This paper examines two policy initiatives that research shows can increase opportunities for physical activity and, in turn, improve health outcomes. These initiatives — shared use and Safe Routes to School (SRTS) — can and should be embraced by schools to improve student and community health. Fear of liability, however, has made many schools reluctant to support these efforts despite their proven benefits. This paper addresses school administrators’ real and perceived liability concerns and identifies four strategies for managing the fear of liability and mitigating any potential liability exposure.

Shared Use and SRTS in the Obesity Prevention Movement

Schools today are no longer just educational institutions; they are powerful playmakers at the forefront of the obesity prevention movement. As places where children and adolescents spend much of their time, schools have a profound impact on student health. Accordingly, schools can improve the health of their students not only by educating them about the importance of healthy eating and physical activity, but also by implementing policies and programs that advance these goals.

Shared Use of Recreational Facilities

“Shared use” — also called “joint use” or “community use” — is an important strategy for increasing opportunities for physical activity. Shared use occurs when government entities (or sometimes private, nonprofit organizations) agree to open or broaden access to their facilities for community use. Shared use can take place on a formal basis (e.g., based on a written legal document) or an informal basis (e.g., based on historical practice). Sharing school and community spaces through shared use agreements, or simply opening school facilities to the public outside of regular school hours (often referred to as “open use”), can increase opportunities for recreation and increase the number of children who are physically active in the community. Further, in an era of budget shortfalls, maximizing access to existing facilities — rather than developing new ones — can be an efficient and cost-effective way to provide opportunities for physical activity for residents of all ages.

Safe Routes to School

Another powerful strategy in the obesity prevention movement is SRTS. SRTS policies and programs encourage students to walk, bike, or use other forms of active transportation when commuting to and from school. A recent study examining the impact of SRTS on U.S. school districts found a 25 percent increase in walking and bicycling in the five years after the program’s implementation. Engaging in active transportation improves students’ overall health by reducing the risk of obesity and diabetes otherwise related to insufficient physical activity. Moreover, students who walk and bike to school get better grades and miss fewer days of school. Getting students out of their parents’ cars and onto their own feet also helps protect the environment by reducing traffic congestion and air pollution.

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The Fear of Liability
Despite the numerous benefits of shared use and SRTS, many schools are reluctant to implement these strategies due to a fear of liability. Findings from several studies concerning shared use suggest that fear of liability is a key perceived barrier for school administrators. Likewise, in the SRTS context, school administrators often assume existing drop-off and pick-up routines are safest — and thus carry a reduced risk of liability — just because everyone is used to them. But that is not necessarily true. Studies on the prevalence and success of administrative claims and lawsuits based on injuries occurring under current shared use and SRTS practices would greatly improve our understanding of actual (versus perceived) liability exposure.

Managing the Fear of Liability
Although liability is a legitimate concern, the following four strategies can help reduce school administrators’ fear of liability: (1) managing risk by providing a reasonably safe environment and adopting straightforward, proactive policies; (2) transferring potential liability through shared use agreements; (3) increasing awareness of existing legal protections afforded by state law; and (4) verifying the adequacy of insurance.

Managing Risk and Adopting Straightforward, Proactive Policies
During the school day, schools have a legal duty to provide a reasonably safe environment for recreational activities. For example, they are responsible for providing reasonably safe facilities and equipment as well as adequate supervision, instruction, and emergency medical care when appropriate. Since schools already perform these duties during school hours, managing risk for before- and after-school activities would not create a new set of legal responsibilities, it would only expand their application.

To effectively manage the risk of injury and protect participants, school personnel should be aware of and incorporate applicable safety guidelines and voluntary standards. For example, the American Society for Testing and Materials (ASTM) provides voluntary standards and safety considerations for recreational facilities often found on school campuses, and both the Consumer Product Safety Commission and ASTM provide guidance on playground safety specifically. State and local regulations also provide guidance for swimming pool safety and health issues relevant to recreational facilities. By understanding the applicable standard of care and implementing the appropriate safety guidelines and standards, school officials can satisfy their duty of providing a reasonably safe environment for participants during both school hours and non-school hours.

In the context of SRTS, schools are generally not responsible for students’ off-campus conduct or safety, even while students are traveling to and from school. An important exception to this rule occurs when schools provide transportation for students or voluntarily assume responsibility for their safety off school premises. But even if schools are ultimately responsible for students, schools can take straightforward, proactive steps to both minimize liability exposure and increase student safety. For instance, when implementing a crossing guard program as part of an SRTS initiative, a school should clearly specify where and when crossing guards will work. Crossing guards
should also be carefully screened, properly trained, and appropriately equipped. Additionally school officials should educate everyone involved with the program, including teachers, school staff, students, and parents. Finally, the school should prepare contingency plans for a crossing guard’s unexpected absence or a change in school schedules.

Transferring Risk through Shared Use Agreements
If a school is interested in shared use, it may be able to transfer the risk of liability through a shared use agreement. A shared use agreement is a legally binding contract, typically between two separate entities, that sets forth the terms and conditions for the shared use of a property or facility. An agreement between a school district and a city parks and recreation department, for example, may allow community members to use a school field at certain times provided the city incurs the risk of liability should someone get hurt while on school grounds.

Understanding Existing Legal Protections
Due to existing legal protections set forth in state law, schools’ actual liability exposure may be quite limited. For example, all states have some form of governmental (or sovereign) immunity that serves to fully or partially protect school districts and their personnel from liability based on a negligence claim. Although levels of protection vary by state, immunity provides schools with some amount of protection.10

Further, many states offer additional protections for schools through specific legislation. For example, all states have recreational user statutes that offer limited liability for landowners who permit certain recreational activities on their property, and in some states, those statutes either explicitly or implicitly apply to school districts.11 Recently, several states (e.g., Arizona and Mississippi, among others) passed laws addressing liability protection for schools engaged in shared use. Some of these laws also call for the creation of resources designed to educate interested parties about shared use. The field would benefit from studies evaluating the efficacy of these laws and their intended and unintended consequences.

Insurance
Finally, insurance plays a key role in managing the risk of financial loss due to the potential for injury and subsequent litigation, and it is important for schools to verify that their insurance policies cover the activities at issue. With the assistance of safety experts, insurance companies can also require that schools re-evaluate the safety of their facilities for activities both during and outside of school hours.

Conclusion
Everything we do involves risks. Schools must assess the relative risks — and benefits — of embracing strategies such as shared use and SRTS. There is always comfort in the familiar, but existing routines are not necessarily the safest just because people are used to them. By taking reasonable steps to manage risk, and armed with a comprehensive understanding of existing legal protections, school officials can rest easy knowing that their actual risk of liability may be minimal when creating and implementing shared use and SRTS initiatives.

References
2. Safe Routes to School was first introduced at the federal level as part of the 2005 federal transportation bill. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, H.R. 3, 109th Cong. § 1404, H.R. 3 (2005).
8. 86 C.J.S. Torts § 2.