

School safety, indemnity forms and delictual liability: An educator's responsibility during school activities

Dr Cecile Eloff, an educational law lecturer at the North-West University (NWU), writes an in-depth piece on the educator's responsibility during school activities.

She says the departure point for preventing (legal) action in case of accidents at schools or during school trips does not begin with indemnity forms. It begins with stakeholders who must fulfil their responsibilities regarding school trips. These stakeholders would normally include educators, the principal, the school governing body and parents.

The role of the educator

Dr Eloff says, according to the *In loco parentis* principle (in the place of the parent), educators have a delegated legal duty to protect learners from danger.

This legal duty to ensure safety during any school activities is partly delegated from the parent to the educator (or school), and partly prescribed by law. Section 8A (2)(a) of the Regulations for Safety Measures at Public Schools (2006) states that a school must ensure, where reasonably applicable, that all learners are under the supervision of educators at all times.

Dr Eloff adds that in reality it would mean that educators should make sure all learners under their care are present and safe at all times. "In fact, this legal document provides for regulations regarding the organisation of school activities, consent and indemnity forms as well as transport and physical activities during the school activity."

If the educator and school did everything in their power before and during the school trip, but a learner is still harmed, the following factors should be considered to determine an educator's liability:

- If there was damage such as physical harm and/or psychological harm for instance loss of integrity, honour, reputation or privacy;
- If the educator's action(s) was in the form of wilful human conduct or an omission;
- If the action of the educator is perceived as unlawful according to the legal convictions of the community;
- If the learner's damage could be causally linked to the action(s) of the educator;
- If the fault of the wrongdoer appears as negligence or as a person's intent.

To ascertain whether or not an educator adhered to the standard of care during an activity, the reasonable person test should be applied. A court or tribunal will ask how a reasonable person would have acted in the wrongdoer's place. Following that question, the following questions should be answered:

- Would a reasonable person have foreseen the possible damage as a consequence of his actions?
- Would a reasonable person who have foreseen harm, take any reasonable steps to prevent harm from taking place?

Dr Eloff adds that, although the use of indemnity forms may currently not be applied correctly at schools, the principles of duty of care should still be realised in basic actions by the school. Actions such as proper communication with parents and proper supervision of children are compulsory.

“Proper supervision would mean for example that educators should always count learners before, during and after the various activities to make sure that every child is safe and accounted for.

“Educators must also communicate with the learners before activities to warn them of possible dangerous actions and set some boundaries so that they are not harmed during the activity,” she adds.

An educator’s duty of care does not only imply rules and regulations to prevent danger, but basic supervision principles which would be applied by parents if they would have been in the same situation.