

Liability from Active School Travel

Prepared by Doug Wyseman, Municipal Risk Services Ltd. ♦ April 2010



While everyone recognizes the benefits of Active School Travel some have expressed concerns about any liability associated with their involvement in these programs. This examination of liability issues should put all such fears to rest.

Q. Just what is liability anyway?

- A. Liability is legal responsibility. For someone to sue, claiming that you are responsible for damages they must prove 3 things:
1. You owed a duty
 2. You failed to perform the duty or did so in a negligent manner
 3. They must have suffered damages

Q. Should my Board be concerned about liability from *Active School Travel* programs?

- A. We understand that School Boards need to determine if involvement in Active School Travel programs could lead to liability problems. The decision as to whether to avoid a risk entirely, or manage the risk to a tolerable level, involves weighing the risks of an activity and comparing them to rewards realized through the activity.

Boards not presently involved in Active School Travel programs are not immune from liability issues regarding pedestrian injuries. During the time just before the morning bell and just after class is dismissed for the day, it is hard to imagine areas more dangerous for pedestrians than many school parking lots and streets in school zones. Many schools try to deal with this risk by having a teacher or principal in the yard or parking lot, trying to protect their students from the overflowing school parking lot and the dangers of parent's cars lining the streets waiting to pick up their children. Active School Travel programs reduce vehicle congestion in parking lots and roadways and therefore can reduce liability exposures to your Board.

Q. So our risk of being sued doesn't dramatically increase by being involved with this program?

A. Absolutely not! Active School Travel is not a high risk initiative. As a result of planning and preparation, participants will be able to enjoy the benefits of this moderate physical activity.

Q. We've been told that if this program is organized by the school board, then the board is assuming added liability exposure as opposed to no involvement. Is that right?

A. Zero involvement with any program does result in no liability from the program. If no sports are played, there will be no liability from games...no school trips results in no liability from school trips. However, a properly organized Active School Travel program does not increase the liability exposure of the board. Through the development of School Travel Planning Committees, parking lots, streets and sidewalks become safer places for students and increased safety translates to reduced risk.

Q. Will our school board have to buy insurance if we get involved with Active School Travel programs?

A. All insurers that we have spoken with confirm that, if your board has liability insurance, your current policy would cover your involvement with these programs. We suggest that you direct any coverage questions directly to your insurer.

Q. I understand the benefits of Active School Travel, but won't it be difficult to put together agreements with all parties that set out responsibilities and make sure that we're doing things right?

A. To make sure that things are done right, a School Travel Planning Toolkit is provided to all groups that get involved with this program. We have reviewed the information and forms contained in the tool kit and we're quite comfortable advising that everything needed is provided in a clear, easy to follow format.

Liability Risk Assessment

The successful operation of *Active School Travel* programs requires the involvement of a number of individuals and organizations all of whom share a desire to improve the health and safety of children. They also share concerns with regard to liability exposures associated with their participation in the program. The following is our analysis of the liability exposures facing those who get involved with this program:

School Boards

By endorsing Active School Travel programs, School Boards greatly improve the service they provide to their students and to the community. Through Active School Travel programs, students will not only increase their knowledge of pedestrian and traffic safety, but will also experience the benefits of more exercise and interaction with their school mates.

At present, many School Boards provide some education regarding pedestrian safety, but they are not legally responsible should one of their students run out from between parked cars around the school and suffer injury. By supporting Active School Travel, School Boards do nothing to increase their liability exposure. In fact, the efforts of Active School Travel programs will decrease the likelihood of pedestrian accidents and therefore, reduce injuries and lawsuits. Further, the increase in numbers of children walking to and from school will reduce the number of cars surrounding the school and improve the current level of safety found in school zones.

As the mandate of School Boards involves "putting the student first," it would seem that they should celebrate the opportunity to broaden the safety and knowledge of their students. If the Active School Travel program is a Board-mandated program, the Board would have responsibility to make sure that it is done properly. The School Travel Planning Toolkit provides all the necessary materials to ensure that roles and responsibilities are clear and tasks are easy to accomplish.

Typical Concern: Child injured/killed/abducted travelling to or from school.

Current Situation: School is not legally responsible for "off property" injury and typically has little or no involvement or input in planned travel routes of students. If a child is injured in the school parking lot, they would likely be challenged to show that the area was reasonably safe.

After Implementation of Active School Travel Program: Routes are better planned. Municipalities are involved to increase road and sidewalk safety resulting in risk of harm to students being dramatically reduced. If the Board's negligence causes a child to be abducted or struck by a car, they would be liable. As long as the Board acts in a reasonable manner, it will have no more responsibility and their "on property" exposure will be lessened.

Municipalities

Currently many students travel to and from school on municipal roads and sidewalks. Since Municipal Acts place a duty on municipalities to maintain roadways and sidewalks in a reasonably safe manner, they face a significant liability exposure should a student fall in a pothole or on an uneven sidewalk. Approximately 35% of all liability losses brought against municipalities target road problems, while another 15% to 20% allege that poor sidewalks caused injuries to a pedestrian.

Municipalities can greatly reduce their liability exposure to road and sidewalk claims by working with Active School Travel initiatives to identify areas of concern and to prioritize roadways and sidewalks requiring attention. Active School Travel programs provide an excellent opportunity for municipalities to improve their risk management programs regarding sidewalks and roads. By following some simple steps, liability exposures for municipalities will be reduced due to Active School Travel. This program will make the community safer and reduce liability exposures for municipalities.

Parent Volunteers

By volunteering to accompany children on their walk to and from school parents are not assuming responsibility for anything that may happen during the trip. Parents are expected to act responsibly... just as they are now when they take their children to school, the park or the mall. Therefore, there is no increase in the liability exposure of the parent. Many parents now walk their children to kindergarten/school, surrounded on their route by other children on their way to school. Should they be afraid of liability if anyone around them is injured? Of course not. Unless they have acted in a negligent manner and that negligence caused the injury, they have nothing to fear. Nothing changes regarding their liability when they walk with other children and families as part of an Active School Travel initiative.

If the parents insure a house or apartment, the insurance that they carry on that property includes personal liability protection for their non-professional acts anywhere in the world. Therefore, if their negligence causes an injury to someone today at the park, or next month with Active School Travel, their insurance will protect them from that exposure.

The liability risks associated with acting as a volunteer with an Active School Travel program are extremely low. The benefits to a child of having their parent participate in this program are extremely high.

Conclusions

It is prudent to examine liability concerns involving almost everything we do. The fact that we live in a litigious society makes it a foolhardy act to proceed without understanding the adverse effects a lawsuit might have on an organization. Knowing the true risk is essential.

The liability risks associated with the implementation and operation of Active School Travel programs are minimal. We found that while this program should result in no more liability than exists in the current situation for all involved, the implementation of this program can dramatically decrease the likelihood of serious injuries and death. That fact, coupled with the physical and social benefits of the program, make the rewards of Active School Travel far exceed liability risks.

Biography

This report was prepared by Doug Wyseman, president of the firm Municipal Risk Services Limited. Doug is recognized as an Associate of Risk Management by the Insurance Institute of America and has been involved in risk management since 1973. He has worked in the public sector as risk manager for a large Canadian municipality and in the private sector for insurers of public entities.

Municipal Risk Services Limited is a Canadian firm that has provided guidance and information regarding risks for public sector organizations in 10 provinces and over 30 states and has worked with more than 400 public entities regarding safety and liability concerns. Their "Risk and Roads" training manual is used by more than 2,300 governments to deal with their roads and sidewalk transportation issues. Their "Risk and Recreation" manual is used in approximately 3,000 municipalities worldwide. They have also provided advice to many insurers of public entities across North America.