



Why Avoid Bike Bans?

Legally Speaking

- Bike bans can increase the risk of liability for school districts.
- Districts may be overstepping their authority when they try to control how students travel to school.
- Districts may be interfering with parents' constitutional rights to make decisions about how to raise their children when they ban biking.

Practically Speaking

- Biking helps support healthy kids.
- Fit and active kids do better academically and miss fewer days of school.
- How children get to school is a family decision, not an educational decision.

Backing Off Bike Bans The Legal Risks of Banning Bicycling to School

Most school districts around the nation recognize that whether children are allowed to bike to school is a family choice. But in a few districts, school officials take one look at morning traffic and decide that allowing students to bike to school is just too dangerous. For a small percentage of families – around seven percent – restrictive school policies such as bike bans act as a barrier to children walking and biking to school.¹

When students get regular physical activity, their health and academic performance are likely to improve, and active commutes to and from school can help children meet the recommended levels of daily activity despite busy schedules.² That means that bike bans can be detrimental to kids' health and can undermine student achievement. Bike bans can also be bad for schools, because they increase liability and raise other legal issues.

Schools are under tremendous pressure to achieve their core purpose – educating children – in the face of limited resources and critics at every turn. A school's central educational mission offers reasons for schools to invest in programs that encourage children to walk or bike to school.



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Districts, students, and community members all benefit when there is a clear understanding of the line between the school district's responsibility to provide a strong educational environment and each family's responsibility to decide how their children will get to school in the morning.

Bike Bans and Liability

In explaining policies that prohibit students from riding bicycles to school, school officials typically mention concern for student safety and an underlying fear of liability. But by restricting or controlling students' transportation choices, districts may actually increase their exposure to liability for injuries, assaults, or other harm students may potentially suffer on the way to or from school.

When would a district be liable to a student injured traveling to school? In general, states do not make schools responsible for protecting students on the way to and from school, unless schools have taken on responsibility for this time period (for example, by operating a school bus).³ But schools' policies and actions may be interpreted to show that they extended their responsibility for student travel.⁴ When a school adopts a bike ban, it may be taking on a new area of responsibility that exposes it to liability if students suffer injury.⁵

An incident in Colorado illustrates the risk school districts can face by adopting a bike ban. A Colorado school district prohibited younger students from biking to school.⁶ One morning, a first grader secretly borrowed a bike and rode it to school when he thought he had missed the bus. At the end of the day, the child left school on the bike and was hit by a car. The Colorado Supreme Court explained that by creating a policy banning bicycle use for younger students and providing teacher supervision to ensure "that bus students got on buses and that bicycle students left school in a safe fashion," the district may have assumed the duty to enforce its ban.⁷ By failing to properly carry out this duty, the district could be found liable for the child's injuries.⁸

As a result, school districts may be increasing their legal risk when they prohibit students from bicycling to school.

Districts can encourage students to walk or bike to school while minimizing risk of liability by taking specific steps:

- Establish clear policies explaining that families are responsible at all times for their children's safety on the way to and from school and setting out the role of the school district, the family, and others.
- Provide support to community members who are running programs that encourage biking and walking to school.⁹
- Operate district-run walk to school programs that follow good safety practices, have adequate insurance, and communicate clearly about the scope of district responsibility.
- Offer bicycle and pedestrian safety classes for students and families.
- Work with local officials to address street hazards on the route to school and raise funds to improve street infrastructure for students.
- Work to reduce congestion around the campus before and after school hours by creating bicycle and walking trains, carpooling opportunities, and other creative tactics.

We offer additional resources with specific guidance for districts looking to support walking and bicycling while minimizing their risks: www.changelabsolutions.org/publications/SRTS-resources.



Are Bike Bans Illegal?

The law is unclear about whether bike bans are illegal. Because no court has weighed in on this issue, it remains an open question. But districts should tread carefully before adopting or maintaining a bike ban: Two significant legal issues may present serious obstacles.

1. Schools only have the authority given by state law.

The role of schools is to educate children. Their authority comes from the state, and they have only as much authority as the state gives them. States empower school districts to educate children, but they do not grant districts general authority over students' well-being.

The question of whether a school district has the authority to regulate biking will depend upon how broad the authority provided in a given state is and how courts have interpreted that authority. In some states, the law gives school officials authority over students only when they are on campus during school hours.¹⁰ In those states, the law likely does not allow a school district to ban bicycle riding on the way to and from school, although schools can probably always ban parking a bicycle on campus.

“School leaders are constantly balancing their community’s values, beliefs, and priorities as they work to provide the best and safest learning environment possible. As districts work to ensure student safety, school leaders should be careful not to inadvertently expand their scope of authority and or expose the district to unnecessary liability.”

~Martin Gonzalez

Assistant Executive Director, Member Services
California School Boards Association

Other states provide authority that is a bit broader. For example, in New Jersey, schools have authority to regulate behavior on the way to and from school where it involves “disorderly conduct.”¹¹ Still other states give much broader authority to districts regarding off-campus student behavior.¹² In an early case, one of the few cases to address this question, a state court permitted a ban on students driving cars during lunchtime. The court determined that the school district had authority to control student behavior for the benefit of the school as a whole, and the court agreed that prohibiting driving at lunch benefited the school.¹³

But even in a state that gives schools broad authority, school rules cannot be arbitrary.¹⁴ Schools may find it quite difficult to justify prohibiting off-campus student conduct that does not pose a danger to others and that advances the educational mission of the school while improving student health. School officials typically can

punish students for illegal conduct outside of school if the activity has a direct and immediate effect on school discipline and the welfare of other students.¹⁵ But when a student’s off-campus activity does not threaten to disrupt the school or to endanger other students, it typically will be up to the student’s parents to decide what rules apply to that activity.¹⁶

Unlike selling drugs or harassing other students, biking to school is not the kind of conduct that has been found to negatively affect the discipline and welfare of a school. School districts may find it challenging to show that they have the authority to establish a bike ban.

2. Parents’ constitutional rights may limit school authority.

Even if a school has authority under state law to ban bicycling, a ban nevertheless may be struck down if it is found to be inconsistent with parents’ fundamental constitutional right to direct the upbringing of their children.¹⁷

Laws in the United States protect both a school’s authority to set rules for students to avoid disruption at school and also a parent’s authority to decide how to raise his or her children. When presented with a



conflict between these two, courts are likely to reject school rules that stray too far into the realm of the parent's authority.¹⁸

At the same time, courts tend to defer to schools, even in the face of a parental rights challenge, when the rule challenged is closely tied to the school's educational mission. For example, courts have upheld mandatory community service requirements as a valid exercise of school authority.¹⁹

A rule that prohibits students from biking to school reaches beyond the school campus to regulate student activities on the way to and from school. Whether schools violate parents' constitutional rights by doing so is not yet clear in the law. Nevertheless, school districts may want to avoid lawsuits and challenges by adopting policies that support bicycle safety, rather than taking the dubious step of banning bicycle use.

Conclusion

Thoughtful policies that encourage students to bike to school serve everyone's interests. These policies limit school liability for injuries when children are traveling to and from school, respect parental rights to decide how their children will travel to school, and support student health and educational success. These policies also can provide the impetus for communities to undertake street scale improvements that can improve safety and mobility for all.

Unintended Consequences of Bike Bans

- Bike bans can put families without cars at a disadvantage, especially in communities where school bus service or public transportation is limited.
- By passing bike ban policies, school districts limit their ability to respond to steep increases in gas prices. Expensive fuel drives up costs for schools and families, often reducing school bus availability while imposing a heavy burden on families that must drive.
- Bike bans may create impediments for students with disabilities. Some students with disabilities may not be able to walk but can use a modified bicycle.
- Bike bans may affect students who ride as passengers on their parents' bikes.



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- ¹ Dellinger AM and Staunton CE. "Barriers to Children Walking and Biking to School – United States, 1999." *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, August 16, 2002.
- ² See, e.g., McMillan T. *Walking and Biking to School, Physical Activity and Health Outcomes*. San Diego, CA: Active Living Research, 2009. Available at: http://216.92.169.205/files/ALR_Brief_ActiveTransport.pdf. Sibley BA and Etnier JL. "The Relationship Between Physical Activity and Cognition in Children: A Meta-Analysis." *Pediatric Exercise Science*, 15(3): 243-256, 2003. Safe Routes to School National Partnership. *Getting Students Active through Safe Routes to School: Policies and Action Steps for Education Policymakers and Professionals*. 2010. Available at: www.saferoutespartnership.org/media/file/EducatorsGuide.pdf. Trost, SG. *Active Education: Physical Education, Physical Activity and Academic Performance*. San Diego, CA: Active Living Research, 2009. Available at: http://216.92.169.205/files/Active_Ed_Summer2009.pdf.
- ³ See, e.g., *Honeycutt by and through Phillips v. City of Wichita*, 251 Kan. 451 (1992) (holding school had no duty to ensure that someone was available to pick up kindergarten students after class or to post safety patrols at train tracks, and therefore could not be held liable for child's injuries from train accident while walking home) (collecting and discussing cases).
- ⁴ In a 2002 decision from Utah, the Supreme Court divided over whether a district was liable for injuries a child suffered on the way back to school for a mandatory conference. See *Young v. Salt Lake City Sch. Dist.*, 52 P.3d 1230 (Utah 2002). The majority held that the child was not in the district's custody so the district had no duty of care. *Id.* at 1236. The Chief Judge disagreed and would have held the district liable because it scheduled the mandatory conference at a time when no crossing guard would be present and had notice of the hazardous street crossing, and because parents reasonably relied on the district to ensure that the same safety precautions taken during the school day would be in effect. *Id.* at 1238-39.
- ⁵ See *Jefferson Cnty. Sch. Dist. R-1 v. Justus by and through Justus*, 725 P.2d 767, 771-72 (Colo. 1986) (explaining that in addition to duties imposed by law, "a separate and distinct body of law holds that a party may assume duties of care by voluntarily undertaking to render a service" and remanding for determination of what service, if any, the district had undertaken when it placed teachers in front of the school at the end of the day).
- ⁶ *Id.* at 768 (noting school policy reserving bicycle privileges to students in grades 4-6).
- ⁷ *Id.* at 769, 772. The parents also would have to show that they had relied on the school to enforce its bike ban, but that issue could not support summary judgment in favor of the school when it was first raised in briefs to the Supreme Court.
- ⁸ *Id.*
- ⁹ Safe Routes to School was established in 2005 as part of the federal transportation bill. It provides federal funds to states for three purposes: "(1) to enable and encourage children, including those with disabilities, to walk and bicycle to school; (2) to make bicycling and walking to school a safer and more appealing transportation alternative, thereby encouraging a healthy and active lifestyle from an early age; and (3) to facilitate the planning, development, and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools." Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (Public Law 109-59), Sec. 1404. Safe Routes to School Program. Available at: www.gpo.gov/fdsys/pkg/PLAW-109publ59/html/PLAW-109publ59.htm; see generally, Safe Routes to School National Partnership. *What is Safe Routes to School?* Available at: www.saferoutespartnership.org/about/what-is-safe-routes-to-school (no date; last accessed Aug. 15, 2012); National Safe Routes to School Task Force. *Safe Routes to School: A Transportation Legacy – A National Strategy to Increase Safety and Physical Activity among American Youth*. Washington, D.C.: 2008. Available at: www.saferoutesinfo.org/sites/default/files/task_force_report.web.pdf.
- ¹⁰ See, e.g., *Bartel v. Palos Verdes Peninsula Sch. Dist.*, 83 Cal.App.3d 492, 500 (Cal. Ct. App. 1978) (noting limitations on duty to supervise in light of practical and budgetary constraints, and finding "no special circumstances here which would impose a general duty on the school district to supervise and control the conduct of persons on its premises apart from school-related activities and functions which require persons to be on school grounds.").
- ¹¹ N.J. Stat. Ann. § 18A:25-2 (West 2012).
- ¹² See, e.g., 24 Pa. Cons. Stat. Ann. § 13-1317 (West 2012) ("Every teacher, vice principal and principal in the public schools shall have the right to exercise the same authority as to conduct and behavior over the pupils attending his school, during the time they are in attendance, including the time required in going to and from their homes, as the parents, guardians or persons in parental relation to such pupils may exercise over them.") (emphasis added). See also 105 Ill. Comp. Stat. Ann. 5/24-24 (West 2012) ("In all matters relating to the discipline in and conduct of the schools and the school children, they stand in the relation of parents and guardians to the pupils. This relationship shall extend to all activities connected with the school program, including all athletic and extracurricular programs, and may be exercised at any time for the safety and supervision of the pupils in the absence of their parents or guardians.") (emphasis added).
- ¹³ *McLean Indep. Sch. Dist. v. Andrews*, 333 S.W.2d 886, 888-90 (Tex. Civ. App. 1960) (upholding school rule prohibiting students from leaving campus by car at lunch time).
- ¹⁴ See *Meyer v. Nebraska*, 262 U.S. 390, 403 (1923) (overturning school regulation that lacked an "adequate foundation for the suggestion that the purpose was to protect the child's health by limiting his mental activities").
- ¹⁵ See, e.g., *Howard v. Colonial Sch. Dist.*, 621 A.2d 362, 365-66 (Del. Super. Ct. 1992) (rejecting challenge to expulsion based on student's off-campus drug sales).
- ¹⁶ Thus, courts have struck down generally applicable rules that regulated students' off-campus conduct. See, e.g., *Hobbs v. Germany*, 94 Miss. 469 (1909) (holding invalid a school rule that required students to stay home in the evening to work on homework); *Dritt v. Snodgrass*, 66 Mo. 286, 297 (1877) (Judge Norton, concurring) (holding school lacked authority to expel student for attending a party in the evening) ("It certainly could not have been the design of the Legislature to take from the parent the control of his child while not at school, and invest it in a board of directors or teacher of a school.").
- ¹⁷ *Meyer*, 262 U.S. at 403 ("the term [liberty] . . . [includes] the right of the individual to . . . establish a home and to bring up children . . ."); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (affirming parental right to prevent 14- and 15-year-old Amish children from attending school, as free exercise exemption from state compulsory education law). If it can be shown that a bike ban implicates this fundamental right, the rule would be subject to strict scrutiny and would be unlikely to survive a court challenge.
- ¹⁸ Courts follow a rule called "constitutional avoidance" that says they must avoid answering new constitutional questions whenever possible. *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009) ("The so-called canon of constitutional avoidance is an interpretive tool, counseling that ambiguous statutory language be construed to avoid serious constitutional doubts."). Under that rule, if there is any way to interpret a bike ban narrowly and thereby avoid having to answer a constitutional question about the scope of parental rights, courts will do so.
- ¹⁹ See *Inmediato v. Rye Neck Sch. Dist.*, 73 F.3d 454 (2d Cir. 1996) (rejecting parental challenge to community service requirement); *Herndon v. Chapel Hill-Carrboro City Bd. of Educ.*, 89 F.3d 174 (4th Cir. 1996) (same).