

Next is proximity. As a general rule, we do not owe everyone in society a duty of care, only those with whom we have a proximate relationship. But the concept is rather elastic, and there have been many negligence actions where proximity was not clearly obvious. In *Purtill v. Athlone*, a young boy who stole detonators from an abattoir, and was injured when he discharged them at home, successfully sued for negligence.

For many years the courts applied the law of negligence on the basis that where there was proximity and foreseeability of loss or injury, liability for negligence would invariably apply. But in an effort to curb the expansion of negligence claims, the Supreme Court in *Glencar Exploration and Andaman Resources v. Mayo County Council* held that courts should not be obliged to hold that a duty of care exists in every case but should consider whether it is just and reasonable to impose a duty of care in all the circumstances. This now appears to be the settled approach in negligence cases in Ireland.

Duty of care essentially requires us to take reasonable care to avoid acts or omissions which we could foresee may cause harm to people with whom we have a 'proximate relationship'.

Duty of care is therefore essentially a control mechanism which sets a reasonably high threshold for litigants to surpass, so that our courts are not flooded with negligence claims arising from accidental damage or injury. If no duty of care exists, then negligence cannot be proven.

Applying the law to teachers and schools

We can see in a school situation that we have an undeniable proximate relationship with students and accordingly owe them a duty of care. The standard of duty owed by teachers was established in *Maher v. Board of Management Presentation Junior School* as that of a prudent parent, given that teachers operate in loco parentis. In this case the court held that teachers or school management are not necessarily negligent simply because an injury occurs during school hours. A degree of foreseeability is required.

Foreseeability in a school environment is a relatively easy concept to anticipate, though it may differ with the students' age group, capacity, and activities. Clearly, younger children require more supervision than adolescents, though adolescents may require closer supervision in certain circumstances for different reasons. Equally, students engaging in practical subjects involving hazardous tools, dangerous chemicals, or rigorous physical activity require close supervision, because without it, it is foreseeable that accidents could occur, causing injury. Moreover, students with special educational needs often require a high degree of supervision to keep them safe while engaging in normal school activities.

Section 15 of the Education Act 1998 provides that the board of management is responsible for the overall governance of a school, while day-to-day management is devolved to the principal. For primary schools, Circular 16/73

requires a principal to organise effective supervision of pupils during assembly, breaks, and dismissal. Rules 121(4) and 124(1) of the Rules for National Schools oblige individual teachers to take all reasonable precautions to ensure pupils' safety and to participate in supervising pupils while on the school premises and in school activities.

There's no doubting the legal, ethical, and moral responsibility of teachers, both individually and collectively, to provide a duty of care at all times towards the children in the schools where they teach. But how is this duty effectively discharged?

A clear supervision policy, ongoing risk assessment, and constant vigilance are key to avoiding accidents and reducing negligence claims arising from injuries to students while in school or on school-related activities. This requires more than a nominal supervision rota applied ineffectually. It requires a risk assessment to be carried out for all activities, supported by a culture of vigilant supervision that permeates all aspects of school activities in every classroom, corridor, hall, play area, and pitch which involves students. A supervision policy appropriate to students' age, the number of students, and their activities must be developed and strictly observed if schools are to have any chance of defeating negligence claims.

A clear supervision policy, ongoing risk assessment, and constant vigilance are key to avoiding accidents and reducing negligence claims.

This is too important an issue to assign to special needs assistants (SNAs) or volunteer parents, because neither are part of the school management system. That is not to say that SNAs could not assist teachers with supervision duties in the school environs or that volunteer parents are prevented from assisting teachers supervising school trips, once a teacher remains responsible for that supervision.

Ultimately, the duty-of-care buck stops with the principal, and in the event of a successful negligence claim, vicarious liability will also be attached to the board of management. The leadership roles of the board of management and principal are crucial in establishing, implementing, and reviewing the provision of effective supervision in their schools. Prudent schools will have this on their agenda regularly. The start of the school year is perhaps the most appropriate time to establish management expectations and staff obligations, with further reviews and reminders throughout the school year to avoid complacency.

A review of recent case law shows how important a bulletproof supervision policy is in strengthening a school's response to a negligence claim. Many schools have successfully defeated such claims by being able to show that such policies not only existed but were strictly implemented. Others were not so lucky, as illustrated in *Murphy v. County Wexford VEC*, where a school that did not implement its supervision rota on the day a student was injured was found negligent for breaching its duty of care.

Not surprisingly, physical activity in schools features in much of the case law, highlighting the need for continuous risk assessment for such activities. For example, in *Kane v. Kennedy*, a student was injured while playing a simple game of rounders in a school hall. The school was found negligent because there was insufficient space to play the game, which resulted in the plaintiff student colliding with a brick wall.

Judges appreciate that physical education is a necessary and important part of the curriculum and that, by its nature, injuries will occur from time to time. They also appreciate that not every accident points to teacher negligence. For example, in *Carolan v. St. Ciaran's National School,* a claim of negligence arising from an injury sustained in a physical education (PE) class was dismissed on the ground that there was no evidence of negligence on the part of the teacher. Again, in *Cole v. St. Joseph of Cluny Secondary School,* a student who suffered an injury while playing hockey had her negligence claim dismissed on the ground that she simply slipped on wet grass. More recently, in *O'Brien v. Waterford and Wexford ETB*, a student who injured himself in a collision with a wall during a sprinting exercise had his claim dismissed on the basis that the PE teacher had provided clear instruction and had allowed a sufficient run-off area to avoid such collisions.

A school's duty of care is not limited to actual school hours but extends to the periods when students are on the premises before and after school. (Green v. Mundow)

Arrival and dismissal of students

A school's duty of care is not limited to actual school hours but extends to the periods when students are on the premises before and after school. It is now generally accepted that supervision should be provided for a reasonable amount of time before and after school (*Green v. Mundow)*. Crucially, these times should be clearly stated in a school's supervision policy, and parents should be made aware that the school will not be responsible for students who are on school property outside of these published times.

Prudent schools would ensure that a teacher is present at the school gate for a reasonable period to supervise students arriving and departing by school transport or independently, as these present occasions where boisterous or aggressive activity can often result in injury.

The recent case of S*ilva v. Templeogue College* illustrates such risk. Here, an earlier altercation during school time continued during lunch break, when the plaintiff was assaulted by another student near the school while on his way to a local shop. He alleged that the school failed to exercise the required supervision of a large number of students who leave the school at lunchtime. Having considered the evidence provided, the court held that the school was not negligent because it was unaware of the assault and the previous altercation which led to it, but took appropriate action once notified of the

assault by suspending the other student in accordance with the school's code of behaviour.

Conclusion

By their nature, children have a propensity for high jinks and high-octane activities which can put them in harm's way. Despite the best efforts of teachers, accidents can and do happen, resulting in injuries to students and subsequent negligence claims. In their professional role, teachers have a clear duty of care to their students. In this regard they must make reasonable efforts to protect students from harm. In general terms this requires a reasonable level of supervision in classrooms, common areas, and play areas.

More specifically, teachers of practical subjects should contemplate foreseeable risks which could cause injury to students, carry out a risk assessment of these activities, and provide a level of supervision appropriate to the students' age, their capacity, and the nature of the activities. Activities outside the controlled school environment, such as school tours, greatly elevate this duty of care and associated risk assessment.

This dynamic approach to supervision in the school community is the best way of discharging this duty of care, avoiding accidents, and mitigating negligence claims. Teachers may take some comfort from the dicta of Mr Justice Peart in *Maher v. Board of Management Presentation Junior School,* where he opined that simply because an injury takes place in a school does not automatically demonstrate that a school or teacher is negligent.

The courts have endeavoured to curb the expansion of negligence claims in recent years, and this is reflected in the greater proportion of cases reviewed in this article where teacher negligence was not found, due to the irrefutable level of vigilant supervision which ensured that a duty of care was sufficiently discharged. However, such claims are best avoided because, regardless of the outcome, the defence of negligence claims is both expensive and stressful for those involved.

The courts have endeavoured to curb the expansion of negligence claims in recent years, and this is reflected in the greater proportion of cases reviewed in this article where teacher negligence was not found.

CASE LAW CITED:

Carolan v. The Board of Management of St. Ciaran's National School [2006] IEHC 416

Cole v. St Joseph of Cluny Secondary School [2016] *Irish Times* 16 December 2016

Donoghue v. Stevenson [1932] A.C. 562

Dunne v. Trustees and Board of Management of St Paul's Secondary School [2019] IEHC 22

Glencar Exploration plc and Andaman Resources plc v. Mayo County Council [2002] 1 I.R. 84

Green v. Mundow (Unreported, Circuit Court, 20 January 2000)

Kane v. Kennedy [1999] IEHC 142

Kelvin O'Brien v. Malcolm Byrne and Waterford and Wexford Education and Training Board [2023] IEHC 367

Maher v. Board of Management Presentation Junior School [2004] IEHC 337

Murphy v. County Wexford VEC [2004] IESC 49

Purtill v. Athlone UDC [1968] I.R. 205

Silva v. Templeogue College (Unreported, High Court, 20 April 2023)

REFERENCES

Department of Education (1965) *Rules for National Schools under the Department of Education*. Dublin: Stationery Office.

Department of Education (1973) Primary Branch, Circular 16/73.

Department of Education and Science (2013) Primary Branch, Primary Circular 18/03.

***

In July 2023, over 75 primary school teachers took part in the Marine Institute's Explorers Continuing Professional Development marine-themed 5-day training courses, where they learned the value of integrating marine themes in their teaching as part of the new Primary School Curriculum Framework.