

Legal and Medical Issues

Administration of Medication

Introduction

There has been increasing concern in recent years with regard to the extent to which teachers should become involved in the administration of various forms of medication to pupils. While teachers in schools act “in loco parentis”, there is no obligation on teachers to either administer medicines regularly or to supervise children taking them. It should not create a problem however, if teachers are willing, have the permission of the Board of Management, have the written approval of parents and have been trained. Teachers generally do their utmost to make provision for children who are ill, but ultimately would not do so if this in any way jeopardised the safety and welfare of any child in their care. Therefore, it is important that areas of responsibility are clarified. The purpose of this advice is to give clear guidance to members about situations where it is not appropriate for them to administer medication to pupils and to indicate the limitations of any “requirements” which may be made of teachers.

Teachers of course, will always be prepared to help when an accident or emergency situation arises, where for example, a child has a serious accident and parents need to be contacted or an ambulance called. This advice does not seek to clarify the responsibilities of school staff in such circumstances, but recommends that procedures to deal with such emergency situations are clear and made known to all staff and parents.

Teachers’ Professional Duty

Teachers have a professional duty to safeguard the health and safety of pupils both when they are authorised to be on the school premises and when they are engaged in authorised school activities elsewhere. This does not imply a duty upon teachers personally to undertake the administration of medicines. Indeed, it is important that teachers do not take responsibility for administra-

tion of any medication which, if administered incorrectly or for other reasons, could have a damaging effect on the health of a child.

Children with Long Term Health Problems

It is recognised that it is desirable for children with long term recurring health problems, such as asthma, epilepsy, diabetes and anaphylaxis to be accommodated within school in order that they can continue their education. If this is done, however, proper and clearly understood arrangements for administration of medicines must be made. Parents should be encouraged to provide maximum support and assistance in helping the school accommodate the pupil. This would include measures such as self administration (where necessary and only after approval from a GP), or under parental supervision.

Where teachers have been given medication to administer in cases of emergency e.g. adrenaline in case of anaphylaxis, this medication should be the smallest dose possible to ensure recovery until a medical expert can take over. At no time should an emergency dose be such that it could harm the child if inappropriately administered. Confirmation of this should be obtained in writing from the medical practitioner responsible for the child before a school would agree to hold such life saving medication in its care. Where possible, injection needles should not be held on the premises and epipen type injections should be used.

Where children are suffering from life threatening conditions such as the above, parents should outline clearly in writing, what can and can’t be done in a particular emergency situation, with particular reference to what may be a risk to the child.

Court Situations

Introduction

Teachers are increasingly being subpoenaed or invited as expert witnesses to give evidence in different types of cases including:-

- ◇ Family Law Court cases.
- ◇ Child Custody cases.
- ◇ Negligence, Insurance and accident cases.
- ◇ Cases related to Child Abuse.
- ◇ Cases related to Child Protection Orders.
- ◇ Cases related to the implementation of the Child Care Act.

Professional Responsibility

Teachers have a clear professional responsibility to act always in their pupils' best interests, even in circumstances where a court attendance may prove stressful and traumatic. They should be aware that they are not obliged to attend Court except under summons or subpoena. However, in relation to the above a teacher is not precluded from attending Court voluntarily to give evidence. This is a matter of professional judgement for the teacher and the teacher may wish to contact the Principal, Chairperson of the Board of Management and/or the INTO on the matter.

It is generally recommended however, that teachers should insist on being summoned or subpoenaed to attend Court, since in the first instance the Department insists that a copy of the summons or subpoena be included with the salary returns in order to obtain paid leave of absence. Whoever issues the subpoena or summons should be responsible for paying for substitute cover and this should be a condition of attending the Court.

Attending Court under subpoena or summons can also provide protection for the teacher in so far as it indicates to all sides that the teacher is not volunteering information and would not normally wish to become involved in the particular case. Where a teacher is summoned to attend court the INTO recommends that the following guidelines be observed.

INTO Advice

The teacher is there in his/her professional capacity as a teacher and should generally be expected only to comment in relation to the teaching/learning situation, for example in relation to the child's attendance, progress or other school related matters. Teachers should note that they are not psychologists or social workers and that their professional expertise relates to the teaching/learning situation.

Teachers who are asked to attend court as professionals should indicate their expectation of receiving an appropriate professional fee and full substitute cover.

The teacher may wish to clear such matters in advance with the principal or chairperson of the Board of Management.

All witnesses are obliged to tell the truth under oath.

A teacher summoned or subpoenaed as a witness is not directly involved in either side of the case except in his/her capacity as an expert witness and should therefore not require legal representation.

It is INTO policy not to provide legal representation in relation to teachers attending Court as witnesses.

Where teachers are summoned by a party representing the school i.e. the insurance company in relation to an accident at school, teachers are advised to co-operate fully with that party.

Where Solicitors/Social Workers or Psychologists ask teachers for information orally or in writing prior to a Court case with regard to the child's progress, they should have written permission from both parents, where there are two parents. The principal should be made aware of this request also.

Parental separation and the implications for schools

The separation of parents, often following marital breakdown, can be traumatic for the children concerned. Therefore teachers should approach the issue with sensitivity and with a focus on the well being of children. In addition, the situation can often raise conflicting demands for teachers.

In 1997 the INTO published a report entitled "Marital Breakdown: implications for schools" which is available on the INTO's website at www.into.ie

The following key points of advice are extracted from that report and we hope they may be of assistance to you.

Guardianship

Parents, although separated following marriage breakdown, remain the legal guardians of their children – the key principle being "Once a parent always a parent". Guardianship gives both parents a say in matters affecting children's welfare. Unless precluded by Court Order, each parent continues to have rights to consult with class teachers, attend parent teacher meetings, have access to the normal end of year school reports and be notified of meetings of parents. In this respect schools should show some flexibility.

Practical Advice:

- ◇ Where the school is notified that parents are living separately, it may be appropriate to send two separate notices of the parent teacher meeting so as to ensure that both parents have the opportunity to attend. Where it is not possible for parents to attend together schools should attempt to facilitate separate meetings. Teachers should rely on their own sense of good judgment in approaching these matters.
- ◇ During school hours teachers are in 'loco parentis'. Where parents are in dispute, the teacher/school, as a rule of thumb, should make it absolutely clear that issues of dispute should be resolved between the parents them-

selves outside of school. Issues of dispute may for example relate to the collection of children or parents wishing to visit their children during the school day. The teacher/school should make it clear that the school is an independent party and that teachers will act in a fair, open and even handed manner with respect to each parent. However, in general teachers should comply with the request of the parent who has 'de facto' control of the children. Where a dispute arises, the teacher should seek direction from the Board of Management.

- ◇ Information relevant to the child may be passed on from teacher to teacher within the school.
- ◇ Where outside professionals or solicitors acting on behalf of one parent, request a school report on the pupil (at times other than normal end of year), the teacher in consultation with the Principal, or Board of Management where deemed appropriate, should make a decision on whether such report will be furnished. It may be sufficient to copy the end of year report. Where a decision is made by the school to provide a report, such report should be similar to the normal end of year report and supported by the usual verifiable data, eg test results. As a general rule, where a report is issued to one parent, a copy is furnished to the other parent also and parents should be informed in advance, that the school will act in such an even handed manner. However, there may be circumstances where this may not be appropriate especially in cases involving alleged child abuse.
- ◇ Where a solicitor acting for one parent, seeks a written report from a teacher then the consequences of a teacher voluntarily responding must be considered. The report may subsequently be produced in any legal proceedings and the teacher may be called as a witness and cross-examined. If a teacher decides not to respond s/he maybe subpoenaed to attend court. In these circumstances the teacher is advised to seek advice from the INTO.

Administration of Medication (contd.)

- ◇ No teacher can be required to administer medicine or drugs to a pupil.
- ◇ Any teacher who is willing to administer medicines should only do so under strictly controlled guidelines, fully confident that the administration will be safe. It is wise to limit this willingness to emergency situations only. A teacher who does take responsibility for administering medicines takes on a heavy legal duty of care to discharge the responsibility correctly. Every reasonable precaution must be taken. Clear instructions about medicines requiring regular administration must be obtained and strictly followed.
- ◇ Arrangements should also be made by the Board of Management for the safe storage of medication and procedures for the administration of medication in the event of the authorised teachers absence. It is the parents responsibility to check each morning whether or not the authorised teacher is in school unless an alternative arrangement is made locally.
- ◇ In emergencies teachers should do no more than is obviously necessary and appropriate to relieve extreme distress or prevent further and otherwise irreparable harm. Qualified medical treatment should be secured in emergencies at the earliest opportunity.
- ◇ Where possible schools should request that medical practitioners would arrange times for medication so that they don't coincide with school time.
- ◇ It is important that Boards of Management request parents to ensure that teachers be made aware in writing of any medical condition suffered by any children in their class. Children who are epileptics or diabetics or who are prone to anaphylactic shock syndrome may have an attack at any time and it is vital, therefore, to identify the symptoms in order that treatment can be given by an appropriate person if necessary.

The INTO advises that:-

- (A) the parent(s) of the pupil concerned should write to the Board of Management requesting the Board to authorise a member of the teaching staff to administer the medication.
- (B) the request should also contain written instructions of the procedure to be followed in administering the medication.
- (C) the Board of Management, having considered the matter, may authorise a teacher to administer medication to a pupil. If the teacher is so authorised she/he should be properly instructed by the Board of Management.
- (D) a teacher should not administer medication without the specific authorisation of the Board.
- (E) in administering medication to pupils, teachers should exercise the standard of care of a reasonable and prudent parent.
- (F) the Board of Management should inform the school's insurers accordingly.
- (G) the Board of Management should seek an indemnity from the parent(s) in respect of any liability that may arise regarding the administration of the medication.

First Aid

The Board of Management when enrolling a child, should ask parents for a letter of permission to bring their child to hospital/doctor at the teacher's/principal's discretion. This letter should be kept permanently on file during the child's time in the school. The treatment of injuries should always be undertaken by a responsible adult. If it is necessary to bring a child to a doctor or a hospital every effort should be made to make contact first with a parent or guardian. It is advisable that each teacher has a record of telephone numbers where parents can be contacted both at work and at home. In the case of an emergency teachers should use their best judgement in the particular situation.

It is important to note that individuals can also be found liable for failing to treat an injury. In the interests of the safety of staff and children, care should also be taken in administering first aid in order to avoid contact with communicable illness/diseases. The Board of Management should decide on guidelines to be followed on the application of first aid in the school.