Overcoming the Fear of Liability

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Today’s Roadmap

Introduction

How to Approach Liability Risk

Tort Liability 101: Overview

Tips for Specific SRTS Situations
Ignoring dangers in the current environment can increase risk of liability.
What’s the best way to avoid liability?

Avoid injury in the first place.

SRTS is a risk management program that can decrease children’s likelihood of injury.
How should you approach liability risk?
Step One: Relax

Liability risks are exaggerated.

Not a single case has been decided involving an injury that occurred as part of a SRTS program.
Step Two: Be Responsible

- Follow sensible, standard procedures.
- Use reasonable care in both setting up and running programs.
- Anticipate potential dangers
Step Three: Have a Back Up Plan

Insurance provides a final layer of protection

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TORT LIABILITY 101
What is a tort?
A tort is:

An act (or omission) that injures someone in a way that the law deems worthy of compensation.

- Matter of state law
- The relevant tort here is NEGLIGENCE
What Is Negligence?

A practical, common-sense concept

The key: has a person behaved with reasonable care in the situation in question?
Elements of Negligence

Duty

Breach

Causation

Damages
The Upshot: No Liability Unless...

- Someone did not act with reasonable care
- That carelessness caused the injury
Duty

• Common sense not as helpful
• Legal duties don’t necessarily align with moral imperatives
• Districts may increase their liability by taking on new areas of responsibility
Defenses

✔ School districts
✔ Nonprofits
✔ Volunteers
Elements of Negligence

- Duty
- Breach
- Causation
- Damages
- Defenses
Defense for Schools: Immunity

• No liability even though each element of negligence present.

• How it works varies by state.
In California, immunity protects districts for discretionary or planning actions and decisions.

- *Certainly* includes simply sponsoring or endorsing SRTS programs that are run by others.
- *Probably* includes planning or setting up a program.
- *May* include specific “discretionary” decisions made while running a program.
Defense for Nonprofits

No immunity in California
Protections for Volunteers

Federal law: Volunteer Protection Act (applies in all states other than New Hampshire)
The Act provides significant protection for:

- Volunteers
- Acting in the scope of volunteer duty
- Who are negligent (or accused of negligence)
The Act does not protect:

• Volunteers who act with extreme negligence or recklessness
• Volunteers under the influence of drugs or alcohol
• Nonprofit organizations
Tips for Specific Situations
Walking School Buses

- Screen, train, and monitor volunteers
- Train kids on pedestrian safety rules
- Identify hazards and adopt reasonable precautions
Recommended Routes
If you create maps with suggested routes...

- Work with your city to select routes & avoid hazards.
- Consider calling routes recommended or suggested routes, rather than safe routes.
- Revise the maps if you learn of new hazards.
Insurance

✓ This area is confusing!
✓ When partners collaborate, insurance coverage from one may or may not protect another.
✓ Still, more sources of insurance are definitely better.
For more tips on how to minimize liability, consult our factsheet (at www.nplan.org).
A general presentation such as this one cannot substitute for advice from a lawyer about your particular situation.
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