

# SAFETY Notebook



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## Using Safe Routes to School Programs to Decrease Risk

by Sara Zimmerman

Sara Zimmerman is a senior staff attorney at Public Health Law & Policy, specializing in legal issues related to active transportation and safe routes to school. Factsheets and more resources on Safe Routes to School programs and other healthy school policies are available at [www.nplan.org](http://www.nplan.org).

**S**afe Routes to School (SRTS) programs, which encourage kids to walk or bike to school, are increasingly popular. SRTS programs have taken off across the country, inspired by the hope of reversing the dramatic drop in the number of kids walking and bicycling to school in the last generation.

Why have efforts to establish SRTS programs been so successful? Through these programs, kids get more physical activity, helping to overcome the massive epidemic of childhood obesity throughout the country.<sup>1</sup> Schools appreciate SRTS programs because by walking or biking to school, kids get the many cognitive benefits of physical activity, and arrive at school energized and ready to focus on learning.<sup>2</sup>

School districts may wonder how they can run or support SRTS programs without increasing the likelihood of lawsuits. Fortunately, experience shows that schools with SRTS programs can manage possible risks well by acting responsibly and following some practical steps in designing programs. In fact, SRTS programs often *reduce* a school's risk of liability because they identify potential dangers and put measures in place to protect children against injury. Of course, since liability issues vary from state to state, consulting with a school district's general counsel or risk management office, or a local lawyer, may be helpful in structuring SRTS programs to minimize liability concerns.

How do SRTS programs work? SRTS programs often start by hosting a yearly Walk to School Day. More developed programs often involve organized "walking school buses" or "bicycle trains," in which adults supervise groups of children as they walk or bike to school together. Many children walk or bicycle to

school without an organized program, but by putting SRTS programs into place in these locations, schools and cities can obtain additional funding to support walking and address potential risks associated with infrastructure (e.g., poor sidewalks, signage, need for traffic calming devices, etc.). This type of funding can save schools thousands of dollars in transportation costs while supporting healthier kids.<sup>3</sup>

### Risk Management

Do schools need to worry about liability when taking on SRTS programs? Well, more than 12,000 schools around the country have SRTS programs in place,<sup>4</sup> and to date, there have not been any known lawsuits involving injury to a child in an SRTS program.<sup>5</sup> In addition, concerns about liability are often much greater than actual risks,<sup>6</sup> and commonsense precautions go a long way toward avoiding liability risk. In fact, SRTS programs can *decrease* schools' liability exposure by addressing hazards systematically.<sup>7</sup>

SRTS programs can play an important role in risk management for districts. SRTS programs identify possible dangers to children as they travel to and from school and institute reasonable precautions to protect against these dangers. 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. With fewer cars near schools, driving at slower speeds, SRTS programs make areas near schools safer for children. SRTS programs also educate children about traffic safety, while SRTS infrastructure improvements help eliminate hazards for bicyclists and pedestrians.

*In an effort to "go green", the November 2011 Safety Notebook will be the last printed version we will provide. All future versions will be available on the AAPAR website at: [www.aapar.org](http://www.aapar.org) by June 1 and December 1 of each year.*



## Safety and Risk Management Council Officers

Annie Clement, Phd, JD, President  
Sport Administration Program  
University of New Mexico  
505-277-5151  
e-mail: [annieclement1@bellsouth.net](mailto:annieclement1@bellsouth.net)

J. O. Spengler, Past-President  
Department of Tourism, Recreation, and  
Sport Management  
University of Florida  
P.O. Box 118208  
Gainesville, FL 32611  
352-392-4042  
e-mail: [spengler@hhp.ufl.edu](mailto:spengler@hhp.ufl.edu)

Dan Connaughton & J. O. Spengler, Editors  
Department of Tourism, Recreation, and  
Sport Management  
University of Florida  
P.O. Box 118208  
Gainesville, FL 32611  
352-392-4042  
e-mail: [danc@hhp.ufl.edu](mailto:danc@hhp.ufl.edu)  
[spengler@hhp.ufl.edu](mailto:spengler@hhp.ufl.edu)

## Understanding Negligence

The key to preventing liability is to avoid being negligent. The term *negligence* has a specific meaning under the law. Fortunately, this meaning is very similar to the way that we use the idea of negligence in our ordinary, everyday conversation. We would describe behavior as negligent if a person was careless or acted without regard for someone else's property or possible injury. The legal idea of negligence is similar, describing 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. Negligence is very dependent on circumstances: many actions are reasonable in some situations but not in others. For example, it might be negligent to let a young child in your care run ahead of you on a busy street, but not in the safety of a familiar park.

A court will find negligence only if four specific "elements" are all present. A district will be found negligent if it (1) had a *duty* or responsibility toward the injured person, (2) *breached* its duty by failing to act with reasonable care, and (3) this breach was the *cause* of (4) injury or *damage* to a person or property. The best reason to avoid negligence in setting up and running SRTS programs is to protect the safety of the children involved. But acting with reasonable care also protects against liability, because even if someone does get hurt, a district will not be found liable if the court agrees it has acted non-negligently.

Even where a district was negligent, it will not necessarily be held liable. School districts often have some degree of governmental immunity as a matter of public policy.<sup>8</sup> Immunity provides some level of protection for school districts in every state. If immunity applies, it may serve to protect a school district from liability even where the district was negligent.

## Sponsoring a SRTS Program

Although the extent of protection provided by governmental immunity varies from state to state,<sup>9</sup> school districts are generally, at a minimum, entirely immune from liability for decisions to *sponsor* or *endorse* a program.<sup>10</sup> Sponsoring a program can involve allowing it to take place, informing families about it, or providing funding or other support. Sponsoring is distinct from



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*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 nonprofit organization, it is not responsible for how the program is run. Of course, 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 addressed.

## Implementing a SRTS Program

School districts can also plan and run SRTS programs. In some states, a district's immunity may extend to planning and implementing SRTS programs.<sup>11</sup> Districts regularly engage in these activities even where they are not immune from liability. How do districts protect themselves from liability in running a SRTS program? In addition to ensuring that their insurance covers their SRTS activities, which provides an important fallback protection given that things occasionally go wrong, districts can take a number of practical steps to minimize liability risk.

The key to minimizing liability risk in running a SRTS program is instituting practical measures that anticipate possible hazards and putting reasonable precautions into place. On a practical level, this requires districts to consider steps such as making routes safer for students, developing responsible school dismissal policies, educating students about bike and pedestrian safety, and more. Addressing these issues helps districts manage existing risk related to school transportation.

First, think through the possible dangers that exist at or near school grounds. If it is reasonably easy to eliminate the danger, a school should do so. Schools may be able to help children avoid dangerous areas by encouraging them to enter or leave the school through a different door or gate, or to take a different route. Is something broken or poorly designed that can be fixed? One great strategy for increasing traffic safety near schools is to work with the city or county.

Schools should exercise care at the time and in the manner of school dismissal, and should take precautions to avoid harm to children from known dangers on or near the school property. Another important approach is educating students about safety precautions. Local police and trainers from local bicycle shops are often available to provide bicycle, pedestrian, and traffic safety training to students.<sup>12</sup> If you've put meaningful effort into reviewing and addressing possible hazards, document the steps you've taken.

## Maps with Suggested Routes to School

Many SRTS programs create maps that provide suggested routes to school. If your district creates such maps, there are some simple steps to follow to increase safety and minimize liability risk. First, it is wise to engage 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.

It is important to walk the routes in question, preferably with students. Discuss students' reactions to routes, to identify dangers that may not be apparent from an adult's perspective. In putting the maps onto paper, be sure to include a clear, plainly worded statement that parents remain responsible for getting their children to and from school safely, and that the school is not taking responsibility for travel by providing suggested routes. Also explain that new hazards or conditions may arise, and that parents and children should exercise common sense in following the maps. It's a good idea to refer to routes as "recommended" or "suggested" routes, rather than "safe routes," just to make it clear that you aren't guaranteeing the safety of the routes on the map.

## Walking school bus programs

One of the most common and successful elements of SRTS programs is the walking school bus, a group of students walking to school together under the supervision of parents, volunteers, or teachers. In putting together a walking school bus, you'll want to be thoughtful in structuring the program and selecting the routes, following the guidance available from groups like the National Center for Safe Routes to School<sup>13</sup> and the Safe Routes to School National Partnership.<sup>14</sup> Also, be sure to develop, explain, and practice safety rules, bearing in mind the children's ages. Children's ability to comply with safety rules varies with their age, and negligence law, because it is focused on what is reasonable under the circumstances, takes these differences into account.

## Volunteers

In any programs that involve volunteers, you will want to have some process for screening, training, and monitoring volunteers. A screening process can involve an elaborate and thorough criminal background check, or may simply involve sitting down with volunteers and making sure they are reliable and appreciate potential dangers and the importance of exercising care in supervising children. State law or district policy may apply to SRTS volunteers, or it may not, so be aware of the rules in your jurisdiction and follow them.

## Conclusion

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. In determining whether to participate in any new program, schools weigh the benefits against the risks. 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. SRTS programs can actually help schools and other organizations decrease their liability exposure, while enabling children to get the physical activity they need to be healthy and learn well.



## Notes

<sup>1</sup>Active Living Research, *Walking and Biking to School, Physical Activity and Health Outcomes* (May 2009), 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, B.A. & Etnier, J.L., *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*, 6–12 (June 2010), at <http://www.saferoutespartnership.org/media/file/EducatorsGuide.pdf>; Active Living Research, *Active Education: Physical Education, Physical Activity and Academic Performance* (Summer 2009), at [http://216.92.169.205/files/Active\\_Ed\\_Summer2009.pdf](http://216.92.169.205/files/Active_Ed_Summer2009.pdf).

<sup>3</sup>Safe Routes to School National Partnership, *Safe Routes to School: Helping Communities Save Lives and Dollars: Policy Report 2011*. Available at: <http://www.saferoutespartnership.org/media/file/SRTSNP-2011-Policy-Report.pdf>.

<sup>4</sup>National Center for Safe Routes to School, “Fall 2011 Safe Routes to School Program Tracking Brief,” at [www.saferoutesinfo.org/sites/default/files/page/Fall\\_2011\\_1\\_0.pdf](http://www.saferoutesinfo.org/sites/default/files/page/Fall_2011_1_0.pdf).

<sup>5</sup>Lawsuits have occurred involving children who were injured while walking or biking to or from school, but not as part of a SRTS program. See, e.g., *Joyce v. Simi Valley Unified Sch. Dist.*, 110 Cal. App. 4th 292 (2003). Such suits often involve preventable injuries that could have been avoided by common sense precautions of the type taken by SRTS programs. For example, in *Joyce*, a school had created a hole in the chain link fence around the schoolyard, which encouraged students to enter and exit school grounds via a busy road with a blind intersection. The district was found liable for a subsequent injury, because the hole created a dangerous condition, and the school failed to seal it despite increase in speed limit and notice of the hazard. *Id.* at 298.

<sup>6</sup>Baker, Tom, Overview Memo for Liability Risks for After-Hours Use of Public School Property to Reduce Obesity: A Fifty-State Survey (Mar. 2010), pp. 2–3, at [www.nplanonline.org/sites/philpnet.org/files/Overview\\_JointUse\\_Final\\_SP\\_20100713.pdf](http://www.nplanonline.org/sites/philpnet.org/files/Overview_JointUse_Final_SP_20100713.pdf).

<sup>7</sup>Gavin, Kristin, *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>8</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>9</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>10</sup>For example, even in states such as Louisiana and Oklahoma, where school districts are not likely to be immune for setting up or running SRTS programs, they still are likely to have immunity for endorsing SRTS programs. See *Johnson v. Orleans Parish Sch. Bd.*, 975 So.2d 698, 709–10 (La. App. 4 Cir. 1/30/08); *Nguyen v. State*, 788 P.2d 962, 964–65 (Okla. 1990). For more information about the extent of governmental immunity for school districts in your state, contact your school district’s attorney.

<sup>11</sup>See, e.g., *McDowell*, 678 S.E.2d at 924 (Georgia); *Downing v. Brown*, 935 S.W.2d 112, 114 (Texas 1996).

<sup>12</sup>In *Castaneda v. Comty. Unit Sch. Dist. 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. 644 N.E.2d 61 (Ill. App. Ct. 1994).

<sup>13</sup>The National Center for Safe Routes to School: [www.saferoutesinfo.org](http://www.saferoutesinfo.org).

<sup>14</sup>Safe Routes to School National Partnership: [www.saferoutespartnership.org](http://www.saferoutespartnership.org).

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AAPAR  
1900 Association Drive  
Reston, VA 20191