

NSTA – Duty or Standard of Care

By the NSTA Safety Advisory Board

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“Duty or Standard of Care” is defined as an obligation, recognized by law, requiring conformance to a certain standard of conduct to protect others against unreasonable risk (Prosser et al., 1984). “The breach of a particular duty owed to a student or others may lead to liability for both the teacher and the school district that employs that teacher” (Ryan, 2001).

The legal definition of "negligence" is important for every teacher to know. Negligence, as defined by the courts today, is conduct that falls below a standard of care established by law or profession to protect others from an unreasonable risk of harm, or the failure to exercise due care. It should be noted that in the absence of specific laws or local policies, the standard of care expected of those having a duty of care is measured against any standards adopted by the profession, e.g., position statements adopted by the National Science Teachers Association (NSTA), the National Association of Biology Teachers (NABT), the American Chemical Society (ACS), the Council of State Science Supervisors (CSSS) or the National Science Education Leadership Association (NSELA).

As a science teacher or supervisor it is imperative to understand your duty of care owed to your students. While the duty of care remains the same for each individual, that is to protect students from unreasonable risk of harm, the behavior expected of a teacher to meet the duty of care changes with each situation. Certain behaviors are now required to meet the duty of care. For example, the duty of care requires that teachers provide safety instruction and the appropriate level of supervision during every lab activity that is done within their instructional space (e.g., classroom, laboratory or in the field.) Teachers must act reasonably (objectively measured) to prevent harm to students. Warning students once at the beginning of the school year is not enough; safety must be reinforced every time students engage in any activity with the potential to cause harm. Failure to perform those actions required to meet the duty of care can result in students being injured, sometimes fatally. And not to diminish the primary responsibility to students such failure may result in teachers and school districts being sued for negligence – a preventable waste of valuable resources. Teachers need to understand their state’s education law relative to any statutes that specify a teacher’s duty of care and any possible immunity that may exist. For example, in many states, teachers cannot be sued for acts that may not meet the duty of care because a governmental statute provides for immunity for those acts as defined in the statute. However, teachers should be aware that they may put their certification in jeopardy in many states if they are proven negligent. Do not assume that because you are employed by a school district that you cannot be held personally liable for a student’s injuries.

With the focus on STEM (Science, Technology, Engineering and Mathematics) education, many science teachers are having their classroom/laboratory extended to include the technology/engineering education laboratory. The best approach curriculum and safety-wise to STEM is one of collaboration between science and technology/engineering education faculty. All STEM teachers must exercise caution when students and student assistants are working with tools of any kind. A review of safety protocols/procedures followed up by a demonstration should take place to teach students how to operate all tools and equipment safely. A safety acknowledgement form containing the standard operating procedures for tool use and other relevant safety information should also be reviewed and signed by the student and their parent/guardian. Personal protective equipment must be worn when using tools and teachers must keep students in their line of sight while tools are in use.

Teachers have the sole responsibility for the laboratory activities that are carried out in their instructional spaces and no teacher should have their students perform an activity that they believe is unsafe. Laboratory activities or science projects that are assigned for completion at home should be reviewed by teachers to be certain that they can be conducted safely and, if applicable, that students have the necessary personal protective equipment. Teachers may be held liable if a student or family member is injured by an experiment that the student was assigned to complete at home. Teachers should examine the chemicals and procedures used in each lab and substitute less toxic chemicals or less dangerous procedures whenever possible.

The duty to maintain a safer science instructional space environment is shared by teachers, administrators, school boards, parents and students. Teachers and administrators need to communicate frequently in order to ensure that student safety remains a school priority.

For an example of a court case related to negligence see *Mastrangelo v. West Side Union High School* - <http://scocal.stanford.edu/opinion/mastrangelo-v-west-side-u-h-school-dist-32321>.

Teachers and administrators should understand the following behaviors required to meet the duty or standard of care (Roy):

Notify Students of Safety Practices and Procedures – Teachers have a duty to discuss safety practices with students at the beginning of the school year, establishing the rules by which all experiments will be conducted. These safety practices should be outlined in a safety acknowledgement document which students and parents/guardians sign. These signed documents should be kept on file, and no student should be permitted to participate in a laboratory activity without this document being on file. An example of a Student Safety Acknowledgement Form can be found at <http://www.nsta.org/pdfs/SafetyInTheScienceClassroom.pdf> Safety practices and procedures should also be reviewed before every laboratory activity is performed.

Instruct and Model Safety – Students pay attention to what teachers do as well as to what they say. As science teachers we have a duty to provide safety instruction and model appropriate safety practices, such as wearing goggles, for our students. Teachers should make sure that paraprofessionals and other adults in the room do the same. In addition, teachers must demonstrate for students how to perform various laboratory skills and use laboratory equipment in the safest possible manner.

For an example of a court case related to personal protective equipment, see *Desmarais v. Wachusett Regional School District*: <http://masscases.com/cases/sjc/360/360mass591.html>.

Warn Students of Hazards – Teachers must explicitly and specifically warn students of the dangers they may encounter during a laboratory activity. This includes reminding students those scalpels and scissors are sharp. While it may seem as though this is common sense, teachers protect themselves by including a written warning on any laboratory materials, and making a verbal warning before the laboratory begins. Teachers should also include a note in their plan book of the safety procedures and safety warnings that are issued prior to each laboratory. For an example of failure of duty to warn leading to both teacher and school district negligence, see *Heuser v. Community Insurance Corporation* 2008 AP 2760 <http://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=41491>

Inspect for Safety – Teachers should inspect equipment prior to, during and after laboratory activities to ensure that they are in proper working order. Students should be asked to report any equipment that is not functioning properly, with no fear of punishment. Teachers should make sure that they perform any demonstrations and lab procedures themselves before doing them with their classes in order to ensure that they are aware of any and all safety precautions that should be taken.

Enforce Safety Regulations – Teachers must also ensure that students follow all safety procedures at all times. A student who is behaving inappropriately in the laboratory should be removed from that setting, with disciplinary consequences to follow. Schools should consider including a description of proper behavior in the laboratory in their Code of Conduct.

Maintain Equipment – Teachers have a duty to make sure that personal protective equipment and engineering controls are operating properly and meet manufacturer's specifications. If a piece of equipment is not functioning properly, it should not be used, and should be repaired or replaced.

Each of the behaviors described above can be incorporated into three overarching responsibilities on the part of the science teacher:

- Duty of instruction
- Duty of supervision
- Duty to properly maintain facilities and equipment

Duty of Instruction- Teachers must provide adequate instruction before a laboratory activity (preferably in writing). This instruction must:

- Be accurate, appropriate to the situation and to the maturity of the student population. Teachers must provide instruction that addresses reasonably foreseeable dangers
- Explain specific risks, explain proper procedures and/or techniques, and outlines appropriate and inappropriate conduct in the laboratory.
- Follow professional and district guidelines, and should set a proper example for students, by modeling appropriate laboratory procedures. .

Duty of Supervision –Teachers must provide adequate supervision of students following professional, legal and district guidelines. Teachers must ensure that students behave properly in the laboratory to prevent accidents or injuries. Teachers should keep in mind:

- Student misbehavior of any type must not be tolerated
- Failure to act to prevent student misbehavior or improper action is a ground for teacher liability.
- The level of supervision must be appropriate to the degree of danger in the laboratory.
- The younger the students, or the greater the population of special needs students, the greater the degree of supervision required.
- Students should never be left unattended in the laboratory. If an emergency occurs, another adult should be given responsibility for the class if the teacher must leave them to ensure a proper response to the situation.

For a court case related to supervision, please see Nash v. Port Washington Union Free School District:

<http://www.nycourts.gov/courts/ad2/calendar/webcal/decisions/2011/D30303.pdf>.

Rainbow Demonstration Accident Video, Chemical Safety Board,

<http://www.youtube.com/watch?v=g6vR0BdRCNY>

Duty of Maintenance –Teachers must ensure a safe environment for themselves and their students. This means:

- Defective equipment should never be used.
- Written reports should be filed for maintenance/correction of hazardous conditions or defective equipment with responsible administrators.
- Regular inspection schedules and procedures for checking safety and first-aid equipment should be established.
- All safety guidelines for labeling, storing and disposing of chemicals must be followed.

Teachers minimize their risk of liability by keeping a file of all hazard notifications and maintenance inspections, in the event that no corrective action was taken. To be clear, if the equipment is not safe it should not be used.

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Resources:

Flinn Scientific – www.flinnsci.com

NSTA Position Paper Liability of Science Educators for Laboratory Safety -
http://www.nsta.org/pdfs/PositionStatement_Liability.pdf

Science and Safety – Making the Connection – Council of State Science Supervisors –
<http://www.csss-science.org/downloads/scisafe.pdf>

Science Classroom Safety and the Law - Court Cases can be found through the Flinn
Scientific Safety Course –

<http://labsafety.flinnsci.com/CourseDetails.aspx?CourseCode=SCSC>

References:

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