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Liability 101: Understanding & Overcoming Common Obstacles

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ChangeLab Solutions creates innovative law and policy solutions that transform neighborhoods, cities, and states. We do this because achieving the common good means everyone has safe places to live and be active, nourishing food, and more opportunities to ensure health. Our unique approach, backed by decades of solid research and proven results, helps the public and private sectors make communities more livable, especially for those who are at highest risk because they have the fewest resources.



DISCLAIMER

The information provided in this discussion is for informational purposes only, and does not constitute legal advice. ChangeLab Solutions does not enter into attorney-client relationships.

ChangeLab Solutions is a non-partisan, nonprofit organization that educates and informs the public through objective, non-partisan analysis, study, and/or research. The primary purpose of this discussion is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation.

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Liability 101

AGENDA

Q&A

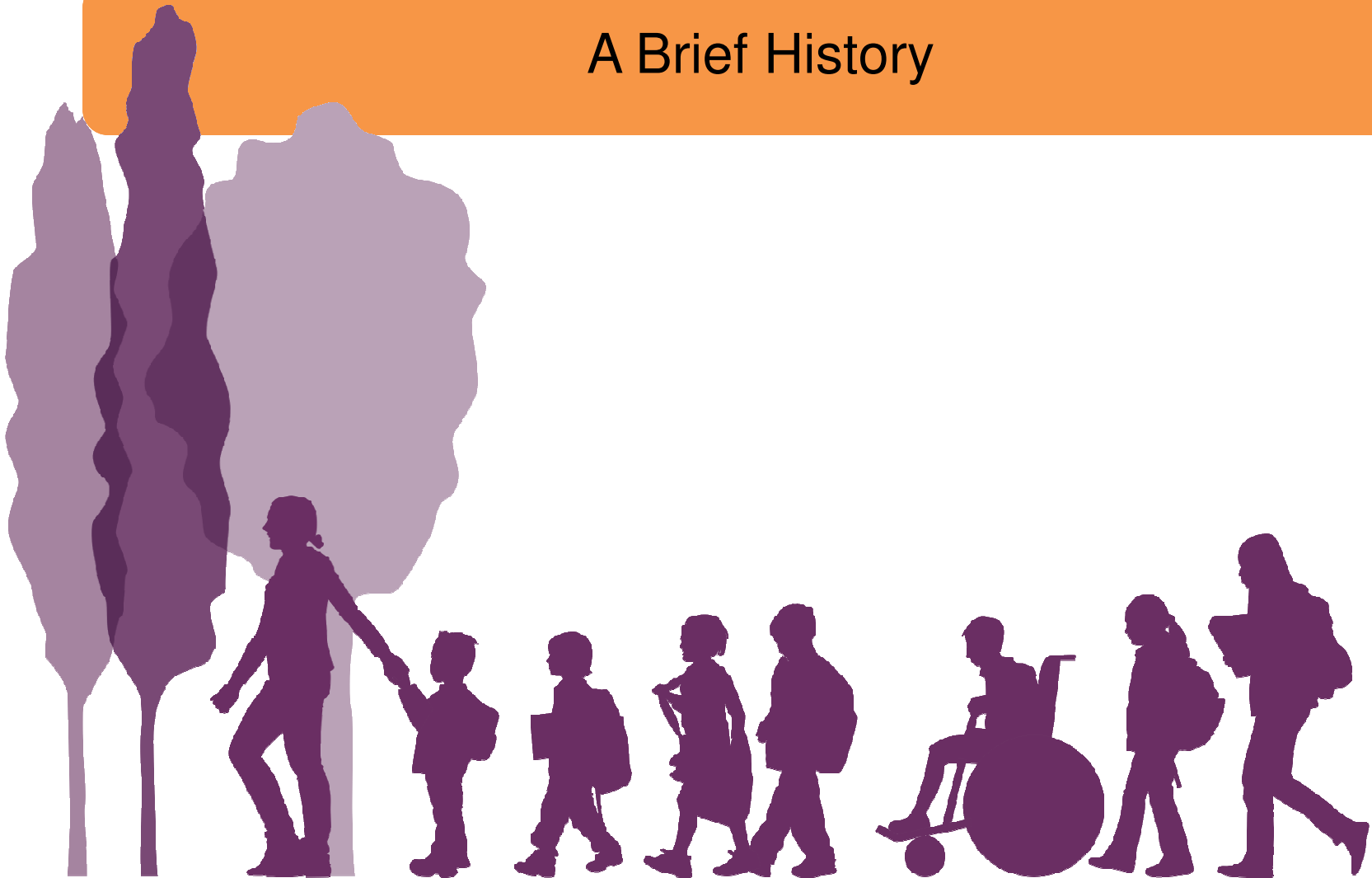
**Safe Routes
to School
+
Shared Use**

Schools & Active Living



Policy Intervention: Safe Routes to School

A Brief History



Policy Intervention: Shared Use



Shared use is a strategy for providing community recreational space where it is needed most



Liability Basics

A successful negligence claims requires...

- Duty
- Breach
- Causation
- Damages



To Reiterate

NO LIABILITY unless...

- Someone did not act with reasonable care

AND

- That carelessness caused an injury



Case in Point



Balancing Risks and Benefits

- Everything we do involves risks
- Any risk associated with a new program must be weighed against the risk of taking no action

On-Site Drop-Off Only	Risk Factors	Remote Drop-Off Program
	car - car collision exposure	
	car - pedestrian collision exposure	
	car - bike collision exposure	
	peer harassment or violence	
	neighborhood harassment or violence	
	exposure to toxins (including exhaust)	
	hazards on route to school	
	additional car collision risk based on time in car	
	long term health consequences	
	long term academic consequences	

Question

Principal Skinner decides to open up Springfield Elementary School facilities to the general public during non-school hours. He has known that a particular swing set has been **broken for two months**, causing kids to fly off when swung high. Lisa Simpson uses the swings after school and **breaks a leg** when the swing detaches from the set.

Is Springfield Elementary School liable for **negligence**?

Question

Principal Skinner decides to implement a Safe Routes to School Program for Springfield Elementary School. He assigns a teacher, Mrs. Krabapple, the responsibility of being a **crossing guard** after school. There is light rain as Mrs. Krabapple is walking Bart Simpson across the street. Bart then unexpectedly gets **struck by lightning** as he crosses the street.

Is Springfield Elementary School liable for **negligence**?

Question

Principal Skinner hires Barney Gumble to replace Mrs. Krabapple as the school **crossing guard**. Principal Skinner did not conduct a background check which would have revealed Barney to be the **neighborhood drunk**. Barney is **drunk** when he helps Lisa Simpson cross the road. She **narrowly avoids** getting hit by a car.

If Lisa's parents sue Springfield Elementary School for **negligence**, will they win?

Immunity

- No damages regardless of actions
- But...



Managing Risk - Crossing Guards

- When and Where
- Screen, Train, Equip



Managing Risk - Crossing Guards

- Absences and Changes
- Communication



Managing Risk - Shared Use

1. Reasonably safe environment
2. Shared use agreements
3. Awareness of legal protections in state law



A Quick Aside...



A Final Thought...

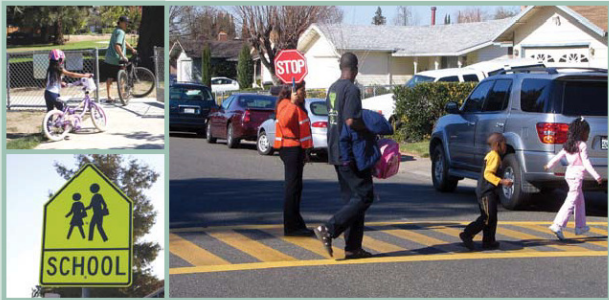


What's the best way to avoid liability?

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Fact Sheets

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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.

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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—leading kids in physical activity through Safe Routes to School programs and after-school activities, teaching cooking and gardening classes, and encouraging healthy lifestyles through many other programs. Volunteers often make it possible for financially stretched schools, nonprofits, cities, and counties to do more to create healthy communities and help children lead healthier lives.

But people sometimes worry that they could be at risk of liability if an injury occurs while they are volunteering. Fortunately, a federal law—the Volunteer Protection Act—provides volunteers with significant protections from liability associated with volunteer activity¹ in every state but one.² Some states also have laws that provide additional protections for volunteers.

The Volunteer Protection Act protects volunteers under many circumstances, although it does not eliminate the possibility of a lawsuit. It does not shield the nonprofit or governmental agency using the volunteer's services from liability; it only protects the volunteers themselves.

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More Fact Sheets

Crossing with Confidence

Managing Risk When Creating
Crossing Guard Programs in California



With careful planning and implementation, schools, cities, and counties can reduce their risk of liability when creating and operating crossing guard programs.

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healthy places...healthier lives

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Get Out & Get Moving

Opportunities to Walk to School through
Remote Drop-Off Programs



Understanding the legal implications of implementing a remote drop-off program can help school districts, parents, and active transportation advocates determine whether a remote drop-off program is appropriate for their community.

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Primers and Toolkits

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Opening School Property After Hours A Primer on Liability

Some school districts are reluctant to open school property to the community after hours, concerned about the legal risks and the costs associated with injury or property damage. The good news is that the risk of liability is often exaggerated, and the legal system offers school districts many protections against lawsuits.

Concerns about the legal risks of opening school property to the community after hours are often exaggerated, and the legal system provides school districts with many protections against lawsuits. This fact sheet explains how state laws, insurance, and "joint use" agreements can help protect school districts from liability.

The Truth About Lawsuits


Research shows that liability risk is much less severe than many believe:

1. With the exception of car accidents and injuries covered by workers' compensation, most people who are injured through another's fault never file a lawsuit or bring a claim.²
2. The legal system does a reasonably good job of weeding out claims without merit, particularly high-value claims.³
3. Even when plaintiffs win at trial, they only rarely receive the full amount of the verdict.⁴
4. Media reporting on lawsuits is overwhelmingly weighted toward the unusual, very high value claim or verdict, ignoring the vast majority of cases in which plaintiffs recover only small amounts of money or the defendants win.⁴

philpnet.org | nplan.org August 2010

Playing Smart

Maximizing the Potential of School and Community Property Through Joint Use Agreements



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McBoomer
It starts with a playground.

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Additional Resources

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What Is a Joint Use Agreement?

A Fact Sheet for Parents, Students, and Community Members

A joint use agreement is a formal agreement between two separate government entities—often a school district and a city or county—setting forth the terms and conditions for the shared use of public property or facilities.

Many communities lack safe, adequate places for children and their families to exercise and play. Schools might have a variety of recreational facilities—gymnasiums, playgrounds, fields, courts, tracks—but many districts close their property to the public after school hours because of concerns about costs, vandalism, security, maintenance, and liability in the event of injury.

Most states currently have laws that encourage or even require schools to open their facilities to the community for recreation or other civic uses.¹ Nonetheless, school officials may be reluctant to do so, cautious about the expense in times of increasingly tight budgets.

The good news is that city, county, and town governments can partner with school districts through what are known as joint use agreements to address these concerns.

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Checklist for Developing a Joint Use Agreement (JUA)

Many communities lack safe, adequate places for children and their families to exercise and play. Schools might have a variety of recreational facilities – gymnasiums, playgrounds, fields, courts, tracks – but many districts close their property to the public after school hours because of concerns about costs, vandalism, security, maintenance, and liability in the event of injury.

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A joint use agreement (JUA) is a formal agreement between two separate government entities – often a school and a city or county – setting forth the terms and conditions for shared use of public property or facilities. JUAs can range in scope from relatively simple (e.g., opening school playgrounds to the public outside of school hours) to complex (allowing community individuals and groups to access all school recreation facilities, and allowing schools to access all city or county recreation facilities).¹

Just as there is no one model JUA, there is no single method to develop an agreement. Successful JUAs require a lot of thought, effort, and cooperation to reach agreement on a range of issues.

This checklist is designed to identify issues for the parties to consider when developing a JUA to share existing facilities. Not all of the issues presented will be applicable in all situations, and there may be issues unique to a community that are not included here.

We have developed four model JUAs as templates for communities to use to develop their own agreements. See all our joint use products online at www.changelabsolutions.org.

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If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish).

For any other information dealing with Supplemental Nutrition Assistance Program (SNAP) issues, persons should either contact the USDA SNAP Hotline Number at (800) 221-5689, which is also in Spanish or call the Arizona Nutrition Network Hotline; in Maricopa County call 602-542-9935, outside of Maricopa County call 1-800-352-8401.



www.eatwellbewell.org



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Thank you!

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