

10 TIPS FOR Safe Routes to School Programs and Liability

SafeRoutes
National Center for Safe Routes to School



TIP SHEET

Background and Overview

Forty years ago, nearly 90 percent of children who lived close to their school walked or bicycled to get there. Today, this number has decreased by about 25 percent.¹ As Safe Routes to School (SRTS) programs have developed to reverse this trend, some have wondered if encouraging walking and bicycling to school may increase a school's liability exposure.

In general, the answer is no. In fact, SRTS programs are designed to help schools and communities identify and address potential safety concerns. Taking concrete steps to make walking and bicycling safer will reduce the likelihood of injury, and thereby minimize exposure to liability.

A SRTS program that simply encourages or promotes bicycling and walking to school should not, in most cases, expose schools to increased liability risk. Even school-sponsored walking and bicycling programs, such as a Walking School Bus or Bicycle Train should not expose schools to any greater liability than other school-sponsored activities. Of course, schools with SRTS programs must ensure they are meeting their responsibilities for children's safety just as they must routinely do with all other forms of school transportation and with other school activities.



SRTS programs can vary greatly, ranging from programs to encourage walking and bicycling to active sponsorship of walking and bicycling programs and providing new infrastructure to support these activities. The school's responsibility for safety will vary according to the individual elements of the SRTS program and the local legal context. The information below provides a brief overview of the relevant legal definitions and identifies several issues you may want to look into as you develop your program to ensure you are addressing any potential liability issues. **This information is not intended as legal advice and should not be used as such. For specific legal guidance, you should consult with an attorney with relevant knowledge and experience.**

Legal Context

Schools and school districts must regularly address issues of liability for a variety of school programs and school sponsored activities. Regardless of whether students walk, bike, take the bus, or are driven to school, there is a possibility that an injury may occur on or off school property. However, not all injuries result in liability. The extent to which a school will be held legally responsible or "liable" for its negligent actions or omissions depends on the facts of a given case, on laws and legal principles that vary from state to state, and even from school district to school district.

In general, to establish liability for negligence, the injured person or someone acting on his or her behalf must show that the school owed a legal duty of care to that person, that the school breached that duty, and that the breach was the "proximate cause" of damages or injury.² (Visit Law.com and search liability and negligence for more detailed definitions and descriptions.)

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A school's duty of care to students and resulting legal liability when students are injured is very situational and can only be assessed in the context of the specific program or activity and with knowledge of the specific facts giving rise to an injury. Relevant factors are likely to include:

- the degree to which the school controls or directs the activity that results in injury,
- the extent to which the school's actions conformed to applicable rules, regulations, policies, or procedures, and
- the extent to which the school knew or should have known of a particular hazard and failed to correct or warn against it.

A school will not ordinarily be held liable for injuries sustained by children while they are walking or bicycling to school simply because the school encourages children to walk or bike, where injuries occur off school property, and parents have been reminded that the school is not responsible for supervising children who walk or bike to school.

To avoid liability for negligence, the school must exercise "reasonable care" under the circumstances. If the school directly sponsors walking or bicycling activities such as a Walking School Bus or Bike Train, the school generally has greater responsibilities just as they would for other school-sponsored forms of transportation. At a minimum, the school should follow the recommended procedures outlined in the National Center for SRTS publication, *The Walking School Bus: Combining Safety, Fun and the Walk to School* (http://www.saferoutesinfo.org/guide/walking_school_bus/index.cfm) as well as any rules, policies, or protocols established by the school district for school-sponsored activities occurring off school property. (For example, volunteer training, screening, or adult to child ratios.)



Minimizing Risk

Even though SRTS programs are designed to make walking and bicycling safer for students, there are certain steps the school should take to minimize the risk that the school will be held liable for negligence in the event that a student is hurt while walking or bicycling to school. Some key measures are detailed below.

References

1. "In 1969, 87 percent of children 5 to 18 years of age who lived within one mile of school walked or bicycled to school. In 2001, 63 percent of children 5 to 18 years of age who lived within one mile of school walked or bicycled to school." U.S. Centers for Disease Control and Prevention. *Kids Walk-to-School: Then and Now — Barrier and Solutions*. Available: http://www.cdc.gov/nccdphp/dnpa/kidswalk/then_and_now.htm Accessed: January 17, 2006.
2. Schools Legal Service, Orange County Department of Education. 2001 "School Districts and School District Employees Liability for Negligence." Costa Mesa, CA.

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1 Work with your school district's administrative and legal staff to understand the relevant liability issues and to develop appropriate policies.

Most likely, your school district already has a number of policies in place to help manage its liability for various school programs and activities. A SRTS program is no different. You should work closely with your school district's administrative and legal staff to identify any particular risk management and insurance needs based on your individual SRTS program and the relevant laws of your jurisdiction.

2 Be aware of local laws, regulations, and school policies.

Work with your school's legal counsel to identify the laws and regulations in your jurisdiction that are relevant to walking and bicycling. These may include laws regarding school safety patrols, the designation of school walking routes (some states require them), student bus transportation, and any bicycle safety requirements such as helmets, bells or lights. You should also review the state and local pedestrian laws and portions of the local development code regarding pedestrian safety and provision of pedestrian accommodations. Make sure you are following any applicable school policies, such as parental permission slips, waivers, or required supervision for school-sponsored activities. If appropriate, your school may consider making modifications or exceptions to any school policies that appear to be in conflict with your SRTS activities.

3 Take steps to fix problems.

If you are aware of unsafe walking and bicycling conditions, such as unsafe vehicle drop off and pick up conditions, take steps to fix them. Even if the problem is not subject to the school's control, such as a heavily trafficked local street, the school should warn parents of any known hazards, and take any prudent steps to address conditions under the school's control that might exacerbate the risk of injury.

4 Be proactive. Develop a plan.

Developing a SRTS Plan for an individual school is a great way to identify potential safety problems and prioritize needed improvements. If you identify problems, take steps to address the problems and inform the school community of possible hazards that cannot be or have not yet been corrected.

5 Document your efforts.

If you are aware of potential problems, document your efforts to fix them. For example, if you are made aware of problems with speeding vehicles in the school area, keep records of your communication with law enforcement officials to address the problem and your communications to parents warning them of any uncorrected problems.



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6 Be uniform, systematic and consistent in undertaking safety improvements.

In making improvements such as new sidewalks or improved crossings, follow accepted engineering and design practices. Any design exceptions should be carefully reviewed so as not to compromise safety.

8 Consider waivers.

Where a SRTS program sponsors specific transportation activities, such as a walking school bus or bicycle train, a school may decide to require parent volunteers and parents of student participants to sign waivers or permission slips acknowledging that the participants are assuming the risk of injury by engaging in walking and bicycling activities, and waiving any claims against the school for its negligent acts or omissions. Keep in mind that waivers need to be carefully drafted in order to be effective.

9 Obtain adequate insurance coverage for your program.

Your school district is likely to have a large umbrella policy that covers a range of school programs and school sponsored activities. Review this policy to ensure the SRTS activities you are organizing are covered. If they are not, have the policy adjusted to include these activities.

7 Inform and involve parents.

Parents and designated caretakers are ultimately responsible for deciding how their children get to school. Material promoting SRTS programs should make clear that parents should determine their child's readiness and the best route for walking and bicycling. Encourage parents to accompany younger children. Let parents know the location of signalized or marked crossings and locations with crossing guards and recommend that they use them. Provide pedestrian and bicycle safety tips to parents as well as students. (See safety tip sheets at the National Center's Web site at http://www.saferoutesinfo.org/resources/education_tip-sheets.cfm)

10 Provide training.

Make sure crossing guards and school employees working on traffic and safety issues are well trained regarding pedestrian and bicycle safety and their responsibilities for ensuring that children are safe on their journey to and from school. Provide training to volunteers, and if appropriate, screening, where volunteers will be supervising children as part of a SRTS activity, such as a formal Walking School Bus or Bike Train.