

Director-General of Education and Training

Managing Director of TAFE NSW



NEW SOUTH WALES
DEPARTMENT
OF EDUCATION
AND TRAINING

MEMORANDUM TO SCHOOL PRINCIPALS

98/139 (S.122)

SETTLEMENT OF DISPUTE ON THE CARE AND SUPERVISION OF SCHOOL STUDENTS

I am pleased to advise you that the dispute between the Department and the Teachers Federation concerning the care and supervision of school students has been resolved.

The Department and the Teachers Federation have had extensive negotiations over the last two months resulting in the parties agreeing on Terms of Settlement of the dispute. The Terms of Settlement have been provided to the Industrial Relations Commission.

The purpose of the Terms of Settlement is to clarify the responsibilities of principals and teachers in regard to the supervision of students within school grounds.

A copy of the Terms of Settlements titled "Care and Supervision of Students – Terms of Settlement Between the NSW Department of Education and Training and the NSW Teachers Federation" is attached.

The Terms of Settlement are to be implemented immediately.

A handwritten signature in cursive script, appearing to read "Ken Boston".

Ken Boston
MANAGING DIRECTOR OF TAFE NSW
DIRECTOR-GENERAL OF EDUCATION AND TRAINING
22 May 1998

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10 pg transmission

MATTER NO. IRC 746 OF 1998**CARE & SUPERVISION OF STUDENTS -****TERMS OF SETTLEMENT BETWEEN THE NSW DEPARTMENT OF
EDUCATION & TRAINING AND THE NSW TEACHERS FEDERATION**

PURPOSE

The purpose of the terms of settlement is to clarify the responsibilities of principals and teachers in regard to the supervision of students within school grounds.

PRINCIPLES

- This terms of settlement between the Department of Education and Training (DET) and the NSW Teachers Federation on the Care and Supervision of Students recognises -
 - the duty of care owed by the DET through its staff to students;
 - principals and teachers have a responsibility for the protection, welfare and safety of students in school grounds when the school is open;
 - parents (inclusive of guardians and legal guardians), caregivers, students, transport providers, police and members of the public have a role to play in ensuring the protection and welfare of students in travelling to and from schools. Principals and teachers have an educative role to assist in providing for the welfare and safety of students in travelling to and from school;
 - the commitment of teachers and the DET in providing a safe learning environment for students;
 - the goodwill of teachers in providing a range of extra curricula activities for students; and
 - the need for supervision arrangements to have regard to the wide range of responsibilities of teachers including timetabled class time, lesson preparation, professional development and administrative tasks.

DUTY OF CARE

The duty of care owed by the Department through its staff to students arises directly from the special relationship between teachers and students. It derives from the fact that students up to the age of 15 years are required by law to attend school and parents are required by law to send

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them to school.

The duty of care is a duty to take reasonable measures to protect students against risks of injury which reasonably could have been foreseen. The duty of care has been expressed by the courts as requiring teachers to take such measures as in all the circumstances are reasonable to prevent injury to the student. The duty is not to ensure that there is no injury but to take reasonable care to prevent injury which could reasonably have been foreseen.

This duty of care will arise whenever a teacher/student relationship exists. In the instance of playground supervision, the following apply regarding this duty of care:

- A teacher is to take such measures as are reasonable in the circumstances to protect a student under the teacher's care from risk of harm that the teacher should have reasonably foreseen. This requires not only protection from known hazards, but also protection from those that could foreseeably arise and against which preventative measures could have been taken.
- A higher standard of care is required for younger students and those with disabilities. Generally speaking, the less experienced the student, the higher the standard of care the Courts will expect to be exercised.
- The school principal is responsible for making and administering arrangements for adequate playground supervision. Teachers are responsible for carrying out their assigned supervisory duties in such a way that students are, as far as can reasonably be expected, protected from harm.
- A teacher's duty of care will arise whenever there is a teacher/student relationship and not just when the teacher is assigned for supervision duties eg. if a teacher walks through the school grounds or buildings and becomes aware of a situation that is putting students at risk, the duty of care would require taking reasonable steps to rectify the situation.

CUSTOM AND PRACTICE

In meeting the duty of care, for many decades principals have been responsible for making arrangements for the effective supervision of students in the school grounds during the period of half an hour before school work begins in the morning, taking into account the risk of harm to students and the workload of teachers.

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The hours of duty as specified in regulations, determinations, handbooks and legislation are -

Teachers are required to be on duty at their schools half an hour before school work begins in the morning and may be required to be present, if thought necessary by the teacher in charge of the school, for half an hour after the dismissal of the school in the afternoon. Where special circumstances arise which, in the interest of the school, necessitate attendance beyond these hours, the attendance of the staff may be required.

The practice in secondary schools has varied from the practice in primary schools.

In secondary schools, by custom and practice, the requirement for all high school teachers to be in attendance for a half hour before classes begin in the morning for the purposes of supervision has not been enforced. This was explained by the then Director-General in a memorandum to all Principals dated 10 September, 1981:

“Some years ago the teacher day in high schools was extended by a half-hour in order to provide for a sports afternoon. At that time, the requirement for high school teachers to be in attendance for a further half-hour before classes in the morning was not enforced, but this situation was varied in the late 1950's to provide for a teacher being on duty and available to attend to problems if the need arose during the pre-class period.”

There has, however, been a requirement for some secondary school teacher(s) to be assigned to whole school supervision duties in the school grounds in the half hour before commencement of classes. Only that number of teachers required to ensure effective supervision have been required to be in attendance.

In practice this has not been adhered to strictly in all secondary schools and various forms of supervision have been in place in the half hour before school commences.

In larger primary schools the practice has been for teachers to be assigned to provide supervision of students during the half hour before lessons commence, usually at 9.30am. In smaller primary schools supervision arrangements are consistent with the smaller number of students and staff, and are more informal in nature.

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SCHOOL SUPERVISION PLAN

1. Recognising the duty of care to students and the principles and past custom and practice outlined above, the parties agree that all schools will have a formal supervision plan which provides for the effective supervision of students in the half hour before normal classes begin and during recess and lunch time.
2. Principals and teachers at each school are in the best position to identify reasonably foreseeable risks and put in place arrangements which are reasonable to protect students against injury.
3. The principal is responsible for the development, implementation and evaluation of the student supervision plan in consultation with staff. A feature of this should be fairness and equity. Principals should consider the views of students and the parent bodies in the development of this plan.
4. The plan should be based on a comprehensive assessment of risk, taking into account factors relevant to the school such as: the age, number and nature of students; the finishing time of kindergarten classes; the layout and terrain of the school grounds, including split sites; proximity of play areas to busy roads; fixed playground equipment; climatic conditions; the activity being undertaken; emergency situations; potential hazards; transport arrangements; as well as the duties and workload of individual teachers.
5. Under this plan, and recognising specific school conditions, supervision usually involves actual teacher presence in the playground and/or buildings where students are present, or teacher observation of students from the point in the school which provides ready access to those students. Where this is impractical in small primary schools the plan must specify how the supervision is to be provided to ensure that the duty of care is met.
6. The duty of care must be exercised from the time the school formally accepts the presence of students half an hour before normal classes begin until they safely depart the school after normal classes finish.
7. Special arrangements apply in relation to school activities such as excursions and sporting activities conducted outside the school grounds.

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8. The supervision plan should specify the supervision arrangements and responsibilities of teachers at various times throughout the day and be distributed to all teachers including new teachers and casual teachers. Teachers should be given the opportunity to clarify their understanding of the plan and their role in it. The supervision plan should be communicated to parents and caregivers and be accessible to visitors to the school.
9. Parents are to be informed of the opening hours of the school.
10. The Principal should ensure that students understand the supervision arrangements throughout the school day. Students should be informed of where the supervisory teacher(s) are on duty. Students should be instructed to seek the help of a supervisory teacher in situations which demand it. Students should be instructed as to what constitutes unsafe activities.
11. Any variations to school hours should include an assessment of the impact on school transport arrangements and school supervision requirements.
12. A copy of the supervision plan is to be forwarded to the District Superintendent.

SUPERVISION BEFORE AND AFTER NORMAL SCHOOL LESSON TIME

It is not the responsibility of schools to provide free child minding services for students for extended periods before and after school. Schools are not expected to provide supervision for students any earlier than the half hour before normal school classes commence in the morning. When normal classes finish in the afternoon it is expected that students will safely depart the school. Parents must be made aware of this.

Primary Schools

In primary schools the age of students is a major factor in determining the nature and level of supervision. In larger primary schools supervision is to be provided by assigned teachers during the half hour before lessons commence, usually at 9.30 am. This supervision will usually involve teachers observing and being seen to observe. In smaller primary schools supervision arrangements for the half hour before school commences may be consistent with the smaller number of students and will usually involve observation of students from a point in the school that provides ready access to the students.

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Secondary Schools

In secondary schools there will be more flexibility in before school supervisory practices in recognition of the age of students and the increasing variations in school hours and patterns of attendance. Supervision in the half hour before school begins, usually at 9.00 am, is to be determined by the principal in consultation with the staff. This supervision plan must address the requirements of duty of care and is to be based on a range of local factors including an assessment of student travel patterns, the usage by students of school grounds before normal lessons commence and the history of before school supervision needs.

The NSW Teachers Federation has made representations to the DET that the nature of before school supervision in secondary schools, as determined by the principal in consultation with the staff and detailed in the memorandum 87/239 "Policy on the Supervision of Students", the aspect of the 1987 second tier salaries settlement dealing with "Student Care" and memorandum 88/120 "Policy on the Supervision of Students", has generally proven satisfactory and appropriate to local circumstances. The parties agree that the nature and adequacy of this supervision, particularly in meeting duty of care requirements, is to be evaluated by the principal in consultation with the staff in each secondary school during term 2, 1998 and submitted to the district superintendent.

ASSISTING STUDENTS TO TRAVEL SAFELY TO AND FROM SCHOOL

1. Schools and parents have a responsibility to promote appropriate behaviour and the safety of students travelling to and from school. School policies should include statements covering appropriate behaviour in travelling to and from school.

Schools should support parents in developing appropriate standards of behaviour for students travelling to and from school. Schools also have a responsibility to develop educational programs that will reinforce both community and parental standards. Community groups, including other government authorities, should be invited to contribute to these programs.

Students also have a responsibility to meet community, school and parental expectations in this regard. This should be brought to the attention of parents. Students have a responsibility to behave in appropriate ways and to ensure both their own safety and that of other students.

Particular care needs to be taken by parents in and around schools when collecting students, particularly young students. In this regard schools should bring any concerns

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about dangerous practices in and around schools to the attention of parents and the appropriate authorities.

2. School supervision plans need to address the safe arrival and departure of students at and from the school. There must be a realistic assessment of the responsibilities of each individual school for the safety of pupils attending that school.

Senior officers of the Department and Teachers Federation will initiate discussions with the Staysafe Committee, the Police Department, Local Government Authorities and the Roads and Traffic Authority to clarify their responsibilities and to promote a safe environment in the immediate vicinity of schools.

In the meantime it is expected that existing practices related to bus supervision and road crossing specific to particular schools would continue.

3. Senior officers of the Department and Teachers Federation will arrange for a "risk assessment" to be carried out on a trial basis in and about a sample of school grounds to assist in the provision of a safe environment for students and staff and to inform the parties in the implementation of the terms of settlement.

The senior officers of the Department and Teachers Federation will consider:

- a) The needs of students who may be present before or after ordinary school hours
 - i) in or near school premises
 - ii) leaving or waiting for school buses
 - iii) are crossing busy nearby/adjacent busy thoroughfares
- b) The effect on supervision of a range of factors including
 - i) age of students
 - ii) nature of traffic flow near the school
 - iii) bus timetables
 - iv) physical and geographical layout of the school
 - v) bus loading and unloading areas

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- vi) the time for which students may need supervision
 - vii) responsibility of parents collecting students
 - viii) appropriate education programs for children travelling on school transport
4. A checklist of measures that schools have initiated to promote the safe arrival and departure of students will be prepared and distributed to all schools.

LIABILITY

When a student is injured while in the care of the school, it is possible that legal action will be taken. If this occurs, it is invariably the State of New South Wales that is sued rather than individual schools or staff members. This is because the Department, like all employers, is vicariously liable for acts and omissions of its employees at work. Teachers should not be concerned about incurring any individual liability provided that the teacher is not guilty of serious and wilful misconduct.

In some rare cases teachers or executive staff members are sued either individually or together with the State of New South Wales. In those rare instances the Department of Education and Training seeks Crown representation for the staff member involved.

Crown representation means that the New South Wales Crown Solicitor's Office acts for the staff member and the State meets all costs and verdicts.

DISPUTE RESOLUTION PROCEDURES

Subject to the provisions of the Industrial Relations Act 1996, should any dispute (including a question or difficulty) arise about the implementation of the terms of settlement, then the following procedures shall apply:

1. Should any dispute, question or difficulty arise as to matters arising from implementation of the terms of settlement in a particular workplace, then the employee and/or Federation workplace representative will raise the dispute, question or difficulty with the principal/supervisor as soon as practicable.
2. The principal/supervisor will discuss the matter with the staff member and/or Federation representative within two working days with a view to resolving the dispute, question or difficulty or by negotiating an agreed method and time frame for proceeding.
3. Should the above procedure be unsuccessful in producing a resolution of the dispute, question or difficulty or should the matter be of a nature which involves multiple workplaces, then the individual staff member or the Federation may raise the matter with

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an appropriate officer of the Department with a view to resolving the dispute, question or difficulty or negotiating an agreed method and time frame for proceeding.

- 4. Where the procedures in paragraph 3 above of this subclause do not lead to resolution of the dispute, question or difficulty, the matter will be referred to the General Manager of Personnel of the Department and the General Secretary. They or their nominees will discuss the dispute, question or difficulty with a view to resolving the matter or by negotiating an agreed method and time frame for proceeding.
- 5. Should the above procedures not lead to a resolution, then either party may make application to the Industrial Relations Commission of New South Wales.

MONITORING

The parties will monitor the implementation of the terms of settlement.

Signed by:

**The Director-General of New South
Wales Department of Education & Training**

[Handwritten Signature]

21 / 5 / 98

in the presence of:

[Handwritten Signature]

21 / 5 / 98

**On behalf of the New South Wales
Teachers Federation**

General Secretary

[Handwritten Signature]

22 / 5 / 98

in the presence of:

[Handwritten Signature]

22 / 5 / 98