



Tranby College

**Teachers and the Law:
Responsibilities for all staff**

Craig D'cruz
AISWA Industrial Officer

General Overview

- Schools are complex organisations - there are many Acts and laws that are required to be followed in order for schools to remain registered.
- Teachers are not exempt from compliance with State and Federal Acts and laws even as 'employees' of a school. However they are not *usually* personally liable when acting in their scope of employment.
- Some of the Acts that affect schools include but are not exclusive to:

Legislative Acts and Regulations

<p>Western Government Acts / Regulations / Orders</p> <ul style="list-style-type: none"> - Age Discrimination Act 2004 - Australian Curriculum, Assessment and Reporting Authority Act 2008 - Australian Charities and Not-for-Profit Act 2012 - Australian Education Act and Regulations 2013 - Australian Border Traffic Commission Act 1986 - Building Code of Australia 2003 - Child Support Act 1988 - Copyright Act 1968 - Copyright Amendment (Digital Agenda) Act 2000 - Drugs Act 2001 - Disability Discrimination Act 1992 - Donor Incentives for Organiser 2001 - Education Services for Overseas Students Act 2000 - Migration Act 2007 - Motor Vehicle Act 2001 - Family Law Act 1975 - Family Law (Children) Act 1981 - Gender Equity Act 2013 - National Employment Standards (NES) (which is the FWA 2009) - Privacy Act 1988 - Plant Quarantine (Risks) Act 2014 - Privacy Act 1988 - Racial Discrimination Act 1975 - Social Security Act 1991 - Sex Discrimination Act 1984 - Superannuation Guarantee (Administration) Act 1992 and Regulations 2006 - Trade Practices Act 1974 	<p>State Government Acts / Regulations</p> <ul style="list-style-type: none"> - Acts Amendment (Higher Learning Age and Related Provisions) Act 2003 and Regulations 2003 - Animal Welfare Act 2002, General Regulations 2003, and Regulations for Scientific Purposes 2003 - Associations Incorporation Act 1987 - Child Abuse Act 1982 - Children and Community Services Act 2004 - Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2005 - Child Liability Act 2002 - Commonwealth Sales Act 2003 (commencing in 2006) - Criminal Code 1913 - Criminal Code Amendment (Sex Off) 2009 - Criminal Code Amendment Act 2011 - Dog Act 2014 - Disability Services Act 1992 - Education Services (Public Sector Overseas Students) Regulation Act 1991 - Environmental Protection Act 1986 - Equal Opportunity Act 1984 - Children Act 2004 - Family Court of Western Australia (Orders of Registrar) Act 1997 - Family Court Act 1977 - Road Act 2004 and Road Regulations 2005 - Gas Standards Act 1972 and Gas Standards (Use of Gas Appliances) Order 2001 - Health Act 1911 and Regulations - Industrial Relations Act 2010 - Limitation Act 2005 - Liquor Licensing Act 1988 - Local Government Act 1997 - Long Service Leave Act 1958 - Minimum Conditions of Employment Act 1993 - Occupational Safety and Health Act 1984 and Regulations 1996 - Occupiers Liability Act 1987 - Parent Support and Responsibility Act 2006 - Road Traffic Act 1974 - School Education Act 1999 and Regulations 2000 - Unintentional Negligence and Liability Act 1996 - Voluntary Provisions from Liability Act 2002 - Teacher Registration Act 2012 - Teacher Registration Regulations 2012 - Working with Children (Criminal Record Checking) Act 2004 and Regulations 2005
---	--

Overview of topics

- Duty of Care
- Excursions and Camps
- Discipline, Physical Contact and relations with students
- Social Media, Emails, Written documents
- Copyright and Intellectual Property
- Discrimination
- Welfare and Family Matters

Duty of Care

Duty of care is a common law concept, which is underpinned by case law. The level of duty of care can only be determined in a court of law. The standard of duty of care is usually determined as that expected of a 'reasonable person'.

All members of the School community have a duty to take reasonable steps to avoid harm to others.

Adapted from a presentation by Ian Curlewis & Michael Jensen of Lavan Legal in August 2010

Duty of Care

Courts look to a number of factors in determining the extent of a duty of care. These include whether:

- There is a relationship between the parties that establishes a duty of care.
- There has been a breach of that duty of care.
- Any injury suffered by a person was foreseeable.

Adapted from a presentation by Ian Curlewis & Michael Jensen of Lavan Legal in August 2010

Duty of Care

Generally a teacher's duty of care is a non-delegable duty. Certain relationships create different levels of care. For example: Teacher/student or EA/Student.

The duty owed is not to **stop all harm but to take reasonable care** to prevent harm occurring. What constitutes an acceptable level of reasonable care will vary from situation to situation

Adapted from a presentation by Ian Curlewis & Michael Jensen of Lavan Legal in August 2010

Duty of Care

The Court can take into consideration factors such as the:

- Nature of the relationship (teacher/student).
- Age of the students and the School employee
- Experience of the Teacher.
- Physical and mental intellect of the students to be cared for.
- Nature of the activity being undertaken (eg sick bay).
- Employee's attributes and skills.
- Probability of the injury occurring.
- Proactive steps taken by the employee to prevent the injury occurring.

Adapted from a presentation by Ian Curlewis & Michael Jensen of Lavan Legal in August 2010

Duty of Care

A school (the Board) is under a duty to take reasonable care to ensure that it employs competent employees and provides safe premises. The school will be **vicariously liable** for the actions of all employees whilst they are acting in the course and scope of their duties as an employee of the school.

Note that the law regards the teacher/student relationship as having a special welfare component. Teachers have a duty of care to protect all of their students from reasonably foreseeable injuries.

Adapted from a presentation by Ian Curlewis & Michael Jensen of Lavan Legal in August 2010

Duty of Care

The courts recognise that accidents happen in schools, and a teacher will have breached his or her duty of care if:

- The injury was reasonably foreseeable (not completely unexpected) AND
- The injury occurred because the teacher did not carry out his or her responsibilities in a sufficiently careful manner (or failed to follow school policies and procedures).
- **Principals must ensure that all employees read and UNDERSTAND their responsibilities as per School Policy.**

Adapted from a presentation by Ian Curlewis & Michael Jensen of Lavan Legal in August 2010

Duty of Care

It was once argued that a teacher had to take as much care as the 'reasonable parent' would take ('in loco parentis').

In more recent times the standard expected of a 'reasonable teacher' is now thought to be the appropriate test, given that teachers, unlike parents, have specialist training and are in charge of much larger groups than a parent normally is.

Therefore, in the event of an injury, courts must determine whether a teacher has acted as the reasonable teacher would have acted in that situation.

Adapted from a presentation by Ian Curlewis & Michael Jensen of Lavan Legal in August 2010

Duty of Care

Exercising the duty of care appropriately will require a number of factors, including but not limited to:

- Providing 'adequate' supervision in and out of class.
- Ensuring school premises and equipment are safe.
- Implementing 'safe strategies' at the school premises or on school excursions/camps.
- If using an external provider, ensuring that the provider is skilled as to equipment and has in place 'safe plans'.
- If a teacher has special skills, using those skills to the best of his or her ability.
- being aware of and implementing school policies affecting students' safety and welfare eg. Bullying, Occupational Health and Safety, Student Health, supervision ratios etc.

Adapted from a presentation by Ian Curlewis & Michael Jensen of Lavan Legal in August 2010

any HSA / financial issues personally reliable for all 12.

Duty of Care- Interesting Situations

- A duty of care may arise before the morning bell has rung or before the first teacher is on morning playground duty, if children have been allowed to congregate on the school playground with the knowledge of the principal. The principal must therefore carefully consider the extent to which supervision is required before and after school in order to discharge its duty of care.
- The duty could extend in certain circumstances to students from other schools such as students being supervised in an inter school swimming carnival or combined schools camp.
- The duty could also extend to public venues such as train stations and bus stops if it has been voluntarily assumed.

Adapted from a presentation by Ian Curlewis & Michael Jensen of Lavan Legal in August 2010

Duty of Care- Summary

In summary, Schools should ensure that all of their teachers (and all employees) provide a level of adequate care for students whilst students are:

- ON school premises.
- INVOLVED in school activities both on and off school premises.
- In the PROXIMITY of the school premises.

Refer to the AISWA Duty of Care Policy Guidelines

Duty of Care- Summary

Through:

- Supervision (primary basis of negligence claims)
- Maintenance / Inspections
- Incident Reporting and Corrective Action (Responsiveness)
- Record Keeping
- Policy Management

Refer to the AISWA Duty of Care Policy Guidelines

Excursions and Camps

Just as in a school environment, teachers owe a duty of care to students on excursions and camps.

As a teacher's duty of care is non-delegable, a school does not discharge its duty of care by placing students in the control of an excursion provider.

However, this does not mean that a school can never permit its students to participate in excursions operated by others. Rather, a school must be vigilant to ensure that excursion providers with whom it deals are competent and safe.

Excursions and Camps- Questions to ask

A range of questions needs to be asked by the Principal and acted on by the teacher when organising any activity. The key questions are likely to include:

- What is the purpose of the activity?
- Is it in keeping with the School's ethos and Mission?
- Who is in charge?
- What specific learning experiences do we wish each student to participate in?
- Does the School Insurance Policy cover all aspects of this activity and are all of the students AND staff covered?

Excursions and Camps- Questions to ask

- What are the capabilities of each student in each of the specific activities we wish them to participate in?
- What are the risks involved in those activities? (RISK ASSESSMENT)
- Transport arrangements- hire bus or private vehicles? Staff or parents? Who is liable?
- Have we made accommodations and modifications appropriate for students with disabilities?
- Are we able to get written parental consent for each child?
- What happens to the students who do not have written parental consent?

Excursions and Camps

If a teacher becomes aware of a risk to his or her students in the course of the excursion, the teacher should take reasonable steps to eliminate or minimise that risk. This includes the use of excursion provider equipment.

In most cases it will not be reasonably practicable for a teacher to inspect all of the equipment provided by an excursion or camp provider, nor will many teachers have the necessary experience to do this.

However, a teacher should make appropriate enquiries of an excursion/camp provider to satisfy him or herself that equipment and machinery (including personal protective equipment) is maintained, repaired and in good working order. (Risk Assessment)

Excursions and Camps

In determining the extent of a school's duty of care, regard must be had to the purpose of the excursion or camp. For example, on a leadership camp, students may be given *'room for initiative and opportunity to display commonsense and co-operation, as well as room to allow observation of their absence'* provided that there was no obvious risk of significant harm.

Risky activities need not be avoided, provided that proper precautions and safety measures are implemented. Risk assessment, risk minimisation and risk management are quite different to being risk averse.

If there is a current Individual Education Plan, Behaviour Management Plan, and/or Risk Management Plan for any student going on the excursion, this must be taken into account in planning!

Handwritten red scribbles across the top of the page.

Excursions and Camps- Summary

In summary, principals should ensure that teachers:

- Plan excursions carefully and keep records of plans and procedures.
- Carry out a thorough Risk Assessment pre-event.
- Have the correct approvals from the school principal as per school policies.
- Know the excursion/camp area and any hazards (annual).
- Be aware of each child's skill level relevant to the planned activities.

Refer to the AISWA Excursions, Camps and Tours Policy Guidelines

Excursions and Camps- Summary

- Ensure supervision is adequate for activity, age and ability.
- Monitor students at all times.
- Make accommodations and modifications for students with a disability.
- Ensure parents are informed and give written consent of all activities.

Do nothing that is not on the approved programme

Refer to the AISWA Excursions, Camps and Tours Policy Guidelines

Handwritten red notes:
 eg swimming camp at a pool, if it's not specific on the itinerary ADD IT.

Discipline, Physical Contact and relations with students

In independent schools, parents enter into a contractual relationship with the school to educate their child, and this invariably involves agreeing to the school's discipline policy and school rules.

Section 257 of the Criminal Code makes provision for the discipline of children by stating that:

"It is lawful for a parent or a person in the place of a parent, or for a schoolmaster or master, to use, by way of correction, towards a child, pupil, or apprentice, under his care, such force as is reasonable under the circumstances."

Adapted from a presentation by Michael Jensen and Alec Weston of Lavan Legal in August 2012

Discipline, Physical Contact and relations with students

Regulation 40(2) of the School Education Regulations 2000, however, states that a student at a government school is not to be disciplined by way of corporal punishment.

Students at non government schools **MAY** be able to be disciplined by way of corporal punishment, depending on the terms of the contract entered into with parents.

Corporal punishment of any sort or in any manner must never be used if it is not part of the school's discipline policy and the parents are aware of and have agreed, in writing, to its use.

Discipline, Physical Contact and relations with students

Schools should encourage (or insist) that teachers exercise their traditional range of disciplinary powers to ensure that they maintain good order while students are in their care.

All disciplinary actions and/or sanctions made by teachers must fall within the scope of the school's discipline policy and should be meted out in a procedurally fair manner. (Allowing for modifications and accommodations for students with disabilities/special needs)

Generally it is ONLY teachers who are authorised to discipline or chastise students.

Adapted from a presentation by Michael Jensen and Alec Weston of Lavan Legal in August 2012

Discipline, Physical Contact and relations with students

Note that whilst teachers have the authority to chastise students, they should avoid using discipline methods which involve ridicule and/or humiliation- this could amount to bullying and may also contravene the United Nations Convention on the Rights of the Child or a variety of Acts referring to discrimination.

Adapted from a presentation by Michael Jensen and Alec Weston of Lavan Legal in August 2012

Discipline, Physical Contact and relations with students

Non-sexual touching of students

The complete avoidance of all physical contact with students is not necessary unless it contravenes your school policy.

As Hopkins states in "Teachers, Students & the Law":

"Encouraging pats on the arm are a normal part of everyday interaction between people, not just in schools ... Touching of a *non-sexual nature will only amount to an assault* if the student has not consented to it. [Horan v Ferguson] suggests that students tacitly consent to receiving tactile encouragement and that not allowing this would make schools sterile places."

Adapted from a presentation by Michael Jensen and Alec Weston of Lavan Legal in August 2012

Discipline, Physical Contact and relations with students

But, the court added, children do not consent to prolonged or effusive physical contact. Furthermore, "children can withdraw their consent, either by words or gesture."

All employees must, therefore, be on guard for signs that contact may be unwelcome and make sure that they do not repeat that contact if they receive such signals, either verbal or non-verbal, from the student in question. Non-verbal signs could include shrugging off contact or even a nonresponsive facial expression.

In general, physical contact should be avoided unless absolutely necessary.

Adapted from a presentation by Michael Jensen and Alec Weston of Lavan Legal in August 2012

Discipline, Physical Contact and relations with students

Sexual touching of students

Physical contact of a sexual nature is an offence, whether or not the student has consented to the contact and whether or not the student in question is above the age of consent.

Employees should, AT ALL TIMES, engage in personal protective behaviours and ensure that there is a level of professional distance and a professional manner applied in all student/employee relationships both in and out of school. (Age of consent is 16, but for teachers it is 18+)

Please consult with AISWA with regard to any issues related to Mandatory Reporting

Adapted from a presentation by Michael Jensen and Alec Weston of Lavan Legal in August 2012

Discipline, Physical Contact and relations with students

Restraint

Teachers and sometimes EA's may take such physical action as is appropriate to prevent or restrain a student at the school from acting in a manner which places at risk the safety of that student or any other person or any property. A teacher may use as much force as is necessary in the circumstances to restrain a student.

No staff member should ever restrain unless they are appropriately trained.

AISWA recommends PART (Predict Assess and Respond To aggressive and assaultive behaviour) training.

Adapted from a presentation by Michelle Bishop IE Consultant AISWA re Behaviour Management Mar 2012

send in opposite directions. → offer telling students to stop work. loudly.

Discipline, Physical Contact and relations with students

Using excessive force could be deemed to be an assault but what is excessive depends on the circumstances.

School employees never have a legal duty or obligation to put themselves at risk of physical harm.

Adapted from a presentation by Michelle Bishop IE Consultant AISWA re Behaviour Management Mar 2012

Social Media, Emails, Written documents

Although there are several benefits that social media and email can bring to both personal usage and school purposes, there are certain risks and implications that can arise.

While the law has not entirely caught up with technology and there is no one specific piece of legislation that regulates email, social media sites and the use of social media, it is important to keep in mind that what employees do with emails and/or social media can have real world legal consequences.

The laws re discrimination, defamation, harassment and so forth that apply in the 'real world' also apply in cyberspace.

Social Media, Emails, Written documents

For example, there have been cases where the inappropriate use of emails and social media against co-workers (such as harassment) outside of work hours has resulted in staff being dismissed for serious misconduct.

Recent decisions by the Fair Work Commission have confirmed that proof of excessive use or the inappropriate use of social media during or outside of work hours may constitute a valid reason for termination of employment.

Social Media, Emails, Written documents

Employees need to be aware and understand that emails and social media conversations (even those held outside of school hours) may also be covered within school policies pertaining to privacy, defamation and intellectual property and that breaches of these policies may result in disciplinary action; **including dismissal.**

Social Media, Emails, Written documents

Risks associated with employee use of social media include but are not exclusive to:

- Breaches of the school's Code of Conduct for staff.
- Disclosing personal information or 'commercial-in-confidence'
- Plagiarism or breach of copyright conditions when using or reproducing material.
- Excessive work-time used browsing social media applications.
- Having students and/or parents as 'friends'. Blurring boundaries - teachers placing themselves at very serious risk.
- The concept of leaving a "digital footprint", i.e. communication via social media and email is virtually indelible.
- Comments that inadvertently bring the School's reputation into disrepute - inc political views, promises, inaccurate statements.

Social Media, Emails, Written documents

Although by its nature e-mail seems to be less formal than other written communication, the same laws apply.

Emails can be subpoenaed by the courts. If employees:

- send e-mails with any libellous, defamatory, offensive, racist or obscene remarks, he/she and the school can be held liable.

- forward e-mails with any libellous, defamatory, offensive, racist or obscene remarks, he/she and the school can be held liable.

if parent emails me with info need to ask before forwarding onto Ho etc.

Social Media, Emails, Written documents

- unlawfully forward confidential information, he/she and the school can be held liable.
- unlawfully forward or copy messages without permission, he/she and the school can be held liable for copyright infringement.
- Write messages to parents or colleagues re students.

The School is the owner of copyright in all email messages created by its employees and contractors in performing their duties.

Refer to the AISWA Intellectual Property, Mobile Phones, Email and Internet and Social Media Policies

Social Media, Emails, Written documents

Defamation

Generally, defamation occurs when a person publishes a statement that harms or damages the reputation or standing of another person within the community. A statement is published once it is known by a third person.

However, the School may allege the defence of 'innocent publication' if they did not know that the email contained defamatory material.

Refer to the AISWA Intellectual Property, Mobile Phones, Email and Internet and Social Media Policies

Social Media, Emails, Written documents

Written documents that are in a paper format have the same legal ramifications as emails and social media documents. Anything that a teacher writes about a child or parent can be subpoenaed (including emails between teachers). It is essential that teachers and Administration staff understand that if a written comment is placed onto a parent note, added to a school report, sent as a formal letter or written comments are added in a child's diary or sent as an email- they form part of what the courts may determine as the 'School File' for that child.

Employees (and especially teachers) should NEVER write down anything that they do not want 'discovered' at a later stage made possibly public.

Refer to the AISWA Intellectual Property, Mobile Phones, Email and Internet and Social Media Policies

Copyright and Intellectual Property

Copyright is a legal framework that provides protection to the copyright owner against unauthorised use of intellectual property.

Copyright protects the expression of ideas or the way in which ideas have been described or have 'manifested' into form.

Copyright does not protect the idea itself.

It also does not protect facts, methods or techniques (although these might be protected in some cases by other forms of intellectual property rights such as patents or the like).

Refer to the AISWA Copyright Policy Guidelines

Copyright and Intellectual Property

Copyright is a right which allows creators of copyrighted material to take legal action against someone who uses that material without permission (unless that use falls within one of the recognised exceptions). It includes the right to copy, publish, publicly perform and communicate material. Under the Act there are exceptions to infringement that allow some uses of copyright material without permission. These exceptions can be split into two categories – free of charge copying and copying that requires payment.

- fair dealing for the purpose of research or study
- fair dealing for the purpose of criticism or review
- library provisions

Refer to the AISWA Copyright Policy Guidelines

Copyright and Intellectual Property

Infringement of copyright

- Doing an act which is covered by the copyright is a 'direct infringement'. Proof of intention is not necessary.
- Using all, or a 'substantial' part, of copyright work without permission is an infringement.
- Courts define 'substantial part' more in reference to the quality of the part taken, rather than the quantity.
- Quoting directly from the work can result in breach or copyright. Paraphrasing MAY still infringe copyright, if the structure of the work can be said to be part of the expression of the creator's idea.
- Plagiarism is different to copyright infringement.

Refer to the AISWA Copyright Policy Guidelines

Intellectual Property

Usually, the person who has created the work that is the subject of copyright protection, owns the copyright. However, this rule is subject to a number of exceptions.

The most notable exception is that of intellectual property in relation to employment.

Unless agreed in writing otherwise, generally all material produced for a school by a teacher, or any other employee, in the employ of the school during the school's time or time paid for by the school or using the school's resources remains the sole property of the school.

Refer to the AISWA Intellectual Property Policy Guidelines

Discrimination- Disability, Racial, Sexual etc

It is **unlawful** in Western Australia for a school, and any of its employees or volunteers, to discriminate against students because of:

- o Race- colour, ancestry, national origin, ethnicity
- o Sex- gender
- o Marital status- rare but could take place with a student 18+
- o Pregnancy OR potential pregnancy
- o Family responsibility
- o Impairment- a bodily malfunction (disability) or disease, including psychological, emotional, or to learn more slowly
- o Age- except where the school is established for certain ages

Refer to the AISWA Disability Discrimination, Racial Discrimination and Sex Discrimination and Sexual Harassment Policy Guidelines

Discrimination- Disability, Racial, Sexual etc

- o Religious or political belief or activity
- o Sexual orientation/activity
- o Parental status
- o Transexuality
- o Irrelevant criminal or medical record
- o Physical features- height, weight, size etc but does not include tattoos or body piercing.

It is also unlawful to victimise someone because they have made a complaint of discrimination.

Note that there are exceptions for some schools- eg single sex schools, indigenous schools, schools for particular impairments and schools established by a particular religion (Tenets of Faith).

Refer to the AISWA Disability Discrimination, Racial Discrimination and Sex Discrimination and Sexual Harassment Policy Guidelines

Discrimination- Disability, Racial, Sexual etc

Discrimination can be:

- Direct- treating someone less favourably than you would treat someone who does not have their attribute or treating someone unfavourably because of a stereotyped notion about people with that attribute.
- Indirect- where an unreasonable requirement is made which is more difficult for people with a particular attribute to comply with.

Note that the Disability Standards (2005) define 'harassment' as acts in relation to a student's disability which are likely to humiliate, offend, intimidate or distress the student or his/her helper. This can apply to nearly every type of discrimination.

Refer to the AISWA Disability Discrimination, Racial Discrimination and Sex Discrimination and Sexual Harassment Policy Guidelines

Discrimination- Disability, Racial, Sexual etc

If an employee is found to have engaged in discriminatory or harassing behaviour, the employee may be held liable. The school may also be considered vicariously liable unless it can be proven that reasonable steps were taken to prevent offences, (e.g. provision of anti-discrimination training and policy).

All employees, volunteers and agents of the school are legally obliged to ensure that they do not engage in discriminatory behaviour towards fellow employees, supervisors, managers, clients, students or any other person with whom they come into contact through work.

Refer to the AISWA Disability Discrimination, Racial Discrimination and Sex Discrimination and Sexual Harassment Policy Guidelines

Welfare and Family Matters

The Principal, teachers and staff need to have a clear understanding of which persons are entitled to have access to students whilst they are in the care of a school and under what circumstances this right of access may be exercised.

Section 60B of the *Family Law Act* sets out that the objects of the Act are to ensure that the best interests of the children are met by:

- ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child

Refer to the AISWA Family Law Policy Guidelines

Welfare and Family Matters

- protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence
- ensuring that children receive adequate and proper parenting to help them achieve their full potential
- ensuring that parents fulfil their duties and meet their responsibilities concerning the care, welfare and development of their children.

Separation, divorce or re-marriage does not change these duties and responsibilities.

The child's best interests are the main concern of the court.

Refer to the AISWA Family Law Policy Guidelines

Welfare and Family Matters

Parental responsibility means all duties, powers, responsibilities and authority which by law parents have in relation to the child. These responsibilities continue, despite the parents being separated or divorced, unless a court order alters or limits a parent's role in the parenting of the child.

In the absence of a court order to the contrary, each parent has equal rights to information, authority and access to their child.

This means that both parents may access school reports, be involved in parent/teacher interviews, and otherwise take part in school activities. Parents should not be excluded from these school activities unless a court order provides otherwise.

Refer to the AISWA Family Law Policy Guidelines

court order subpoena

Welfare and Family Matters

If a court order has been issued, it is important that the school has an up to date copy and has **all** of the pages of the order. Section 70NAC of the *Family Law Act* deals with contraventions of court orders and provides that only parties to the order can actually contravene the order.

Further, it is **not** the role of the teacher, any employee or the School to enforce the terms of a court order. If the school considers that a parent may be in breach of a court order, every effort should be made to verbally persuade them to cease acting in that manner.

At all times the school's responsibility is its duty of care to the child and it should always act with that foremost in its mind.

Refer to the AISWA Family Law Policy Guidelines

Welfare and Family Matters

Parenting Plans are made by arrangement between the parents of the child, must be recorded in writing and signed by both parents. In situations where parents cannot agree on the arrangements for the care, welfare and development of a child, the Family Court will issue orders to protect the best interests of the child.

- A **Contact Order** will usually stipulate which person is allowed access to a student during school hours and is permitted to collect a student from school.
- A **Residence Order** usually deals with whom a student is to reside.

Refer to the AISWA Family Law Policy Guidelines

Welfare and Family Matters

- **Specific Issues Orders** deal with aspects of parental responsibility for a student such as medical, education and religious matters.
- **Violence Restraining Orders (VRO)** may be issued against one of the parents. A VRO restricts access that a parent may have with the other parent and/or children of the relationship.

If a parent is subject to a VRO and the School becomes aware that the order is being breached, the Principal may contact the police. However, it is not the School's responsibility to enforce a VRO and staff should not place themselves at risk in trying to enforce the terms of a VRO.

Refer to the AISWA Family Law Policy Guidelines

Welfare and Family Matters

All persons authorised, by either a Parenting Plan or a Court Order, to have access to a student should be allowed this access subject to the School's usual rules and requirements. However, a Principal is obliged to refuse access to a student by anyone the Principal considers being a potential or actual risk to the physical or moral wellbeing of a student- this can include parents!

Other than in exceptional circumstances, unauthorised persons who call at a school and seek access to a student whom they claim they know should not be permitted to have access to the student.

Refer to the AISWA Family Law Policy Guidelines

Welfare and Family Matters

The Family Law Act provides that in the absence of any Court Orders to the contrary, both parents have equal rights and responsibilities in the parenting of the child, irrespective of the nature of the parents relationship. This includes access to school events and all information about the child which the school provides.

Any differences that arise between the parents regarding contact, access to school information concerning the child or the residence of the child must be sorted out between the parents or their advisers.

The school should not become involved in these issues

Refer to the AISWA Family Law Policy Guidelines

Welfare and Family Matters

Reporting Child Abuse:

1. Physical/Emotional/Neglect- to the Principal/Delegate
2. Sexual- Mandatory Report Teachers only-(Ref Slide 29)

The school should have clear guidelines in place regarding the reporting of any form of child abuse.

If an employee suspects child abuse of any sort and he/she has a belief that it has occurred, **it is not his/her responsibility to investigate it**. It must be reported and it would be wise to follow up that the report is being actioned.

Refer to the AISWA Family Law Policy Guidelines

QUESTIONS?

References

- Hopkins, Drew- Victoria Law Foundation- **Teachers, Students & the Law - Third Edition- A quick reference guide for Australian teachers** (2008)
- Lavan Legal- Ian Curlewis and Michael Jensen- AISWA Legal Seminar Conference Presentation- **Duty of Care** (2010)
- Lavan Legal- Michael Jensen and Alec Weston - AISWA Legal Seminar Conference Presentation- **Disciplining Students and Staff** (2012)
- Lavan Legal- Michael Jensen and Alec Weston - AISWA Legal Seminar Conference Presentation- **The Use of Social Media in Schools** (2012)

References

- The Association of Independent Schools of WA- **Physical Contact with Students**- Briefing the Board (2009)-*Presented by Ms Kate Offer, Senior Lecturer, School of Law, University of Notre Dame*
- The Association of Independent Schools of WA- **Behaviour Management - Policy and Procedure**- Briefing the Board (2012)-*Presented by Ms Michelle Bishop, AISWA*
- Mark Comito, Solicitor and Ryan Carlisle Thomas, Lawyers **Internet and Email Use- Your legal rights and obligations** (2009)
- The Association of Independent Schools of NSW- **Duty of Care Policy Guidelines** (2012)

References

- The Association of Independent Schools of WA- **Duty of Care Policy Guidelines**(2011)
- The Association of Independent Schools of WA- **Sexual Discrimination and Sexual Harassment, Racial Discrimination and Disability Discrimination Policy Guidelines** (2010-2012)
- The Association of Independent Schools of WA- **Copyright Policy Guidelines** (2009)
- The Association of Independent Schools of WA- **Social Media Policy Guidelines** (2012)
- The Association of Independent Schools of WA- **Excursions, Incursions, Camps and Tours Policy Guidelines**(2012)

References

- The Association of Independent Schools of WA- **Intellectual Property Policy Guidelines**(2012)
- The Association of Independent Schools of WA- **Family Law Policy Guidelines**(2013)

Disclaimer: The information contained in this document is to the best of our knowledge and belief correct at time of publication. However, no warranty or guarantee is or can be provided by the Association of Independent Schools of Western Australia to any member of its staff, and no liability is or can be accepted for any loss or damage resulting from any person relying on or using this information contained in this publication.

Copyright: Association of Independent Schools of Western Australia Member Schools are welcome to use the information in this publication. Acknowledgement of the Association of Independent Schools of Western Australia would be appreciated.



