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Overcoming the Fear of Liability

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Today's Roadmap


- Introduction
- Tort Liability 101: Overview
- Defenses for School Districts, Nonprofits & Volunteers
- Tips for Specific SRTS Situations



What's the best way to avoid liability?

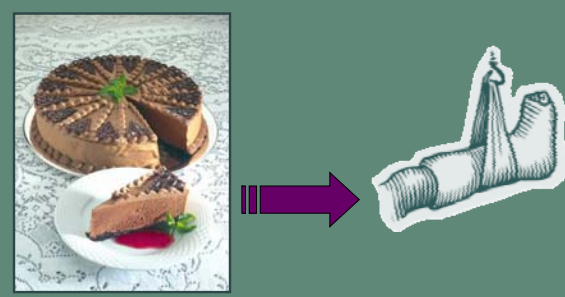
Avoid injury in the first place.

SRTS is a risk management program that can decrease children's likelihood of injury.



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 *and*
- ✓ That carelessness caused the injury



Defenses for:

- ✓ 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 all states, likely to protect districts from liability for simply sponsoring or endorsing programs.



Defense for Nonprofits

A few states provide immunity or caps on damages for nonprofit organizations.

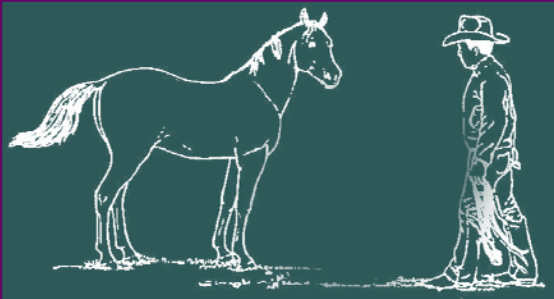


Protections for Volunteers

- Federal law: Volunteer Protection Act (applies in all states other than New Hampshire)
- Some states also have laws that protect volunteers
- Doesn't protect nonprofits



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 a SRTS program.



Step Three: Have a Back Up Plan

Insurance provides a final layer of protection



Tips for Specific Situations



Walking School Buses



- ✓ Screen, train, and monitor volunteers
- ✓ Develop pedestrian safety rules and train kids on them
- ✓ Identify hazards on the routes and adopt reasonable precautions

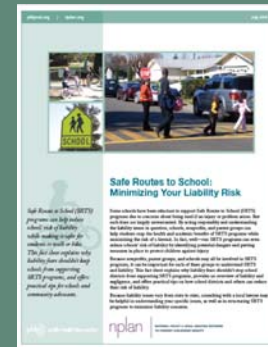
Recommended Routes

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.



For more tips on how to minimize liability, find our new factsheet at www.nplan.org.



Myth vs. Reality

Myth: Walking to school is dangerous.

Reality: Children are much more likely to be injured or killed as a passenger in a car than walking.



Myth vs. Reality

Myth: Districts are responsible for kids from door to door – from home to school.

Reality: Districts are generally **not** responsible for this travel, although they may have **authority over misbehavior** on the route to and from school.



Myth vs. Reality

Myth: Schools can ban kids from bicycling if they want to.

Reality: It appears that schools (1) do not have authority to ban bicycling, and (2) impinge upon parents' constitutional rights in doing so.



In Conclusion

Balance the benefits against the risks



In Conclusion

A general presentation such as this one cannot substitute for advice from a lawyer about your particular situation.



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