



# Liability for Volunteers in the Walking School Bus Program

## *Minnesota Law Provides Protection from Liability Claims*

A walking school bus program aims to get children to be more physically active and socially engaged by supporting walking to and from school in groups accompanied by adults. The program is ideal for neighborhoods that have a school within walking distance.

Adult volunteers can be essential to the Walking School Bus Program because they are often responsible for organizing the program and for walking the children to and from school. Adult volunteers are expected to act responsibly — just as they would with their own children. As long as adult volunteers act reasonably and with good intention, Minnesota law should protect them from liability claims for accidents that occur while volunteering.

### **Q: What is liability?**

**A:** Put simply, liability is a legal responsibility. Typically, for you to be held liable, someone must prove that:

- You owed them a duty of care;
- You failed to perform that duty or did so negligently; *and*
- Your negligence caused someone harm that could have reasonably been expected to occur.<sup>1</sup>

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## Q: What is a person’s “duty of care?”

**A:** The duty you owe someone depends on the circumstances. Generally, everyone has the duty to act with reasonable care toward others.<sup>2</sup> What is considered reasonable also depends on the circumstances.

In order to satisfy the duty of care, volunteers should be aware of traffic regulations, particularly those that apply to crossing roads. Volunteers and the children they are assisting are pedestrians and are subject to all pedestrian traffic laws.<sup>3</sup> Especially relevant pedestrian traffic laws include:

- Pedestrians must follow traffic control signals at all intersections.<sup>4</sup>
- Where traffic-control signals are not in place or operation, vehicle drivers must stop to yield to a pedestrian crossing the road at all marked crosswalks and intersections with unmarked crosswalks. The driver must remain stopped until the pedestrian has passed the lane in which the vehicle is stopped.<sup>5</sup>
- Pedestrians who cross a roadway at any location other than within a marked crosswalk or at an intersection with no marked crosswalk must allow traffic in the roadway to pass first before walking further.<sup>6</sup>
- Pedestrians must maintain a proper lookout and walk on the left side of the road.<sup>7</sup>

(Please refer to the Public Health Law Center’s fact sheet regarding Pedestrian and Bicyclist Rights and Responsibilities at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org).)

## Q: What is “negligence?”

**A:** Negligence is the failure to act as carefully as an ordinary, reasonable person would in the same situation.<sup>8</sup>

## Q: What is “cause of harm?”

**A:** “Cause of harm” means that your action or inaction was an important factor in causing harm to another person and that you could have reasonably expected the injury to occur as a result of your action or inaction.<sup>9</sup>

## Q: Are there any Minnesota laws that provide added protection to volunteers?

**A:** Yes. Under Minnesota law, volunteers will generally not be liable for a child’s injuries if their actions (1) were in good faith, (2) within the scope of their duties, and (3) not willful or reckless.<sup>10</sup>

## Q: What does acting in “good faith” mean?

**A:** This means acting with a good, honest intention or belief.<sup>11</sup>

**Good Faith:** A volunteer takes the children down a different route one day, believing the traffic will be lighter. The traffic is actually heavier, and a car hits a child while he is crossing the road in a crosswalk.

**Not Good Faith:** A child misbehaves during the walk. The volunteer makes the child walk home by herself, knowing that the child does not know the way home. The child gets lost and is injured.

## Q: What does acting “within the scope of their duties” mean?

**A:** This means acting according to one’s role or responsibilities as a volunteer.<sup>12</sup>

**Within the Scope of Duties:** A student slips and is injured while the volunteer is walking the student to school.

**Not Within the Scope of Duties:** After school, a student stays over at a volunteer’s house to play with the volunteer’s children. The student slips and is injured.

### Q: What is “willful or reckless” conduct?

**A:** This means acting with disregard for the safety of others, or failing to act with ordinary care to prevent or discover a danger.<sup>13</sup> Some examples of willful or reckless conduct might include telling a child to run across the street when the light is red, telling children to cross the road without looking both ways, or making children walk long distances in extreme heat without water.

### Q: If I am sued, will insurance cover the costs of the litigation?

**A:** Check the terms of your homeowner’s or renter’s insurance policy to learn what is covered. Typically, insurance consists of two parts — property coverage and personal liability coverage. The personal liability portion of the policy may protect against a lawsuit brought by someone who is injured by something you do. It may pay for medical or other expenses if you are responsible for the injury. Also, it may pay for legal expenses to defend you if the lawsuit is unjustified.<sup>14</sup>

### Q: How can Volunteers with a Walking School Bus Program reduce the risk of liability?

**A:** Common sense precautions go a long way toward avoiding liability risk. Most importantly, a volunteer should *act like an ordinary, reasonable person*. Additional steps include:<sup>15</sup>

- Creating safety rules and handing them out to all students and parents. These safety rules should comply with any local school rules.
- Planning a training day for students and volunteers.
- Wearing fluorescent vests while walking with the children.
- Asking the parents or guardians to sign a waiver saying they will not hold you liable for any injuries. (Please refer to the Public Health Law Center’s fact sheet regarding Waivers and Releases at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org).)
- Eliminating dangers, where possible.
- Having one adult volunteer for every six children over the age of 10 and one adult volunteer for every three children between the ages of four to six.
- Documenting all precautions taken to avoid harm or risk.<sup>16</sup>

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## Endnotes

- <sup>1</sup> Lubbers v. Anderson, 539 N.W.2d 398 (Minn. 1995).
- <sup>2</sup> See Flom v. Flom, 291 N.W.2d 914, 916 (Minn. 1980); 4 Minn. Dist. Judges Ass'n Minnesota Practice- Jury Instruction Guides-Civil, CIVJIG 25.10 (5th ed. 2006).
- <sup>3</sup> See MINN. STAT. § 169.21.
- <sup>4</sup> MINN. STAT. § 169.21, subd. 1.
- <sup>5</sup> MINN. STAT. § 169.21, subd. 2(a).
- <sup>6</sup> MINN. STAT. § 169.21, subd. 3(a).
- <sup>7</sup> Kachman v. Blosberg, 251 Minn. 224, 235-36, 87 N.W.2d 687 (Minn. 1958).
- <sup>8</sup> See Baker v. Amtrak Nat. R.R. Passenger Corp., 588 N.W.2d 749, 753 (Minn. Ct. App. 1999) (holding that to establish negligence, plaintiff was required to show that defendant did not exercise same degree of care as an ordinary, reasonable person in similar circumstances).
- <sup>9</sup> Lubbers v. Anderson, 539 N.W.2d 398 (Minn. 1995).
- <sup>10</sup> MINN. STAT. § 317A.257; see also, Rehn v. Fischley, 557 N.W.2d 328 (Minn. 1997); Pressler v. Theis, No. A06-2449, 2007 WL 3347632 (Minn. Ct. App. Nov. 13, 2007).
- <sup>11</sup> BLACK'S LAW DICTIONARY (8th ed. 2004).
- <sup>12</sup> Rehn v. Fischley, 557 N.W.2d 328 (Minn. 1997) (interpreting scope of responsibilities as defined by MINN. STAT. § 317A.257).
- <sup>13</sup> BLACK'S LAW DICTIONARY (8th ed. 2004).
- <sup>14</sup> See *Standard Home Owner Policies*, MINN. DEP'T OF COMMERCE, <http://mn.gov/commerce/insurance/topics/home-property/home-insurance-basics/home-owner-policies-covered.jsp> (last visited Oct. 17, 2013).
- <sup>15</sup> *10 Tips for Safe Routes to School Programs and Liability*, NAT'L CTR. FOR SAFE ROUTES TO SCHOOL, available at <http://www.saferoutesinfo.org/sites/default/files/liabilitytipsheet.pdf>; *Kids Walk-to-School, A Guide to Promote Walking to School*, CTR. FOR DISEASE CONTROL AND PREVENTION et al., available at <http://www.saferoutesinfo.org/sites/default/files/resources/kidswalk.pdf>.
- <sup>16</sup> *10 Tips for Safe Routes to School Programs and Liability*, NAT'L CTR. FOR SAFE ROUTES TO SCHOOL, available at <http://www.saferoutesinfo.org/sites/default/files/liabilitytipsheet.pdf>; *Kids Walk-to-School, A Guide to Promote Walking to School*, CTR. FOR DISEASE CONTROL AND PREVENTION et al., available at <http://www.saferoutesinfo.org/sites/default/files/resources/kidswalk.pdf>.