

# Who assumes responsibility for a child at school?

By [Adrian Chester](#)

28 Feb 2020

Over the past few weeks media headlines have been filled with harrowing stories of tragedies across the country affecting learners at schools. These tragedies have obviously fostered much discussion in the media regarding the role of schools *in loco parentis*. Meaning 'in the place of a parent', this legal doctrine holds that educators assume custody of learners at school, while they do not have the protection of a parent/guardian. Parents delegate certain responsibilities for their children to the school. The school then has a legal responsibility to provide a safe environment. What exactly does this responsibility entail?



Image source: Getty Images

*In loco parentis* means that teachers must constantly look out for their learners' best interests and welfare. In other words, school officials have the responsibility to prevent foreseeable dangers from harming learners. Over the years, the courts have stood by the principle that heightened preventative measures must be taken by persons who have learners in their custody.

This extends to persons who control any areas where children are present or could possibly be present. Children do not necessarily have the same comprehension of danger or potential danger as adults have. So, it is the duty of persons responsible for the children to ensure that no danger exists in these areas. The school, as a custodian of areas where children could be present – sports fields, play areas, classrooms – has the same duty of care (even if the children are not in their custody), to make sure that their premises do not present a risk of harm.

## The reasonable person test

To answer whether a danger exists, courts ask if a reasonable person responsible for a child would have removed the danger or kept the child away from it. This 'reasonable person' is a fictional average man or woman, who is not reckless or overcautious. They are aware of their surroundings, and the dangers inherent in various activities. Should the person concerned also have a particular expertise, then their conduct is measured against that of the reasonably skilled, competent and experienced person of such a group.

## Questions the court may ask include:

- Should the educator/school have foreseen that their actions (or failure to act) could cause damage or injury to the learners?
- Should the educator/school have had the knowledge and skill, which would have enabled them to foresee the damage or injury?
- Should the educator/school have taken reasonable steps to guard against or prevent such an eventuality?
- Should the educator/school have arranged to make sure the steps envisaged were carried out?
- Did the educator/school neglect to do so?

## Understanding delictual liability losses:

Schools acting *in loco parentis* may be exposed to delictual liability losses. These are losses concerned with damages suffered by a person resulting from a wrongful act or the omission of another, for which that person is entitled to compensation in terms of our common law. Delictual liabilities include cases where a third party holds a school liable for damages or injury they sustained. The five requirements for delictual liability are: conduct; wrongfulness; fault (intention or negligence); causation; harm. Each of these must be proved for a person to have committed a delict (violation of the law), and thus to be delictually liable.

## How do schools mitigate the risks associated with *in loco parentis*?

Many schools transfer the risks to a reputable insurer and use the insurer's expertise for proactive risk management. For example, the insurer can advise on how to mitigate risks involved in external activities that could put learners at risk, through measures like these:

1. Prominent signs must be displayed stating that participation in this activity is at the participant's own risk. Any participant in this activity must sign a document drawn up by a qualified attorney disclaiming the liability of the insured or any partner or director or employee of the insured prior to taking part in the activity.
2. Supplying of suitable safety equipment and clothing to all participants for the activity concerned.
3. All equipment provided or to be used must undergo safety checks before use to ensure it is fit for purpose.
4. All safety equipment and braking systems must undergo daily safety checks before use to ensure they are fit for use.
5. Ensure that equipment provided is not overloaded beyond its designed carrying capacity and is used according to the manufacturer's guidelines.
6. An adequate number of suitably qualified and experienced employees must be present to supervise all events and ensure that the equipment is being used within its design tolerances (reduced further if more hazardous conditions exist). The employees must also ensure the equipment and safety equipment are correctly used.
7. If the activity takes place in or on water or involves the riding of an animal, then persons under the age of 14 are not allowed to participate in this activity unless accompanied by an adult. (If the riding of an animal is in respect of a domestic animal such as a horse, then the age requirement could be lowered to 7 years of age.)
8. All participants shall wear a life jacket if the activity involves water.
9. All participants shall wear a helmet when there is any possible risk of head injury. This includes activities with water and rivers, animals or that take place at height.

It's important that schools seek an insurance product that addresses the risks they're exposed to and provides additional cover and benefits tailored to their needs. It's also vital to ensure the product's definition of the insured extends to include all parties who have custodianship over children, from the principal and teachers to part-time teachers, pupils, trustees of the governing body and members of the parent teachers association.

The school's *in loco parentis* responsibility is extremely serious, and it's pivotal all parents and school-linked parties are familiar with the legalities involved.

## ABOUT THE AUTHOR

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