

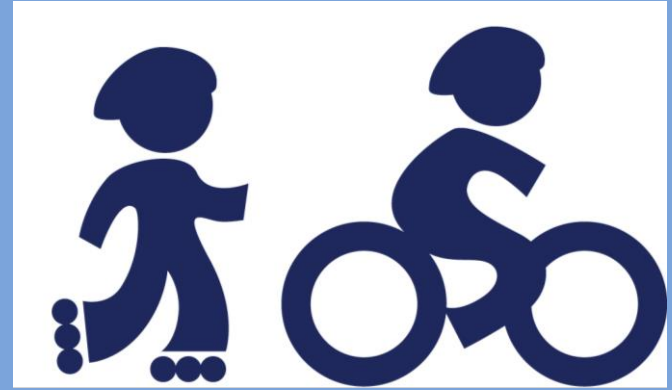
# Safe Routes to School & Liability: Minimizing Risk and Overcoming Concerns



**Sara Zimmerman, JD**  
**Technical Assistance Director**



# Disclaimer



*The information provided in this presentation is for informational purposes only, and does not constitute legal advice. Safe Routes to School National Partnership is not a legal organization and does not enter into attorney-client relationships.*

*For legal advice, consult an attorney who is licensed to practice law in your state.*

# Liability: Why Overcome the Fear?



# Why talk about liability?



**Goal:**  
Healthy,  
Happy,  
Thriving Kids  
and  
Communities

*What's the biggest institutional barrier  
to Safe Routes to School programs?*

FEAR OF  
LIABILITY

# What happens when liability concerns come up in a conversation?

The conversation stops.

The result can be:

- Less safety or health
- Greater risk of liability

Ignoring possible  
problems can  
**increase** risk  
of liability.

*Simi Valley, CA*



# In 1970:

- Hole cut in fence
- More convenient





- No safety consultation
- Some cause for concern
- But, not much traffic

# Over time...

- More cars
- Speeds increased
- Parents and school concerned



# What happened?

In 1989, serious injury & lawsuit



- District found liable
- Failure to take reasonable steps to prevent known danger

If SRTS had  
been around,  
could have:

- Prevented injury
- Protected from liability



# Safe Routes to School helps:

- Reduce risk of injury
- Manage risk



By understanding liability, you can keep the conversation going.

# Liability 101:

## Liability Basics



# What is liability?

In this context,  
what we mean by liability is  
**negligence**

# Negligence:



**A practical, common-sense  
concept**

*The key: has a person behaved  
with reasonable care in the  
situation in question?*

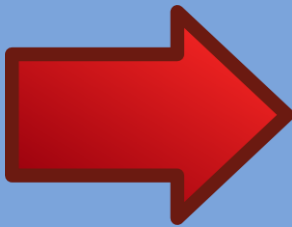
# Elements of Negligence



Duty



Breach



Causation



Damages

# Duty

- What does duty mean here? Legal responsibility
- Usually: responsibility to act with reasonable care
- Legal duties  $\neq$  moral imperatives



# Duty

- Districts may increase their liability by taking on new areas of responsibility
- But if benefits outweigh risks, it's likely worth it



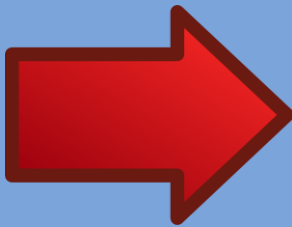
# Elements of Negligence



Duty



Breach



Causation



Damages

# Breach

- Failure to act with reasonable care
- Sometimes we use the word negligence to refer just to this concept of breach
- Very fact dependent
- Remember, you just have to be reasonable – you don't have to prevent any possible problem.





# The Upshot:

---

## No Liability Unless...

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

# Defenses



# Immunity



- When there is immunity, there is no liability even though each element of negligence present.
- **Effect:** no recourse even though someone was hurt due to another's fault.
- How it works varies by state.
- Applies more broadly in some states and more narrowly in others

# Schools, Agencies, Health Departments



- Immunity is alive and well.
- Protection can range from very strong to more slight.
- Whether immunity applies is also fact dependent, so no guarantees.

# School Immunity in California



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.

# Immunity for Nonprofits?

Some states provide some immunity for nonprofits – but not California.



# Protections for Volunteers

Federal law: Volunteer Protection Act  
(applies in all states other than New Hampshire)



# Approach to Liability Risk



# Step One: Relax

Liability risks are *exaggerated*.



No known lawsuits based on injuries from a SRTS program.

- Most injuries – no claim
- Frivolous claims weeded out
- Sensationalistic reporting

# Step Two: Be Responsible

Being responsible  
is the key to  
acting with  
reasonable care



# Overview:

## Be Responsible

- Use **reasonable care** in setting up and running programs.
- Anticipate **potential dangers** and take **reasonable steps** to avoid them.
- **Communicate** about roles and responsibilities.



# Step Three:

## Have a Back Up Plan



# Having a Back Up Plan



*Insurance*

*Indemnification*

*Immunity*

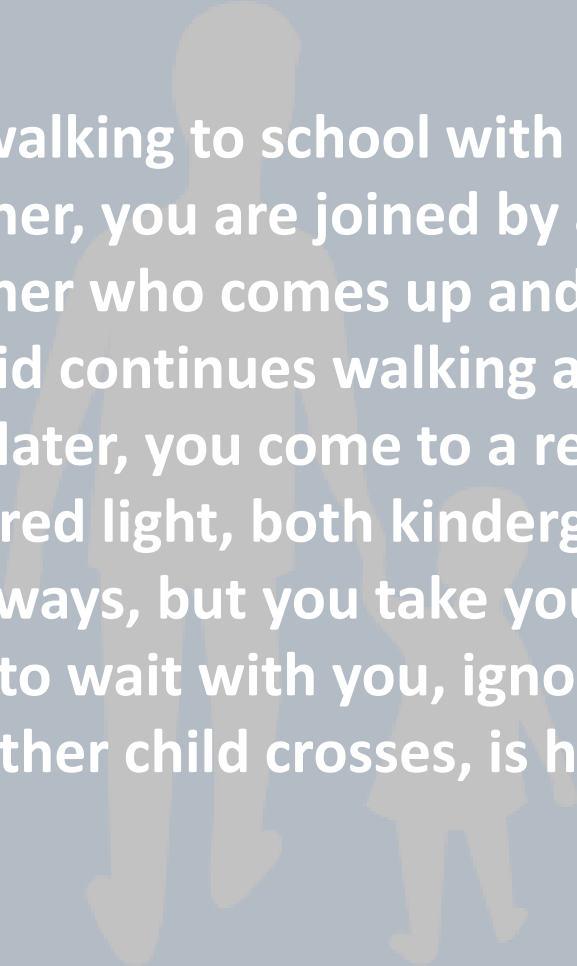
*Apologize*

# Activity



# Question 1

As you are walking to school with your kindergartener, you are joined by another kindergartener who comes up and says hi to your child. The kid continues walking along with you, and a block later, you come to a red light. Despite the red light, both kindergarteners start to cross anyways, but you take your kid's hand and tell her to wait with you, ignoring the other child. The other child crosses, is hit by a car, and is injured.

A faint, light-colored silhouette of an adult and a child walking. The adult is on the left, holding the hand of the child on the right. They are walking towards the right side of the frame.

## Question 1

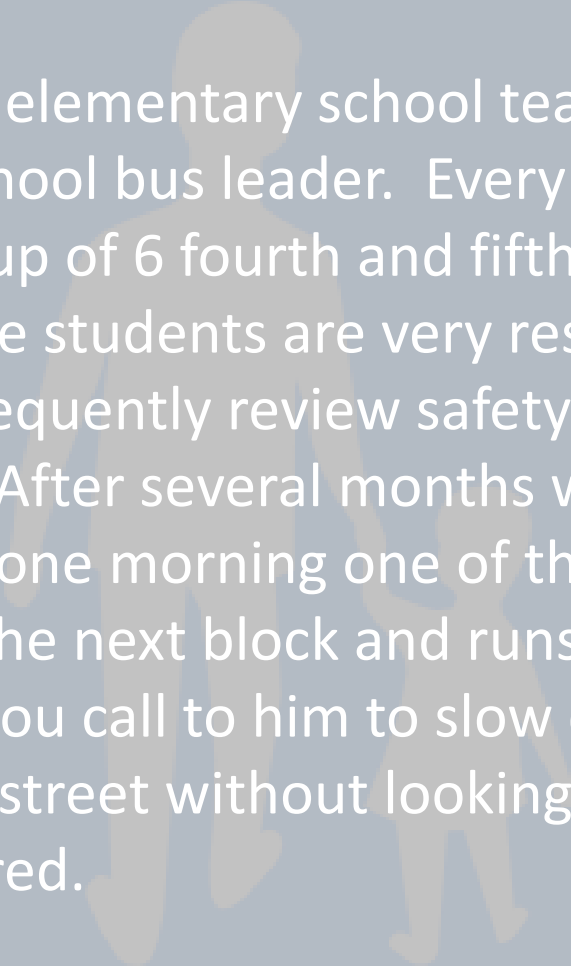
Would you be likely to be found liable if a lawsuit occurred?

No. No **duty**, so no liability.



## Question 2

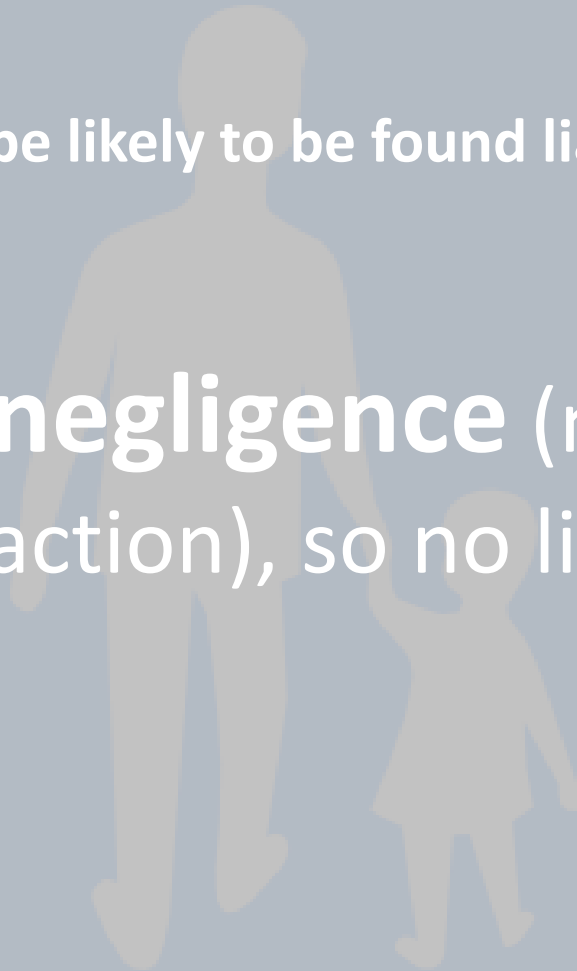
You are an elementary school teacher, and a walking school bus leader. Every morning, you walk a group of 6 fourth and fifth graders to school. The students are very responsible walkers and you frequently review safety tips with them as you walk. After several months without any problems, one morning one of the kids sees a friend on the next block and runs ahead of you. Although you call to him to slow down, he runs across the street without looking, is hit by a car, and is injured.

A faint, light-colored silhouette of an adult and a child walking is visible in the background. The adult is on the left, and the child is on the right, holding the adult's hand. They are walking towards the right side of the frame.

## Question 2

Would you be likely to be found liable if a lawsuit occurred?

No. No **negligence** (no careless action), so no liability.



## Question 3

You and your neighbor have an arrangement – you walk your children and the neighbor's children to school in the morning, and he walks them home in the afternoon. One morning, as you are walking all the kids to school, you get a distraught call on your cell phone from your younger sister, whose boyfriend has just broken up with her. As you are attempting to comfort her, the children get ahead of you. You aren't really paying attention to them, but they wait at the next red light for the light to turn green, and then begin to cross in the crosswalk. Unfortunately, an oncoming car experiences brake failure and skids right into the children, who are hurt.

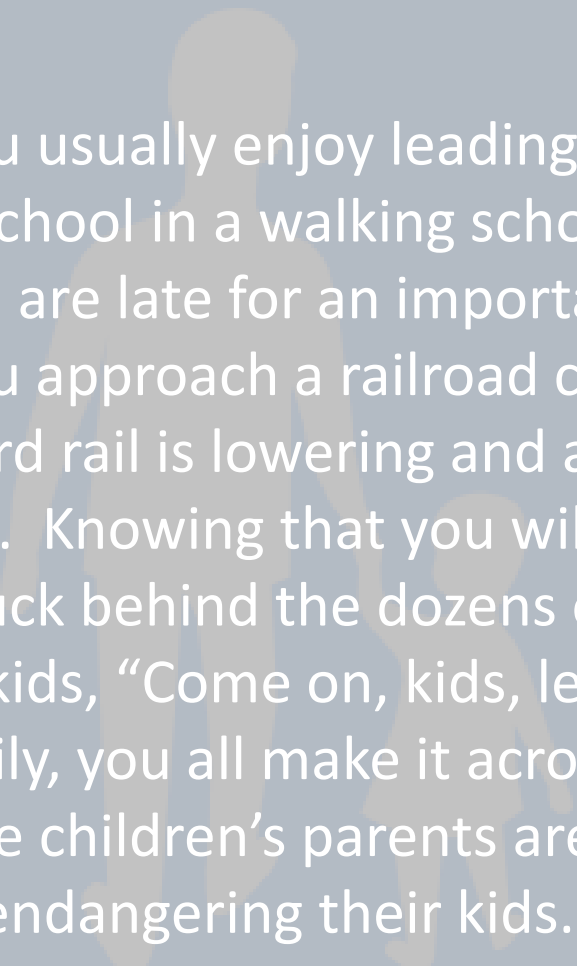
## Question 3

Would you be likely to be found liable if a lawsuit occurred?

No. The negligence did not **cause** the injuries, so no liability.

A faint, light gray illustration of an adult and a child walking away from the viewer. The adult is on the left, wearing a long-sleeved shirt and pants, and the child is on the right, wearing a dress. They are walking towards the right side of the frame.

## Question 4

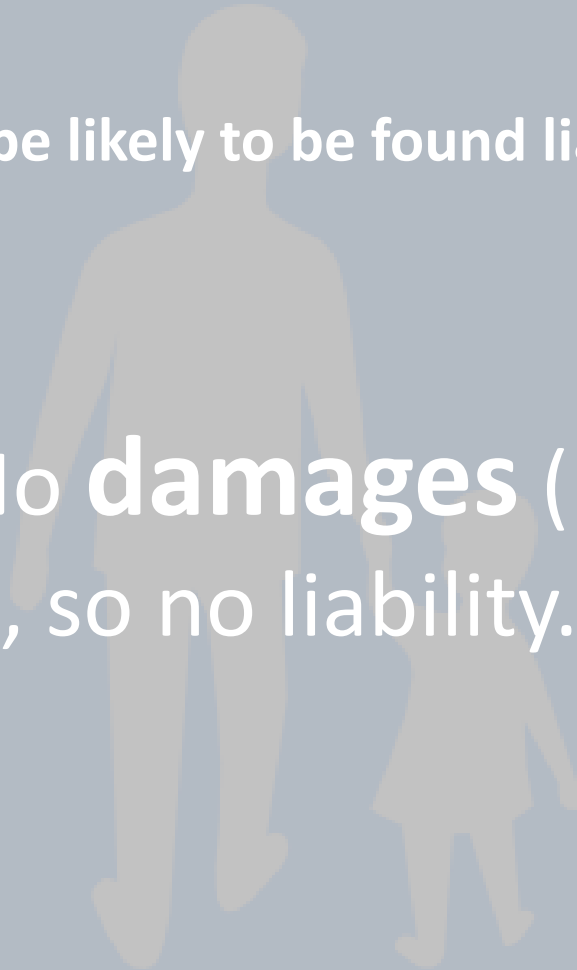


Although you usually enjoy leading a group of children to school in a walking school bus, this morning you are late for an important meeting at work. As you approach a railroad crossing, you see that the guard rail is lowering and a freight train is approaching. Knowing that you will be really late if you get stuck behind the dozens of freight cars, you tell the kids, “Come on, kids, let’s make a run for it!” Luckily, you all make it across in time. Unluckily, the children’s parents are furious, and sue you for endangering their kids.

## Question 4

Would you be likely to be found liable if a lawsuit occurred?

No. No **damages** (no injury), so no liability.



# Conclusion



# Liability Takeaways

- Being thoughtful about how you set up and run activities helps avoid liability
- Steps you take to make sure children are safe also protect you from liability
- The status quo is often a bad option
- Balance benefits versus the risks

# Other resources

changelabsolutions.org | nplan.org July 2013



## Backing Off Bike Bans The Legal Risks of Banning Bicycling

**Why Avoid Bike Bans?**  
**Legally Speaking**

- Bike bans can increase the risk of liability for school districts.
- Districts may be overstepping their authority when they try to control how students travel to school.
- Districts may be interfering with parents' constitutional rights to make decisions about how to raise their children when they ban biking.

**Practically Speaking**

- Biking helps support healthy kids.
- Fit and active kids do better academically and miss fewer days of school.
- How children get to school is a family decision, not an educational decision.

Most school districts around the nation recognize that when allowed to bike to school is a family choice. But in a few districts, take one look at morning traffic and decide that allowing a child to bike to school is just too dangerous. For a small percentage of families, restrictive school policies such as bike bans act as a barrier to walking and biking to school.<sup>1</sup>

When students get regular physical activity, their health and performance are likely to improve, and active commutes to school can help children meet the recommended levels of daily activity schedules.<sup>2</sup> That means that bike bans can be detrimental to student achievement. Bike bans can also be bad for the environment by increasing liability and raising other legal issues.

Schools are under tremendous pressure to achieve their educational mission in the face of limited resources and critics at every turn. Central educational mission offers reasons for schools to encourage children to walk or bike to school.

**ChangeLab Solutions**  
Law & policy innovation for the common good.

nplan | NATIONAL POLICY & LEGAL ANALYSIS NETWORK TO PREVENT CHILDHOOD OBESITY

phlpnet.org | nplan.org July 2010



## Volunteers and Liability The Federal Volunteer Protection Act

*People who volunteer for a nonprofit or school may be concerned about a lawsuit if an injury occurs. This fact sheet provides an overview of legal protections designed to shield volunteers from liability.*

Volunteers are crucial to the fight against childhood obesity—activity through Safe Routes to School programs and after-school cooking and gardening classes, and encouraging healthy lifestyle other programs. Volunteers often make it possible for financial nonprofits, cities, and counties to do more to create healthy communities and lead healthier lives.


But people sometimes worry that they could be at risk of liability while they are volunteering. Fortunately, a federal law—the Volunteer Protection Act—provides volunteers with significant protections from liability for volunteer activity in every state but one.<sup>1</sup> Some states also have additional protections for volunteers.

The Volunteer Protection Act protects volunteers under many circumstances. It does not eliminate the possibility of a lawsuit. It does not shield governmental agencies using the volunteer's services from liability to the volunteers themselves.

**phlp** public health law & policy

nplan | NATIONAL POLICY & LEGAL ANALYSIS NETWORK TO PREVENT CHILDHOOD OBESITY

phlpnet.org | nplan.org July 2010



## 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.

**phlp** public health law & policy

nplan | NATIONAL POLICY & LEGAL ANALYSIS NETWORK TO PREVENT CHILDHOOD OBESITY



Safe Routes  
to School  
**National  
Partnership**

**Sara Zimmerman**

**Technical Assistance Director**

**[sara@saferoutespartnership.org](mailto:sara@saferoutespartnership.org)**

