



## Teacher Liability

### Introduction

Many legal questions from teachers center around the topic of liability. The obligations and responsibilities of teachers are established by a combination of legislation, regulation, common law and school board policy or by-laws. Where teachers have not fulfilled their obligations properly, and when that action has resulted in injury to a student, the question of liability is always a concern.

### Liability

Generally speaking, teachers can be held liable if they have been involved in: (a) an imprudent or negligent act; (b) imprudent or negligent supervision of a school sponsored activity inside or outside the classroom; or (c) have knowledge of faulty equipment and/or dangerous conditions or practices and imprudently fail to take appropriate steps to remedy the situation. School boards, as employers of teachers, are legally responsible for the actions of teachers which occur in the course of the apparent scope of the teachers' employment. For example, a school board would be responsible if a chemistry teacher improperly conducted an experiment and students were injured as a result. The legal rationale for the school board's liability is the fact that, as the employer, it maintains direction and control over teachers as employees and has responsibility to ensure that employees' activities are carried out properly. To use the legal phrase involved, the school board is "vicariously liable" for the actions of its employees. Accordingly, school boards carry insurance to fund the defence of claims and to pay any awards made against them. However, it is important to remember that teachers, like all individuals, are legally responsible for their own acts and have been sued, along with their school boards, for actions carried out in the course of their employment. From a practical point of view, this has meant that the school board's insurance company is responsible for effectively defending both the teacher and the school board.

### Negligence

It is generally assumed in law that teachers and others placed in charge of students have a duty to ensure their safety and welfare. The failure to act reasonably under certain circumstances, if this failure causes injury or death to a student, can result in legal action. In other words, liability for damages or injury arises when there is negligence. Negligence is defined as "the omission to do something which a reasonable person guided by those ordinary considerations which ordinarily regulate human affairs, would do."

There are no absolute criteria for determining what constitutes negligent action, since each case is factually unique and must be analyzed on the basis of its own individual merits. Accidents in the gymnasium, laboratory, classroom, halls, school grounds, or during field trips, are seldom, if ever, identical in nature. Despite exhibiting "reasonable" care and skill, the teacher may be negligent. Accidents do not in themselves infer negligence, but neither do accidents happen without a cause. The function of the court, then, is to assess the cause and hence the responsibility for the accident.

### Elements of Negligence

Over time, the common law has developed a test for proving negligence. The test consists of four main elements and, to be successful in an action for negligence, the plaintiff must prove all four. The elements are:

- 1. Duty of Care:** an obligation, either in common law or by statute, owed by one person to another;
- 2. Standard of Care:** (a) the degree or extent of care one owes to the person to whom s/he owes a duty of care; and (b) a failure to conform to the standard required;
- 3. Causal Proximity:** a reasonably direct and causal association between the conduct and the resulting injury: was the failure to meet the standard of care the reason for the injury or loss?; and,

**4. Injury:** actual loss or damage resulting to a person or to their interests. An injury sustained may be either physical or mental in nature.

### **Duty and Standard of Care**

The duty imposed upon a teacher with respect to the care of students is to act in a manner similar to that of a prudent or careful parent. This duty does not change with the type of student or the type of teaching that is done. The legal obligation is the same to students with special needs as it is to others. However, the specific standard of care required may differ for teachers working with special needs students. A prudent or careful parent looking after a child with special needs may take different precautions than in other circumstances.

There are a number of factors to consider in determining the appropriate standard of care for any teaching or supervision situation, such as:

1. the age of the students;
2. the nature of the activity to be engaged in by students (is it inherently dangerous or does it contain any obvious element of danger?);
3. to what level have the students been instructed with respect to the activities in question;
4. the students' ability to understand and follow the instructions in light of their general level of achievement in the area involved; and
5. the students' awareness of any risks involved in the activity.

These factors should be considered with reference to the particular students involved as well as the context and nature of the activity in question (e.g. regular classroom session, science laboratory, field trip, etc.).

### **Specific Care Needs**

In addition to liability for injuries that may result from students engaging in activities in the classroom, liability may also arise from the specific care needs of a student. For example, a prudent parent would unquestionably learn what to do in the event of an epileptic seizure if his/her child were diagnosed as epileptic. Accordingly, a teacher who is aware that one of his/her students is epileptic should take similar steps. Often, the weakness in the system is the quantity and quality of information given to teachers about the specific needs of students. If a school is aware that a student has needs that may require particular attention, the prudent parent standard would require that teachers receive the proper information, training and supports to respond as necessary.

### **The Need for Information**

It is advisable for schools to have a formal process for the gathering and use of information relating to students' special care needs. There should be a checklist developed which would cover, amongst other things, the following:

1. the specific needs of the child and their relationship to the child's (a) learning ability; (b) degree of participation in regular classroom activities; and (c) degree of participation in non- classroom education activities such as physical education, woodworking or field trips;
2. medications required and responsibility for storage and administration of same;
3. potential medical problems in the classroom (e.g. allergic reactions);
4. potential behavioural problems in the classroom; and
5. support services required to enable the child to function in the classroom.

The above represents only a sample of the types of issues which should be considered and school boards should have policies in place that address these issues.

The more information that is available, the better teachers will be able to meet the appropriate standard of care. However, the availability of information can be a double-edged sword as the teacher who does not respond to known student needs is obviously at greater risk than the teacher who has not been apprised. Nevertheless, the duty of the prudent or careful parent to inquire is such that the balance tips in favour of obtaining as much information as possible.

**It is imperative that a process be established and followed so that relevant information is brought to the attention of teachers. If an injury occurs, nothing could be more damaging than for the school to have had information that was not shared with teachers.**

### **Conclusion**

In summary, the potential liability of a teacher is no different for one type of student than it is for another. The factual circumstances in different situations will determine the appropriate standard of care in a specific context. Accordingly, the information flow to teachers is crucial. In circumstances where the information indicates that the classroom situation does not adequately protect student safety, the appropriate school authorities should be advised immediately and action taken accordingly.