# Duty of care

Everyone has a duty of care not to cause harm to others. Where the expected professional standards are not met and these results in an injury which was reasonably foreseeable, an allegation of negligence may apply.

In education, such allegations are very rare in relation to the number of students being educated and most are rescinded or not found to be valid.

**Scope**

This guidance applies to all teachers who deliver physical education within their school setting**.**

**Why, what and how**

All teachers of physical education have a duty to work within a system that anticipates and manages risks. Head teachers must ensure such a system is operable, even by recently appointed staff and any visiting staff.

Where a teacher has knowledge and experience that is higher than that expected of a reasonably competent person, they will be judged by that enhanced standard of foresight.

**Teachers**

Teachers delivering physical education need to:

* Be suitably experienced and competent to teach the physical activity being offered.
* Use regular and approved practice.
* Be aware of any child/pupil at risk.
* Ensure acceptable pupil behaviour at all times.
* Clarify the role of and monitor the work of other school staff, contracted workers and volunteers.

**Pupils**

Pupils engaged in physical education should be:

* Given opportunities to think about safe practice in relation to themselves and peers.
* Guided to develop their knowledge and understanding relating to responsible participation and progress.
* Sufficiently skilled and confident in the tasks set.
* Appropriately supervised when undertaking a leadership role.

**Physical education facilities**

Physical education facilities should provide:

* hazard free playing surfaces
* sufficient space allocated to the activities

and be subject to:

* + a regular and systematic maintenance programme
	+ appropriate usage.

**Physical education equipment**

Physical education equipment should be:

* inspected before use
* inspected annually
* regularly maintained
* regularly monitored for wear and tear
* disposed of when condemned
* used appropriately and stored safely.

**Preparation**

Preparation requires:

* Comprehensive schemes of work in place, differentiated to meet the needs of all pupils
* a safety policy and guidelines.
* Up to date risk assessment.

**Procedures**

Procedures should involve:

* Safety rules and regulations clearly understood by both pupils and staff.
* Attendance and assessment records consistently maintained.
* All accidents and ‘near misses’ comprehensively logged and reported to the appropriate body where required.
* Communication with parents about school policies and practice.

**Teaching style and class organisation**

Teaching style and class organisation should ensure that:

* Pupil capability is matched to task.
* The methodology is appropriate to safety demands inherent within the activity.
* Pupils are always appropriately prepared and confident through progressive practices.

**Frequently asked questions**

**Do teachers require specific qualifications and competence levels to enable them to deliver physical education?**

Staff are not legally required to hold a specific award in order to teach an aspect of physical education unless their employer requires such a qualification. It is for individual schools to decide on their local policy. It is wise for staff to be able to demonstrate that they are suitably trained, experienced and qualified to undertake the activities in which they engage with students. Examples of potentially higher-risk activities, aquatic activities, athletics throwing events, combat sports, contact sports, aspects of gymnastics, trampolining and free-weights training sessions. Those teaching these activities should hold recognised and current qualifications or significant and relevant experience or training to demonstrate their suitability to teach the activities safely.

Class teachers may be required to teach all of the areas of activity in physical education. They should have satisfactorily completed an initial teacher education (ITE) course and, where possible, have attended further professional learning that covered all the activities they will be required to teach.

**I’m a year 4 class teacher and have a number of children who fail to bring their PE kit to school or produce a note to excuse them from PE. What can I do about it?**

PE is a compulsory requirement for all pupils in schools and therefore all children should participate in PE lessons whenever possible. Children who are not participating should be supervised at all times and where possible be involved in the planning, coaching, officiating and evaluating activities. A letter should be sent home informing parents that their child has failed to bring their kit if it persists. A central resource of PE kit could be made available to enable the child to fully participate.

**What do I need to know about visiting coaches?**

The school procedures for engaging support staff, such as coaches, should include answering three essential questions:

* Is it legal to engage that person? This will be determined by the requirements of a broad range of legislation that sets out whether particular individuals are prohibited from working with children and young people. The relevant vetting and background checks need to be completed carefully.
* Is it safe to employ that person? Safe recruitment procedures, disclosure certification, possessing a governing body of sport licence to coach, where relevant, confirming qualifications and confirming authenticity of identity are processes involved in determining this.
* Is it effective to engage this person? This will be determined by the expertise that person brings to the school, how their expertise may add to the professional learning of the school staff, how the quality of student learning experiences will be improved and whether the PES programme will be improved and whether the PES will be beneficially broadened.

**What clothing is appropriate for staff when delivering physical education?**

Clothing and correct attire for a particular activity represent important features of safe practice that apply in equal measure to both staff and pupils.

Staff should endeavour to change for physical education. On the rare occasions that this proves difficult or impractical, a change of footwear and removal of jewellery, at the very least, should always be undertaken.

Security of footing is essential in all situations. Footwear appropriate to the surface conditions is essential for personal and student safety.

**When is it appropriate to physically assist or have contact in student activities?**

Schools should have clear codes of practice about physical contact with students as part of their safeguarding policy. Physical contact is defined, in this context, as the ‘intentional bodily contact initiated by an adult with a child’.

Teachers of physical education are likely to come into physical contact with students from time to time in the course of their teaching for reasons of safety, support, providing confidence or demonstration. Teachers should be aware of the limits within which such contact should properly take place and ensure decency, dignity and respect ae never compromised.

Any physical contact should be in the context of meeting a student’s needs in order to:

* develop techniques and skills safely
* treat injury

prevent injury occurring

* meet any disability-specific needs
* prevent harm to himself or others.

**What benefit do individual and special needs pupils receive from physical education?**

All students, irrespective of any special needs, have an entitlement to a meaningful and fulfilling experience of PES. Not only can it provide enjoyment, involvement and participation in a range of physical activities, but it can also bring about significant and long-lasting gains to psychomotor and sensory development, physical health and well-being and, though the successful achievement of well-matched challenges, improve social and emotional stability.

With appropriate management, students with special needs should have access to a full and rewarding experience of, and participation in, physical activity at all levels. Inclusion is an entitlement supported by significant statute and regulation. Anyone with a disability should not be treated less favourably, should be enabled to participate in PES as far as is reasonably practicable and, as such, reasonable adjustments to enable this must be made.

**Should schools ask for medical information and medical needs?**

It is standard practice for schools to request student medical information from parents and update information regularly. The onus is on the parents to provide adequate information and inform the school when any medical conditions change.

Schools should have a secure system to inform and regularly update teachers about student medical conditions and associated risk in order for them to take account of such information in teaching the lesson and maintaining a safe learning environment. This may involve adjusting particular tasks for particular students, such as not asking a student who has epileptic seizures to work at a height in case a seizure occurs with little or no notice while that student happens to be at the top of high fixed equipment.

Teachers are not compelled to administer medicines to students nor to supervise the administration of medicines. The school will have a policy on this, and staff should follow that policy unless particular circumstances exist where discussion with the leadership team of the school is necessary. Arrangements will differ in practice from one school to another.

There are now many students in schools recognised as having asthma, epilepsy, diabetes or conditions that may cause anaphylactic shock. These conditions can be severe and long-lasting and can, therefore, become disabilities. Within equality legislation, schools are required to take this into account. Schools, through the head teacher, have to ensure the requisite duty of care is exercised and instruct staff on what to do if confronted by a medical situation.

**What type of clothing should be worn by students?**

Students, from the earliest ages, should change into suitable physical education clothing in order that they may participate safely and securely. Although vest and pants were, in the past, an acceptable option for the youngest children, contemporary views on safeguarding, personal development and hygiene mean this is no longer advisable practice.

Clothing for PES should be well suited to its function. It should be light and allow good freedom of movement, without being baggy and loose, for work indoors. Consideration should be given as to whether the fabric may reduce friction on apparatus and cause slipping, particularly if working at height or in inverted positions.

In specific activity situations, adjustments to normal clothing guidelines may need to apply, such as a need for a long-sleeved top to prevent friction burns to the forearms when performing front drops in trampolining.

**What type of footwear should be worn by staff and pupils?**

Footwear that is fit for purpose is essential. It should demonstrate effective grip, support and reasonable protection for outside work and games, contrasting with lightness and flexibility for indoor activities such as gymnastics and dance.

Neither staff or students should ever participate in socks on polished wooden or tiled surfaces as the level of grip is so poor. Well-fitting socks may be acceptable on a carpet surface if traction is not affected and transfer between carpeted and wooden surfaces, such as benches, is not required.

Systems need to be in place, whereby staff, officials and students regularly check the safety of their footwear. Procedures also need to be applied whereby students avoid, wherever possible, walking over hard surfaces to gain access to the playing area. This can result in studs and other traction devices becoming unacceptably rough and sharp, proving hazardous to opponents in competitive games and practices. Whatever the type of footwear, the need for some form of maintenance is likely, so as not to cause a hazard to anyone.

**Should I consider personal protective equipment (PPE) during physical education lessons?**

Injury in physical activity most commonly occurs through physical contact with another player, or contact of some part of the body with:

* hard ball
* an implement
* a rough surface or chemically affected environment.

The use of PPE is increasingly common for participating in a wide range of physical activities and sports in order to reduce any likelihood of injury.

A number of governing bodies of sport have introduced their own regulations, which impose the mandatory wearing of certain items of protective gear with a view to minimising injury. Whenever students become involved in competition regulated by a governing body of sport, any ruling relating to PPE must be complied with.

**What protective equipment is required for specific sports?**

Cricket

* Helmets, and boxes for boys are mandatory when batting using a hard ball and also when fielding close to the bat.

Hockey

* Mouth guards and shin/ankle pads are recommended at all levels of participation.
* Specialist protection for goalkeepers is mandatory.

Lacrosse

* Mouth guards are mandatory at representative level
* Specialist protection for goalkeepers is mandatory.

Football

* Shin pads are mandatory at all levels of participation.

Rugby football

* Mouth guards are mandatory for representative matches above school level, otherwise with matches at school level they are recommended.
* Padded helmets are permitted.
* Soft shoulder padding is permitted.

Protective equipment should be fit for purpose, and regulation is extensive.

In the case of mouth guards, as well as protecting teeth and gums, additional benefits arise in reducing lacerations inside the mouth of the wearer while mitigating injury caused by teeth to an opponent in the event of an unforeseen collision.

**What should happen if the pupils have not attended their class with the appropriate PPE?**

Where students do not have the PPE that has been advised, it remains the duty of the teacher to ensure the safety of those students. This places a duty on the teacher to consider whether the lesson can proceed as planned – and that injury from the lack of PPE is unlikely – or is a need to consider ways of amending a planned session to maintain a safe context. For instance, this may require grouping according to those with the particular PPE or footwear and those without.

**Is the wearing of jewellery, body piercing and personal effects acceptable when doing physical education?**

Personal effects, such as jewellery, religious artefacts, watches, hair slides, sensory aids and so forth, continue to pose difficulties in many schools since such items should, ideal, always be removed to establish a safe working environment.

Staff have a duty of care to ensure students are able to actively participate without unnecessarily endangering themselves or those working around them. Systems and procedures need to be in place within the changing area to check students fulfil this obligation prior to participation. Any exemptions to this recommendation of complete removal, needs to be carefully considered and always comply with a suitable risk assessment.

The use of retainers (flat studs that retain the piercing when earrings or studs are removed) is becoming more common as a form of acceptable substitution rather than removal. Provided these are flat and cannot cause damage if a blow or ball hits the side of the head, the level of risk is clearly reduced.

Recent developments in the manufacturer of medical aid wristbands have resulted in products with an acceptably low risk factor (soft materials, Velcro fastenings). Such items should be acceptable for physical participation in most activities, largely avoiding the need for removal, provided there are no hard or sharp edges that may cause injury.

Clear expectations should be established throughout the school, and with parents, about the management of personal effects by means of a clear and unambiguous written policy.

The school should have in place a routine for the removal of jewellery and other personal effects, strategies to enable participation by adjusting the teaching situation where removal or safe substitution is not possible, and not allowing a full participative role where removal or adjustment id not feasible.

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**Can we use photography, digital imagery, filming, social networking abuses, internet and mobile phones?**

Confusion exists as to whether, and under what conditions, students can be photographed in schools. Headteachers and governing bodies sometimes forbid photography at school events on the misconception that it is contrary to the Date Protection Act 1998 (DPA). The Information Commissioning Office has confirmed that parents can take photos at school events as the DPA does not apply to such situations. Personal data processed by an individual only for the purposes of that individual’s personal, family or household affairs, including recreational purposes, are exempt from the act. This would include photographs taken by family members of their children at school events. Similarly, events where there will be large groups of participants and/or spectators are deemed to take place in public areas so the permission of those in shot is not required.

However, with concerns about the abuse and manipulation of photographs of children, it is wise to inform and involve parents in decisions that affect their child. Also, while it remains within the school’s prerogative to create a policy banning photography, school use of photography for educational purposes but no parental allowance for photography at school events could be challenged.

In circumstances where DPA does apply, the key obligation of schools is to ensure consent from parents and student’s is obtained for that photography or filming. A common sense approach to obtaining permission has been described in the approved code of practice as the photographer asking for permission to take the photograph. This will normally be enough to ensure compliance.

**Do disclaimers have a legal status?**

Disclaimers from parents alleging the removal of responsibility from teachers in the event of an injury occurring while their child takes part wearing jewellery should be declined. Such indemnities have no legal status. The duty of care stays firmly with the school on such matters, and the student may take out independent action for compensation when they become an adult, thus nullifying any agreement made in good faith. Schools should work with parents to achieve a solution that does not compromise the safety of the student and others nor the employer’s duty of care.

**Should our establishment become a member of the Association for Physical Education (afPE)?**

Yes it would benefit your establishment to be a member of afPE as this will give you; afPE termly journals, monthly e-newsletters; expert advice on health and safety, safeguarding; employment advice; career advice; pre-post Ofsted inspections, plus access to a 24hr hotline amongst other benefits. Contact www.afpe.org.uk

**How do I know if the pitch or court is an adequate size for the sport that I wish to undertake?**Guidance is available from Sport England to give an overview of space requirements for an extended range of sports and reflect the most up-to-date National Governing Bodies (NGB) facility requirements. These documents have been fully endorsed by the NGBs at the time of publication.