



## Safe Routes to School: Minimizing Your Liability Risk

*Safe Routes to School (SRTS) programs can help reduce schools' risk of liability while making it safer for students to walk or bike. This fact sheet explains why liability fears shouldn't keep schools from supporting SRTS programs, and offers practical tips for schools and community advocates.*

Some schools have been reluctant to support Safe Routes to School (SRTS) programs due to concerns about being sued if an injury or problem arises. But such fears are largely unwarranted. By acting responsibly and understanding the liability issues in question, schools, nonprofits, and parent groups can help students reap the health and academic benefits of SRTS programs while minimizing the risk of a lawsuit. In fact, well-run SRTS programs can even reduce schools' risk of liability by identifying potential dangers and putting measures in place to protect children against injury.

Because nonprofits, parent groups, and schools may all be involved in SRTS programs, it can be important for each of these groups to understand SRTS and liability. This fact sheet explains why liability fears shouldn't stop school districts from supporting SRTS programs, provides an overview of liability and negligence, and offers practical tips on how school districts and others can reduce their risk of liability.

Because liability issues vary from state to state, consulting with a local lawyer may be helpful in understanding your specific issues, as well as in structuring SRTS programs to minimize liability concerns.

## Background

By walking or bicycling to school, children get more physical activity, lower their risk of obesity, and improve their overall health.<sup>1</sup> When children exercise before school, they arrive focused and ready to learn.<sup>2</sup> Walking and bicycling to school reduces air pollution and traffic congestion around schools and neighborhoods. Because fewer car trips mean lower greenhouse gas emissions, walking and bicycling to school also helps the environment.<sup>3</sup>



Although some children walk or bicycle without an organized program, many schools, parent groups, nonprofits, and collaborations have adopted formal SRTS programs to encourage more children to walk

and bike to school. SRTS initiatives can range from the exploratory—hosting a Walk to School Day once a year, for instance—to the robust, involving safety audits that result in stepped-up infrastructure and law enforcement near schools; maps and recommendations for safer routes; and organized “walking school buses” or “bicycle trains” in which adults supervise groups of children as they walk or bike to school together. The federal government, via state departments of transportation, helps to fund these programs as well as SRTS safety improvements to sidewalks and street crossings near schools.<sup>4</sup>

Despite the important benefits of SRTS, fear of liability can keep schools from embracing these programs. But these fears can be largely alleviated by bearing these key facts in mind:

- To date, there are no known lawsuits involving an injury to a child in an organized SRTS program, although there are SRTS programs in place at over more than 4,500 schools around the country.
- Concerns about liability are often much greater than actual risks.<sup>5</sup>
- Commonsense precautions go a long way toward avoiding liability risk. In fact, SRTS programs can *decrease* schools’ liability exposure by addressing hazards systematically.<sup>6</sup>
- In most states, school districts have meaningful protection against liability through “governmental immunity” (discussed later in this fact sheet).

## Understanding Negligence

The key to preventing liability is to avoid being negligent. *Negligence* occurs when a person or entity doesn’t act as carefully as an ordinary, reasonable person would under the circumstances, and as a result someone is injured or property is damaged. The biggest reason to avoid negligence in setting up and running SRTS programs is to protect the safety of the children involved, of course, but avoiding negligence is also crucial to minimizing the risk of liability.

Liability for negligence requires all four of the following elements: *duty*, *breach*, *causation*, and *damages*.

*Duty* refers to a legal obligation to act with a required level of care toward another person. As a general matter, schools have a duty to exercise “reasonable care” in supervising children during the school day, but not once the children have left the school’s custody and control.<sup>8</sup> (Whether or not a school had a duty in a given case, however, can be a complex question.<sup>9</sup>)

*Breach* is a failure to comply with a duty. In this case, it is usually a failure to act with reasonable care.

*Causation* means that the breach of duty must cause the harm that occurred.

*Damages* refer to the injury or harm that results from the breach.

Even where these four elements are shown, the negligent person or entity may have some protection from negligence. For instance, some individuals and entities are granted immunity as a matter of public policy.<sup>10</sup> If immunity applies, no liability will be found even if negligence can be shown.



Negligence is very dependent on the circumstances: many actions are reasonable in some situations but not in others. It might be negligent to let a young child in your care run ahead of you on a busy street, for example, but not in a park.

At its core, negligence is a practical, commonsense concept that turns on whether a person has behaved with reasonable care in the situation in question. Districts and SRTS programs need to act with reasonable care to anticipate and prevent injuries, but they do not need to guarantee safety to avoid liability.



## Reducing Liability Risk: Practical Tips

This checklist offers suggestions to reduce liability and increase children's safety for anyone running a SRTS program—school districts, community and parent groups, or local agencies. For specific recommendations and considerations for school districts, see “Special Tips for Schools,” on page 4.

### For any SRTS program:

- Think through the possible dangers that exist near your school.
- If it is reasonably easy to eliminate or avoid the danger, do so. Is there something broken or poorly designed that can reasonably be fixed? By working with the city or county, you can potentially increase traffic safety considerably near the school. Children may be able to avoid the danger by entering or leaving the school through a different door or gate, or by taking a different route.
- Take other reasonable actions to reduce the danger. Encouraging certain behaviors—such as holding a buddy's hand while walking past a mild danger—can also keep children safer. You'll have to use your judgment to decide whether encouraging a specific action is a good idea under the circumstances.
- Educate students so that they act safely. Local police are often available to provide bicycle, pedestrian, and traffic safety training to students, as are trainers from local bicycle shops and nonprofit organizations.<sup>11</sup>
- If you've put meaningful effort into reviewing and addressing possible hazards, document the steps you've taken.
- Comply with relevant school district policies or state and local laws.
- Where possible, make sure your insurance covers your SRTS activities. In some states, such as California, PTA insurance may provide coverage for some SRTS liability risks if the PTA has endorsed a SRTS program

### If your SRTS program creates maps with suggested routes to school:

- Engage your city or county staff—especially transportation, law enforcement, and public works officials—in identifying suggested routes. Providing good routes to schools is part of local government's responsibility, and the collaboration may also help you form relationships that will lead to improved infrastructure and law enforcement near your schools.
- Explain that parents remain responsible for getting their children to and from school safely, and that the school is not taking responsibility for those travels by providing suggested routes.

- Emphasize that new hazards or conditions may arise, and that parents and children should exercise common sense in following the maps.
- Refer to routes as “recommended” or “suggested” routes, rather than “safe routes.”

### If you are implementing a “walking school bus” or “bicycle train” program:

- Identify any hazardous areas on the routes prior to beginning the program and adopt reasonable precautions to avoid or protect against dangers.
- Screen, train, and monitor volunteers. (See NPLAN's factsheet on *Volunteers and Liability* for more information about liability protections for volunteers.)
- Develop safety rules for the walking school bus or bicycle train, and educate children who are participating about the rules, bearing in mind the ages of the children who will participate. Children's ability to comply with safety rules varies with their age, and negligence law takes these differences into account.

## Reducing Risks Through SRTS

Before adopting any school program, districts assess the risks and benefits. In SRTS programs, the risks are manageable, while the benefits for children's short-term and long-term health are considerable. As with other school programs, risk management—the process of analyzing exposure to risk and determining how best to handle it—can help school districts adopting SRTS programs minimize their risk.

SRTS programs can play an important role in risk management for districts.<sup>7</sup> SRTS programs identify possible dangers to children as they travel to and from school and institute reasonable precautions to protect against these dangers. By reducing the number of cars near schools, and making sure they drive at slower speeds, SRTS programs make areas near schools safer for children. The programs also educate children about traffic safety, and SRTS infrastructure upgrades help eliminate hazards for bicyclists and pedestrians. As a result, SRTS programs actually decrease the likelihood of an injury occurring in the first place, and can reduce the risk of liability if there is an injury—not only for children who begin walking as a result of a new SRTS program, but also for children who are already walking or bicycling to school without a formal program in place.

## Special Tips for Schools

School districts should consider some additional points about SRTS that do not apply to other groups.

### **Sponsoring or endorsing a SRTS program will rarely subject a school district to any direct liability.**

“Governmental immunity” shields public money and governmental decision-making from lawsuits, and provides some level of protection for school districts in every state.<sup>12</sup> Although the extent of protection provided by governmental immunity varies from state to state,<sup>13</sup> school districts are generally, at a minimum, entirely immune from liability for decisions to *sponsor* or *endorse* a program.<sup>14</sup> Sponsoring a program can involve permitting it to take place, informing families about it, or providing funding or other support. Sponsoring is distinct from *implementing* a program, which involves structuring it, setting it up, and actually running it.

When a school district is simply *sponsoring* a SRTS program that is being run by parents, the city or county, or a separate organization, it is not responsible for how the program is run. However, if the district becomes aware of a safety problem with the program—for example, a volunteer who is failing to supervise children adequately—it should not continue to sponsor the program without taking action. The district should let families know there is a problem, make sure the problem is resolved, and stop supporting the program if the problem is not adequately addressed.

### **School districts can also plan and run SRTS programs.**

Districts may also wish to participate in planning or implementing a SRTS program. In some states, districts may have immunity not only for supporting but also for planning and running SRTS programs.<sup>15</sup> Districts can engage in these activities even where they are not immune, and should follow the general tips outlined earlier to minimize liability.

**Be clear about whether or not you are taking on a new duty toward students.** Remember, people and organizations are only liable for negligence if they had a legal obligation to exercise care (a duty) toward the person injured. Schools generally do not have a legal responsibility to protect students from harm on the way to and from school unless they take on such a duty, for example, by busing students.<sup>16</sup> Schools should be clear with families about what duties they are or are not taking on. For example, schools may want to explicitly state that they have not assumed a duty to ensure the safety of walking or bicycling routes, and encourage families to determine for themselves whether the routes are suitable for their children.

**Exercise “reasonable care” in what you do.** When a school has assumed a duty, it must be reasonable in carrying it out. For example, if a school voluntarily chooses to provide a crossing guard, it should not simply discontinue this service without at a minimum providing ample notice to parents and students. Schools should exercise care in how they dismiss children from school for the day, and should take precautions to avoid harm to children from known dangers on or near the school property.

### **Insurance provides an important back-up protection.**

Where possible, school districts should make sure their insurance covers their SRTS activities, as protection against the chance that something unexpected could occur.



## In Summary

School districts and nonprofits can manage the risks of liability associated with setting up and running SRTS programs—risks that are often exaggerated—by taking commonsense precautions and addressing hazards responsibly. Supporting and implementing SRTS programs can help schools and other organizations decrease their liability exposure while giving children the physical activity they need to be healthy and learn well.



## Additional Resources

More resources on SRTS are available from the Safe Routes to School National Partnership, which advocates for safe bicycling and walking to and from school at local, state, and national levels: [www.saferoutespartnership.org](http://www.saferoutespartnership.org)

The National Center for Safe Routes to School has a variety of helpful resources on safety and liability, including:

- *10 Tips for Safe Routes to School Programs and Liability*: [www.saferoutesinfo.org/resources/collateral/liabilitytipsheet.pdf](http://www.saferoutesinfo.org/resources/collateral/liabilitytipsheet.pdf).
- *Tips for Creating Walking and Bicycling Route Maps*: [www.saferoutesinfo.org/resources/collateral/walkbikeroutetipsheet.pdf](http://www.saferoutesinfo.org/resources/collateral/walkbikeroutetipsheet.pdf).
- *Assessing Walking and Bicycling Routes: A Selection of Tools*: [www.saferoutesinfo.org/resources/collateral/Assessing\\_Walking\\_and\\_Bicycling\\_Routes.pdf](http://www.saferoutesinfo.org/resources/collateral/Assessing_Walking_and_Bicycling_Routes.pdf).

Other liability resources available at [www.nplan.org](http://www.nplan.org):

- NPLAN's *Liability for After-Hours Use of School Facilities* has additional general background on liability, myths and reality of liability, the elements of negligence, governmental immunity, and more.
- NPLAN's fact sheet on *Volunteers and Liability* has more information about protections for volunteers against liability.



*ChangeLab Solutions formerly existed under the name Public Health Law & Policy (PHLP). Any references to PHLP in this publication should now be understood to refer to ChangeLab Solutions.*

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- <sup>1</sup> Active Living Research. *Walking and Biking to School, Physical Activity and Health Outcomes*. May 2009. Available at: [http://216.92.169.205/files/ALR\\_Brief\\_ActiveTransport.pdf](http://216.92.169.205/files/ALR_Brief_ActiveTransport.pdf).
- <sup>2</sup> See, e.g., Sibley BA and Etnier JL. "The relationship between physical activity and cognition in children: A meta-analysis." *Pediatric Exercise Science*, 15: 243-256, 2003; Safe Routes to School National Partnership. *Getting Students Active through Safe Routes to School: Policies and Action Steps for Education Policymakers and Professionals*. June 2010, pp. 6-12. Available at: [www.saferoutespartnership.org/media/file/EducatorsGuide.pdf](http://www.saferoutespartnership.org/media/file/EducatorsGuide.pdf); Active Living Research. *Active Education: Physical Education, Physical Activity and Academic Performance*. Summer 2009. Available at: [http://216.92.169.205/files/Active\\_Ed\\_Summer2009.pdf](http://216.92.169.205/files/Active_Ed_Summer2009.pdf).
- <sup>3</sup> US Environmental Protection Agency. *Climate Change—What You Can Do*. Available at: [www.epa.gov/climatechange/wycd/road.html](http://www.epa.gov/climatechange/wycd/road.html).
- <sup>4</sup> Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) 23 U.S.C.A. §§ 148(a)(3)(B)(xix), 402 note (West 2010).
- <sup>5</sup> Baker T. *Overview Memo for Liability Risks for After-Hours Use of Public School Property to Reduce Obesity: A Fifty-State Survey*. March 2010, pp. 2-3. Available at: [www.nplanonline.org/system/files/Overview\\_JointUse\\_Final\\_SP\\_KW\\_20100602.pdf](http://www.nplanonline.org/system/files/Overview_JointUse_Final_SP_KW_20100602.pdf).
- <sup>6</sup> Gavin K. *Safe Routes to School: Putting Traffic Safety First - How Safe Routes to School Initiatives Protect Children Walking and Bicycling*. Safe Routes to School National Partnership. December 2009.
- <sup>7</sup> *Id.*
- <sup>8</sup> See, e.g., *Stokes v. Tulsa Pub. Schs.*, 875 P.2d 445, 447 (Okla. Civ. App. 1994); *Jackson v. Colvin*, (La. App. 3 Cir. 12/23/98); 732 So.2d 530, 533; Cal. Educ. Code § 44808 (West 2009).
- <sup>9</sup> For example, if an action taken while a child is in the school's custody is the cause of later injury—for example, failing to supervise a child so that she wanders away from the school and is later hurt, negligence may be found despite the fact that the school did not have a duty to supervise at the time the injury occurred.
- <sup>10</sup> Governmental immunity is one example of such immunity, and is discussed in detail in this fact sheet. In addition, in some states, nonprofit organizations may qualify for a defense of charitable immunity. See, e.g., *Univ. of Va. Health Servs. Found. v. Morris*, 657 S.E.2d 512, 517 (Va. 2008). This doctrine is not as widely available as governmental immunity, but will provide an additional layer of protection for nonprofit organizations when applicable.
- <sup>11</sup> In *Castaneda v. Community Unit School District No. 200*, the court, rejecting liability for a collision during a class bicycling outing, emphasized the extensive safety instruction provided to student bicyclists by their teacher. 268 Ill. App.3d 99, 106 (Ill. App. Ct. 1994).
- <sup>12</sup> Sovereign and governmental immunity (jointly discussed here under the term "governmental immunity") describe the concept that the government cannot be sued unless it has agreed to allow such suits through, for example, a statute.
- <sup>13</sup> Georgia, for example, has extremely broad immunity for school districts and school officials, see *Kaylor v. Rome City Sch. Dist.*, 600 S.E.2d 723, 726 (Ga. App. 2004); *McDowell v. Smith*, 678 S.E.2d 922 (Ga. 2009), whereas the scope of governmental immunity in Oklahoma is considerably narrower, see *Robinson v. City of Bartlesville Bd. of Educ.*, 700 P.2d 1013, 1015-16 (Okla. 1985).
- <sup>14</sup> For example, in states such as Louisiana and Oklahoma, school districts are likely to be immune for endorsing SRTS programs, but are not likely to be immune for setting up or running such programs, see *Johnson v. Orleans Parish Sch. Bd.*, (La. App. 4 Cir. 1/30/08); 975 So.2d 698, 711; *Gary v. Meche*, (La. App. 3 Cir. 11/3/93); 626 So.2d 901, 905; *Nguyen v. State*, 788 P.2d 962, 964 (Okla. 1990). For more information about the extent of governmental immunity for school districts in your state, contact a local attorney with expertise in school law. You might consult with your school district's attorney, or contact your state affiliate of the National School Board Association's Council of School Attorneys.
- <sup>15</sup> See, e.g., *McDowell*, 678 S.E.2d at 924; *Downing v. Brown*, 935 S.W.2d 112, 114 (Tex. 1996).
- <sup>16</sup> See *supra* note 8.