



Legal issues bulletin

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Preparation and use of accident reports in schools

Some accidents that occur on school or during department endorsed activities will result in claims for compensation for personal injury or damage to property. These claims fall into two categories - those involving formal legal proceedings (litigated claims) and those where legal proceedings have not been commenced (unlitigated claims). The following procedures apply to the handling of both types of claims.

The procedures do not apply to accidents involving members of staff. Principals should continue to comply with relevant procedures relating to workers compensation claims for accidents involving staff.

When should an accident report be prepared?

Except in the case of trivial accidents, a report must be prepared for any accident that occurs on departmental premises or during departmental activities. This requirement applies to accidents that occur both during and outside normal school hours. A common sense approach should be taken to determine whether an accident is trivial and when it occurs away from the school premises, whether it has sufficient nexus to the school.

An accident report should generally be prepared when any of the following events occur:

- A serious incident report is prepared about an incident that has resulted in death, injury or hospitalisation;
- An injury to the head or where a person loses consciousness
- A person sustains an injury to the eyes or where teeth are broken or dislodged
- A person sustains an injury as the result of an assault or alleged assault
- A person sustains broken bones or cuts requiring stitches
- It is necessary to transport an injured person to hospital
- An ambulance, doctor or other medical assistance is required on site or such treatment is reported by the student, parent or visitor at a later date
- A student has to leave school or the college early as a consequence of an accident
- A parent, care-giver or responsible person is summoned to the school or college as a consequence of an accident
- Parents or caregivers are advised to take a student to a doctor for precautionary reasons
- An accident occurs during the use of a school by a community group; or
- The principal considers it appropriate to do so.

What is the purpose of an accident report?

Accident reports are prepared for the purpose of considering and, if necessary, defending the department's legal position if a claim for compensation is made. The reports are also used to notify the NSW Treasury Managed Fund when claims are made or anticipated to be made against the department. Accident reports prepared by principals may attract the protection of legal professional privilege.

What documentation should be prepared in relation to accident reports?

When preparing accident reports, principals must ensure that relevant documentation is included. Depending on the circumstances of the accident, relevant documentation should include any or all of the following:

- Statements from witnesses, including the person injured if practicable
- Details of supervision arrangements in place at the time of the accident
- Staff supervision rosters
- First aid register or its equivalent
- Photographs of the scene
- Sketch plans of the site indicating the location of the accident and of relevant people such as supervising staff at the time of the accident
- A copy of any information provided to parents regarding the activity, including any signed permission notes received from parents
- School welfare and/or discipline policies (where appropriate)
- Details of previous accidents of a similar nature.

In order to minimise potential conflict of interest allegations, the collation of accident reports should as far as possible be undertaken by a member of staff who has not been directly involved in the incident (eg as a witness, rendering assistance).

Accident reports play an important role in the department's defence of claims arising from accidents. Principals must ensure that all relevant documentation is collated as soon as possible after any accident occurs - preferably on the same day - and is securely retained. In accordance with the department's policy on records management, school accident reports should be retained for 7 years or until the injured person attains the age of 25 years, whichever is the longer. Statements obtained from witnesses to accidents are subject to the provisions of the Privacy and Personal Information Protection Act 1998. Action needs to be taken to ensure that persons making statements are aware the statements may be used by the department in the assessment of claims or the defence of legal proceedings.

Should parents or caregivers be notified if a student is injured in an accident?

Principals must ensure that parents or caregivers are notified of any injury incurred by a school student under the age of 18. The notification should be made as soon as possible after the accident occurs. Notification to parents or caregivers, either by telephone or in writing, should include the following:

- Confirmation that the student was involved in an accident together with a description of the nature of the accident
- Details of any injuries sustained by the student
- Details of any action taken following the accident eg first aid, calling of a doctor or ambulance.

Should liability for the accident be admitted?

Under no circumstances should liability for the accident be admitted nor any opinions as to responsibility for the accident expressed. Any request from parents, caregivers or persons acting on their behalf for a copy of the accident report and accompanying documentation should be refused. A person who has made a statement as part of the accident report is however entitled to a copy of his or her own statement upon request.

Will students be covered by insurance if injured during school activities?

The department relies on the coverage by NSW Treasury Managed Fund to meet any liabilities arising from its activities. The cover provided is based on the claimant being able to establish negligence on the part of the department. The department does not automatically cover students injured during school activities and so in this way, the cover differs from the usual concept of insurance.

Can an apology be offered in respect of any accident which occurs?

Legally, an apology does not constitute an admission of liability and cannot be used in any legal proceedings as a means of establishing liability. Often, an apology will be of significant value in maintaining an appropriately caring educational environment and comforting aggrieved persons.

The wording of an apology will be dependent on the individual circumstances of the particular accident. As a guide, any apology offered should include the following elements:

- An outline of the accident for which the apology is being given
- An acknowledgement that the person has suffered some form of injury
- An expression of sorrow, sympathy or regret for the accident and any injuries occasioned

Litigated claims

Legal proceedings arising from accidents on department premises or during department activities are normally taken against the State of New South Wales. Usually the statement of claim will be served on the Crown Solicitor's Office (school matters). Occasionally the proceedings may name an individual school as the defendant and be served at the relevant school.

If a statement of claim commencing legal proceedings is served at a school, the principal should immediately forward a copy to Legal Services. A copy of any accident report and supporting documentation should also be included.

Unlitigated claims where the amount claimed is less than \$300

In accordance with Treasury Managed Fund requirements, principals are responsible for assessing and, where appropriate, paying claims which are less than \$300. Upon receipt of such claims, principals should examine the relevant information to determine if there has been any action or omission by staff that has led to the accident occurring. If it is considered that the accident has occurred as a result of such actions or omissions, the claim should be paid. Under no circumstances should liability for the accident be admitted nor any opinions as to responsibility for the accident be expressed.

Principals should contact the [Legal Services](#) if they are unsure of whether to pay any claim under \$300 or need other assistance.

Unlitigated claims where the amount claimed is more than \$300

Upon receipt of such claims, including letters from parents or legal representatives alleging negligence, principals should immediately forward a copy of the claim, together with any relevant accident report, and supporting documentation including receipts for any medical treatment received to Legal Services. Claimants should be advised that the claim will be forwarded to Legal Services which will confirm receipt in the near future. Claimants must not be told that the claim will be met.

Action taken once claims are forwarded to Legal Services

The legal work associated with personal injury claims over \$300 against the department is undertaken by a panel of legal service providers

When claims, both litigated and unlitigated, are received by Legal Services, a letter will be sent to the school and claimant acknowledging receipt. Contact details of the relevant panel solicitor who has been allocated the matter will also be provided.

It may be necessary for the panel solicitors or their agents to contact the school to obtain or clarify information concerning the circumstances of an accident. This may involve seeking documentation or speaking to relevant staff. Subject to suitable arrangements being made, every assistance should be provided to the solicitors or their agents acting on behalf of the department.

Should principals have any inquiries regarding matters that have been allocated to a particular panel solicitor, they should speak to the relevant contact person. Any problem, complaint or other comments arising from the allocation of a claim to one of the panel solicitors can be directed to the [Legal Services](#).

Will it be necessary for staff to become involved in accident claim matters?

Staff in schools who witness accidents will generally be involved in accident claim matters in some or all of the following ways:

- Providing an informal written statement to the principal at the time of the accident
- Speaking with the solicitors, investigators or agents acting on behalf of the department in the defence of any claim
- Providing a formal written statement to the department's legal representatives for use in the defence of any legal proceedings
- Attending conferences with any barristers briefed to appear on behalf of the department in any legal proceedings
- Giving evidence in court.

It should be noted that only a small percentage of litigated claims proceed to a court hearing. While nervousness about giving evidence is natural, staff are not on trial nor is the school. Any decision to settle a case should not necessarily be interpreted as an admission of fault or as reflecting on the professional competence of relevant staff.

Should staff have any concerns about their involvement in legal proceedings relating to an accident claim, they can speak to the contact person of the relevant panel solicitor or staff at [Legal Services](#).

Principals should also refer to the [department's School Accident Report policy](#) for more comprehensive information on the preparation of school accident reports, including pro-forma documents.

About Legal Services

Legal Services is here to support our government schools. **Staff can contact Legal Services by email or phone.**

Legal Services can only provide legal advice to departmental staff. It is not able to provide legal advice or assistance to parents, students or members of the public due to the potential for a conflict of interest.