

## Chapter 4

# Negligence, Risk Management, and Liability

### **ABSTRACT**

*This chapter focuses on the issues of negligence, risk management, and liability in schools. It contains the California Education Code and the Chinese Education Act on these issues, but its main contents are about the Ontario Education Act and related regulations concerning negligence, risk management, and liability in schools. The chapter provides sections from the Ontario Education Act and the relevant regulations on the issues mentioned above. It also has several legal cases where negligence, risk management, and liability in schools and school-related activities were discussed, explored, and analyzed by the Supreme Court of Canada and the Court of Appeal for Ontario.*

### **DANGEROUS ACTIVITIES AND PHYSICAL EDUCATION**

Children by their nature are more active than adults. Accidents happen in schools and schools related activities. California Education Code Title 2 Division 3 Part 21 Chapter 2 Article 13 subsection 35330 (a) (4) stipulates that the governing board of a school district may provide supervision of pupils involved in field trips by certificated employees. Division 4 Part 28 Chapter 5 Article 16 subsection 51879.7 states that fundamental water safety training be provided for all the children so that they will be able to enjoy water recreation while avoiding its hazards. Chapter 5.7 subsection 51940 (a) presents that the California Healthy Kids Resource Center shall review,

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acquire, and circulate curricula focused on the prevention of brain and spinal cord injuries for use by school districts maintaining kindergarten and any of grades 1 to 12, inclusive. The Chinese Education Act does not have any section specifically on negligence, risk management, and liability.

Ontario Regulation 298 Operation of Schools (1990) subsection 19 (1) requires that educators must always keep the safety and well-being of their students in mind. Educators have a duty of care for their charge, students. In caring for their students, educators must follow practices that ensure student safety and prevent foreseeable risks. In measuring whether a teacher performs the duty of caring for students, one important standard is to see whether a teacher acts as a careful parent (Brown, 2009). Always keep an eye on students' activities to observe whether anything can go wrong. Never leave students unsupervised if possible. A teacher's presence usually has a restraining effect on the behaviour of students. If a teacher must leave students unsupervised for a short period of time, it is recommended that the teacher, before leaving, assign students a task to keep them engaged and give students very clear instruction about what they should do and should not do.

Students play during recess, lunchtime, before and after school hours in school. When they play, sometimes accidents can happen. Provide supervision whenever it is possible. Brown (2009) has a list that names the claims that allege negligence on the part of a school board and their staff. The first claim on the list is lack of adequate supervision. The following is the list of claims provided by Brown (2009, pp. 147-148):

1. lack of adequate supervision by a teacher or other staff member;
2. improper, inadequate or defective equipment;
3. failure to warn pupils of specific dangers in doing an activity;
4. failure to train pupils in the proper use of equipment or in safety proceedings;
5. failure to take reasonable precautions against injury or loss;
6. failure to hire competent staff and to provide them with the necessary training;
7. failure to properly treat an injury.

Providing adequate supervision is the most important way of preventing accidents. "The fact that a teacher permits students to participate in a potentially dangerous activity is not, in itself, negligence. However, the care taken must be appropriate to the activity, whether it be sports, outdoor education, recreation, laboratory, experiments, etc. In each case, the teacher is expected to guard against the reasonably foreseeable dangers of the activity" (Brown, 2009, p. 150).

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