

School excursions: are they worth the risk?

“An exclusive Sydney girls school today reached a settlement with a former student who alleged she’d been gang raped on an overseas study trip.”

Sydney Morning Herald 1 December 2004

Many schools offer students the opportunity to travel overseas with school tours for sport, music, history, languages or other education-related purposes. Will the publicity given to the claim against the Sydney school discourage such trips? Outdoor education trips have become well-entrenched parts of the curriculum in recent decades. However, several students have died in Australia and New Zealand on such trips in recent years. A British teacher was jailed for manslaughter after he ignored safety rules and a child drowned. What legal liability faces Australian schools and teachers from incidents occurring while students are on school-arranged excursions?

While the law recognises the advantages of excursions and appreciates their aims, the Courts have held that education must give way to safety. A balancing act is involved: schools “must strike some balance between meticulous supervision of children every moment of the time when they are under their care, and the very desirable object of encouraging the sturdy independence of children as they grow up”. Nevertheless, there are cases which suggest that the courts are less likely to find negligence where the activity is intended to develop independence.

Schools and their teachers continue to have a duty to take reasonable care of their students on these trips. Essentially, this means that teachers must ask:

- What risks to students might occur on the trip?
- Is there more than an insignificant chance of those risks materialising?
- If so, ought they, as reasonable teachers, take any precautions to prevent the risks?

In determining whether they should take precautions against a risk of harm, teachers must consider (amongst other relevant things):

- (a) the probability that the harm would occur if care were not taken,
- (b) the likely seriousness of the harm,
- (c) the burden of taking precautions to avoid the risk of harm,
- (d) the social utility of the activity that creates the risk of harm.

The age of the students is, of course, a very important factor. Foreseeable risks and their probability will vary greatly between a primary school trip to the zoo and a secondary school trip to Europe. Likewise, taking boys away may involve different risks to those involved when taking girls or a co-ed group. There is English authority saying that 15-year-old boys do not need to be kept under constant observation. However, teachers must be mindful of all the circumstance before blindly accepting this. The destination is also relevant: Japan, Italy and Ghana will each throw up different risks. Teachers should consult the government's travel warnings right up to departure and be prepared to cancel trips if the situation at the destination becomes dangerous.

It is important to let students and parents know in some detail about the trip: where students will stay, how they will travel, the nature of activities, and so on. Schools should provide sufficient information to allow parents to make an informed decision as to whether or not to allow their child to go. It is good practice to have parents and older students sign something to acknowledge having been given all this information. As many excursions, particularly overseas ones, are not compulsory, warnings given beforehand may allow schools to avoid liability where a risk materialises. Many states now have provisions like section 5M of the NSW *Civil Liability Act* which states that neither a teacher nor a school owes a duty of care to a student who engages in a recreational activity (such as an overseas trip) to take care in respect of a risk of the activity if the risk was the subject of a risk warning to the student.

While some independent schools own their own outdoor education sites and run their own programmes with their own staff, both State and independent schools are making use of others to provide sites and/or run programmes. Likewise, there are those who offer to

arrange overseas school trips. This can be both cost effective and sensible risk management. While the use of external providers does not remove the duty of care and hence the potential liability, it does limit the matters which a school must consider and therefore also reduces the risk of being sued. Further, if a school is sued and an external provider has been used, any liability for damages may end up being shared with others.

What then does a school have to do to fulfil its duty to its students when it uses the services of an external provider? The school must:

- check that the site or destination is apparently safe;
- check that the staff are competent and careful people;
- see that the equipment to be used is apparently safe and is under the control of competent and careful people who supervise its use.

The experience and reputation of the service provider, the experience that the school has had with the provider over a period and the school's observations of the checks and inspections carried out by the provider are all relevant considerations when considering the school's liability.

What expectation is there, if any, that students will behave reasonably while on excursions? Courts have been loath to find that school students have contributed to their own injury by their own negligence. While often acknowledging that students have acted foolishly or have misbehaved, judges rarely accept that such foolishness or misbehaviour justifies partial responsibility for injury. As one judge said "misbehaviour and contributory negligence are not synonymous concepts". A finding of contributory negligence can be justified only if there is evidence that students have failed to take reasonable care for their safety and that failure can properly be regarded as a contributory cause of the injury. Therefore, if the lack of supervision caused the injury, a student's failure to obey rules may not reduce a school's liability. But ... there may be change in the air: in a NSW case last year, the Court of Appeal found no negligence by the school but then said that, if the school had been negligent, the Year 9 boy should bear 85% of the responsibility for his own injury. The boy appreciated that what he did was dangerous and there had been considerable supervision in place.

In conclusion, I set out some of the principles which can be drawn from the cases dealing with school excursions:

- Plan, plan, plan!
- Check, check, check!
- Supervise, supervise, supervise!
- Consult experts;
- Train the students and teachers beforehand;
- Ensure that the qualifications of all staff have been checked and are current;
- Reconnoitre the site or route beforehand;
- Choose an area safe for the age of the students;
- Compile equipment lists;
- Have proper equipment in good condition;
- Check the condition of equipment regularly;
- Ensure the equipment includes complete First Aid kits;
- Arrange proper transport;
- Develop emergency procedures;
- Be prepared to cancel the activity if conditions change (e.g. weather, staff availability, terrorist activity);
- Take into account the age, physical development and experience of the students;
- Warn of dangers;
- Have adequate briefings;
- Ensure that an adequate supervision ratio is maintained at all times;
- Actively supervise throughout the activity;

- Obtain parental consent to student being involved and to emergency medical treatment;
- Obtain students' medical history and ensure teachers have this information with them;
- Know the health and fitness of the students.

David Ford

EMIL FORD & CO – LAWYERS

Level 5, 580 George Street, SYDNEY NSW 2000

Tel 02 9267 9800

Fax 02 9283 2553

Email David.Ford@emilford.com.au