

Supervision & Duty of Care



IN THIS RESOURCE BUNDLE

❖ Introduction

❖ Duty of Care

❖ The Principal & Supervision

❖ Frequently Asked Questions

- › Do all teachers have to partake in the supervision scheme?
- › Is the BoM responsible for pupils who are dropped to the school early or collected late from the school?
- › What is the correct level of supervision?
- › Can SNAs supervise pupils?
- › Does the BoM have a Duty of Care to Pupils Availing of School Transport?
- › Who is responsible when a Bus Escort is employed – BoM or Bus Éireann?
- › Is the BoM responsible for children who go home for lunch or leave the school on other occasions?
- › What should a BoM do if a child is a flight risk and leaves the school without permission?
- › What is the required level of supervision for PE?
- › Who is responsible for supervision of pupils at swimming?
- › Is the liability of teachers covered when carrying pupils in their car?
- › Teachers' private motor insurance
- › What if the teacher has an accident whilst using his/her car on school business?
- › Why should the teacher have to suffer loss and lose No Claims Bonus when he/she is using the car on behalf of the school?
- › How do you manage Supervision in a Two-Teacher School?
- › What supervision levels should be in place for school tours?
- › Are there any restrictions on class numbers?
- › Do classes with SEN students require greater supervision levels?

❖ Useful Resources

INTRODUCTION

Determining acceptable levels of supervision and defining the school's duty of care is one issue that exercises the minds of many Boards of Management (BoM) and principals. While there is no prescriptive answer provided by the DES, the liability of the BoM is predominantly based on judicial decisions and precedence in previous cases.

This resource bundle will examine the most frequently-asked questions that IPPN's Principal Advice Panel receive and provide best practice and advice. However, it is advisable that a school contact their school insurance provider to receive specific guidance regarding their individual circumstances.

DUTY OF CARE

The measure of duty placed on the principal and teachers, in any primary school, is "to take such care of the pupils as a careful parent would of his/her own children". This legal principle is known as "in loco parentis" (in the place of the parent). The degree of supervision required of the teacher will vary with the circumstances and especially the age of the pupil.

The liability of the Board of Management and the teacher is incurred under Common Law, which is based on judicial decisions and precedents in previous cases. The primary liability attaches to the person or persons in breach of that duty of care which is, in the main, the teacher. Legal liability for accidental damage incurred by the teacher is covered by the Policy issued to the Board of Management.

Rules 121(4) and 124(1) of the Rules for National Schools and Section 23(2) of the Education Act 1998 oblige teachers to 'take all reasonable precautions to ensure the safety of pupils when the pupils are on school premises, during school time and/or on school activities. Accordingly the responsibility of all teachers individually or collectively to provide a duty of care at all times towards the pupils in the schools in which they teach, including periods of supervision remains.'

It is advisable to discuss with staff their responsibility, both individually and collectively, to provide a duty of care at all times towards pupils. The start of the school year is a good time to put this on the agenda for a staff meeting and discuss any changes to procedures that may have taken place in terms of supervision for the current year.

THE PRINCIPAL & SUPERVISION

DES Circular 18/2003 states that 'The overall responsibility for the day-to-day management of school supervision will continue to rest with the Principal teacher'. The terms of Circular 16/73 continues to apply - 'the Principal teacher should organise supervision for the order and general behaviour of the pupils during school hours. In particular, s/he should organise and participate in the effective supervision of the pupils during breaks, lunch-breaks, assembly and dismissal. A table of names and times of supervision duties should be on display in the staff room'.

The role of the Principal is very important in managing, monitoring and participating in the supervision of the pupils during mid-morning and lunch breaks. The roster should include arrangements for providing supervision for short-term absences. It should be submitted to the BoM for approval and should be retained in the school for inspection by DES officials.

In accordance with the above, the principal and staff should formulate a school policy on supervision. This policy should be updated from time to time and should be approved by the BoM. It is a matter of judgement for the principal, staff and Board to be satisfied that the number of teachers on duty at any one time is sufficient to provide "adequate supervision". There is no agreed definition of "adequate supervision" as the degree of supervision required of the teacher will vary with the circumstances. In this regard, the following issues should be considered in formulating a school policy on supervision:

- the opening and closing time of the school. Parents should also be advised of the hours between which the school will accept responsibility for pupils. It is advisable to communicate this information to parents at the beginning of each term
- the number, ages and level of maturity of the children
- the layout of the school, including the layout of school play areas
- existing supervision practices and experience of accidents or claims
- arrangements for specific circumstances, such as wet day supervision, absence of teachers, swimming, school tours
- arrangements for allowing individual children to go home early in the event of illness, visit to a doctor, parental request etc
- the supervision of children arriving via school transport before the formal start of the school day and the supervision of children awaiting collection by school transport after the formal conclusion of the school day (c.f. Department of Education, Circular 24/71: Insurance Against Liability for Injury to Pupils and Teachers)



FREQUENTLY ASKED QUESTIONS

Do all teachers have to partake in the supervision scheme?

It is mandatory for all teachers to participate in the supervision scheme as part of DES Circular 33/2013. Teachers can no longer opt out of the supervision scheme. A teacher is required to provide 43 hours supervision per annum. This will also include providing substitution cover for the following absences:

- to cover all uncertified sick leave absences, subject to appropriate alleviation measures in relation to multiple absences, particularly in small schools
- to cover the first day of force majeure leave and illness-in-family leave.

Is the BoM responsible for pupils who are dropped to the school early or collected late from the school?

A duty of care is placed on the school and teachers to supervise at all times (length of the school day - 5hrs 40 mins) when they are placed in loco parentis. There is no relaxation of this duty on the BoM if access is provided to the school before and after the official school timetable. This legal requisite produces a dilemma for Boards. Do the BoM agree to lock the school gates and refuse entry until 10 minutes before the school starts and possibly place the pupils in danger from passing traffic? This dilemma holds little sway with the courts, who will argue that parents have established the practice of dropping pupils to the school before hours or collecting them after hours and in that acceptance is the obligation to provide supervision. Allianz suggest that there is some mitigation for boards. It is recommended that the hours which the school provides supervision before and after school are communicated to parents at the beginning of each term and that this information is displayed in the school yard. Based on case law precedence, it can be reasonably expected that pupils will be on the school premises for a minimum of 10 minutes before and after school. Allianz Insurance Company has provided the following sample wording to be sent to parents:

'The school will open to receive pupils at the hour of 8.45 a.m. No responsibility is accepted for pupils arriving before that time. Classes will commence each day at 9.15 a.m. No pupils should arrive later than 9.10 a.m. Classes will end each day at 3.30 p.m. Parents who wish to have their children escorted home should make their own arrangements to have them met at the school gate and the person to escort them should be at the school not later than 3.30 p.m. as the school cannot accept responsibility for looking after the children after that time'.

What is the correct level of supervision?

There is no simple answer as to what constitutes the 'correct' level of supervision. However, it is advisable that the following influencing factors be taken into account - age, maturity and number of pupils as well as the topography of the area that requires supervision. The degree of supervision by a teacher should be that of 'reasonable care' i.e. equate to the supervision levels of a careful parent. This is supported in Rules 121 (4) and 124 (1) of the Rules for National Schools and Section 23 (2) of the Education Act 1998 which oblige teachers to take all reasonable precautions to ensure the safety of pupils and to participate in supervising pupils when the pupils are on school premises, during school time and/or on school activities. Accordingly, the responsibility of all teachers individually and collectively to provide a duty of care at all times towards the pupils in the school in which they teach, including periods of supervision remains. [Primary Board of Management Information Manual - DES, Nov 2007]

Can SNAs supervise pupils?

SNAs may support the teaching staff in the supervision of pupils, but may not carry out this function in isolation. Similarly, a parent should not carry out supervision unless accompanied by and under the direction of a member of the teaching staff. Pupils, too, should never be left to supervise.

Does the BoM have a Duty of Care to Pupils Availing of School Transport?

Schools are not party to the school transport system, according to Allianz Insurance. There is no additional obligation placed on the BoM, despite the fact that children are conveyed to or from school by bus. It is a prerequisite that parents are informed at least once per term that no arrangement exists for the supervision of their children who arrive at school using school transport before the official opening time or who remain after school hours awaiting collection by the school bus. IPPN suggests that the BoM and the Parent Association negotiate with transport providers and seek more practical collection and drop-off times for children. Where transport providers are either unwilling or unable to show flexibility, parents could be encouraged to engage in car pooling.

In schools where there is a practice of accompanying pupils to and from the school bus, the BoM may be held liable if, having established the practice, an incident occurred.

Allianz Insurance provides suggested text to be communicated to all parents at the beginning of each term about school transport:

"In the case of children travelling by School Bus, the school cannot accept responsibility for escorting them from the bus to the school or from the school to the bus. Parents who feel that their children may need to be escorted in these circumstances should make arrangements to ensure that an escort is provided."

Who is responsible when a Bus Escort is employed – BoM or Bus Éireann?

The BoM is the employer of the bus escort and accepts responsibility for the pupil from the time of escort. It is recommended that the bus escort receive training and instruction in the performance of their duties. It is advisable that the school would maintain a list of substitute escorts should an escort be unavailable on a particular day or days.

Is the BoM responsible for children who go home for lunch or leave the school on other occasions?

Teachers act in loco parentis for 5 hours and 40 minutes each day and schools are required to know where all pupils are at all times. It is advisable that the school ask the guardians to sign an authorisation note. Allianz Insurance suggests the following wording:

"This is to acknowledge that we have requested the Board of Management and Teachers to allow our child (or children) (...name(s)...) to leave the school premises at lunch time. We are aware that an accident may befall the child on their way from or on their return to the school and we hereby absolve and release the Board of Management and Teachers from all claims of every nature and kind in respect of any injury or loss or accident which may be suffered by our child during lunch time."

The form should be addressed to the school, indicate the names of the child or children, signed by the parents and dated.

What should a BoM do if a child is a flight risk and leaves the school without permission?

Certain children will be identified as 'flight risks'. It is necessary that the Board, in conjunction with staff, carry out a risk analysis of the dangers involved, quantify the risk as low, medium or high and draw up an action plan to eliminate or, at least, reduce the risks involved. This may mean securing access areas and establishing a list of procedures in the event of the child fleeing the school. All staff, as well as the parents, should be fully conversant with these procedures. Running after a child in flight mode will probably cause the child to run faster. A staff member would be advised to follow at a safe distance where possible. Where a child runs into the path of traffic, for example, it will require a judgement call as to whether physical restraint/intervention is needed. It is also advised that another staff member immediately inform the parents and Gardaí in the event of a child leaving the school.

In the event of a number of possible physical interventions, a policy on Physical Intervention/Restraint will be necessary. Advice in this regard may be sought through the IPPN National Support Office.

What is the required level of supervision for PE?

In the first instance, pupils must not be placed in any danger over and above the acceptable dangers of the sport. It is essential that teachers ensure that all pupils use safety equipment to reduce the likelihood of injury i.e. helmets should be worn when playing hurling and gum shields should be used when playing football, hurling or rugby. If a pupil is injured, an incident report form is required to be completed. It is advisable to notify your insurance company of the incident.

Who is responsible for supervision of pupils at swimming?

A teacher's supervision responsibility does not diminish because pupils are not on the school premises. The BoM is required to ensure that transport is provided for all pupils to and from swimming. A Garda-vetted volunteer may assist in the supervision of pupils, but cannot supervise pupils in isolation. Procedures for the supervision of pupils outside of the school premises should be included in the school's Supervision Policy.

Teachers using their car for school business

Allianz Insurance has provided the following advice to schools regarding teachers using their cars for school business:

(i). Is the liability of teachers covered when carrying pupils in their car?

No. Liability for passengers in a car in any capacity is a matter solely for the teacher's own motor insurance. Any liability, however, which attaches to the BoM, in the event that the teacher's insurance should prove defective, is covered by the Custodian School Protection Policy

(lii). Teachers' private motor insurance

Like any individual, teachers are free to arrange their motor insurance with whatever insurer they like. Bearing in mind, however, that teachers may carry pupils to sports matches or to hospital in an emergency, some advice is necessary. It is quite common for insurers to offer insurance for use of the vehicle on what is known as a Class 1 basis. This provides cover for Social, Domestic and Pleasure usage of the vehicle. To include the carrying of pupils, school equipment etc. in their own car, teachers are advised to have the extended Class 1 usage of the vehicle which is Social, Domestic and Pleasure and by the insured in person for his/her business. These additional words are important and will give the additional cover required - only when the teacher/insured is driving. There may be an additional premium required by insurers for this cover.

(iii). What if the teacher has an accident whilst using his/her car on school business?

The teacher's motor insurance will cover any liability arising out of the use of the car. If Comprehensive cover has been arranged then it will also cover damage to the teacher's car. There will be an excess (or amount deducted from the amount of the claim payable by the teacher/insured) and the possible loss of No Claims Bonus/Discount.

(iv). Why should the teacher have to suffer loss and lose No Claims Bonus when he/she is using the car on behalf of the school?

This problem has been recognised and the policy has been extended to include such financial loss suffered by a teacher in the event of involvement in an accident whilst using the car on behalf of the school (subject to limits specified).

How do you manage Supervision in a Two-Teacher School?

Primary Circulars 27/02 and 18/03 outline clearly the role of the teacher with a special duties post in a two-teacher school. A two-teacher school, for the payment of the allowance, is defined as a school with a Principal and one mainstream class teacher. Payment of the allowances is subject to the BoM agreeing the duties to be performed with the teacher and specifying the duties in writing. Payment is also subject to the teacher satisfactorily performing the duties of the post.

Circular 18/03 notes that each two-teacher school is entitled to 122 hours supervision. The 2nd teacher in a two-teacher school who is in receipt of the Special Duties Allowance must undertake 28 hours of this supervision and is receiving payment for this in the special duties allowance. Consequently, the balance of supervision hours payable for such schools under the terms of this circular is 94 hours.

Paragraph 5.1 of the circular states that a full-time teacher who undertakes supervision duties in a Primary school must opt to provide a minimum of 37 hours supervision per school year. In two-teacher schools, the Principal will therefore carry out 37 hours supervision. The special duties teacher will carry out 37 hours as part of his/her post, or a total of 65 hours. A grant will issue to the Board of Management to facilitate payment in respect of the balances of the extra 20 supervision hours (Circular 18/03 paragraph 7.2). If the Principal carries out these 20 hours supervision, they are entitled to be paid by the Board of Management for their services.

In a two teacher school where the 2nd teacher is a privileged assistant or in receipt of an allowance on a personal basis or has not asked to receive the special duties allowance, such teachers are not obliged to undertake supervision duties as per the terms of Primary Circular 27/02. Where such teachers opt out of supervision duties, a grant will issue to the Board of Management to facilitate payment for arrangements put in place.

If a school moves to three mainstream teachers, each teacher who opts for supervision duties will receive payment with salary for 37 hours undertaken. A grant will issue for the balance of supervision i.e. 11 hours, if all 3 teachers have undertaken the duties. In such circumstances, the special duties holder would no longer have an obligation to carry out 28 hours extra supervision and a review of the duties of the post would be advised.

What supervision levels should be in place for school tours?

It is advisable that every school has a policy on tours and trips to ensure that all practical possibilities are covered to reduce the risk to children. As ever, the code of behaviour will cover conduct issues, but risks increase when leaving the controlled environment of the school. A template policy is available on www.ippn.ie (Resources, School Policies), titled 'School Tours, Excursions & Field Trip Policy' and can be tailored to meet the needs of each individual school.

Are there any restrictions on class numbers?

There is no definitive answer to the appropriate pupil : teacher ratio for school tours and trips. Influencing criteria to assist the BoM in making their decision is the age, maturity and number of pupils, mode of transport, destination and activity type. It is the responsibility of the BoM to maintain classes at a level that allows effective supervision by a teacher. Volunteers that are Garda vetted may assist the teacher in the supervision of pupils.

Do classes with SEN students require greater supervision levels?

The law does not differentiate between pupils. However, it would be advisable for the BoM and teachers to be aware that in some instances their duty of care to these children may be increased as a result of their SEN requirements.

USEFUL RESOURCES

DES Circulars

0016/1973 – Posts of Responsibilities: Duties & Responsibilities
PPT01/2003 - Supervision of pupils during the morning and lunchtime breaks and before and after school
P18/2003 - Supervision for mid morning and lunchtime breaks
P29/2003 - Supervision for mid morning and lunchtime breaks
0033/2013 - Public Service Stability Agreement 2013 – 2016 (Haddington Road Agreement) - Supervision Scheme in Primary Schools

IPPN.ie Resources

IPPN Position Paper: Before & After School Supervision

Leadership+

Issue 26, May 2005 - Failure to maintain supervision rota results in negligence for school
Issue 38, May 2007 - Supervision for mid-morning and lunchtime breaks in a 2 teacher school & supervision of pupils outside official school opening hours – A dilemma
Issue 46, May 2008 - Before & Afterschool Supervision

Policies

Before & After School Supervision - professional guidance
Supervision Policy
Swimming Policy
Swimming Policy II
Garda Vetting Policy
Supervision Schedule Template

E-scéal

E-scéal 340 - School Tour Preparations & Online Courses
E-scéal 255 - Croke Park Agreement – 'Whole School Hours'
E-scéal 350 - Uncertified Sick Leave - Revised Supervision Scheme
E-scéal 352 - Conference 2014, Appointments & Yard Supervision