



# Safe Routes to School

## Minimizing Your Liability Risk in California



Safe Routes to School (SRTS) programs bring many benefits to children's health, but fears of liability—largely unwarranted—can be an unfortunate barrier to their adoption. By acting responsibly and understanding the liability issues in question, schools, nonprofits, and parent groups can help students reap the benefits of SRTS programs while minimizing the risk of a lawsuit due to injury. In fact, well-run SRTS programs can even reduce a school's risk of liability by identifying potential dangers and taking steps to protect children against injury.

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, nonprofits, parent groups, and others can reduce the risk of liability.

What's the upshot? The best way to avoid a lawsuit is to act with care and take reasonable steps to prevent harm from occurring in the first place. By following established best practices for running SRTS programs<sup>1</sup> and taking note of the tips highlighted below, program organizers can not only prevent injuries but also avoid liability. In California, school districts and volunteers have significant protections and immunities from many aspects of liability that relate to SRTS. As a general matter, it is worth remembering that districts and organizers need to act with reasonable care to anticipate and prevent injuries, but they do not need to guarantee safety to avoid liability.

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## Background

The health of children in California is in danger. One of every three California children is overweight or obese, and increasing numbers of children are developing type 2 diabetes, which can lead to dire health consequences.<sup>2</sup> Low levels of physical activity contribute to these and other health problems.<sup>3</sup> In fact, state testing demonstrates that more than 70 percent of children in California are not physically fit.<sup>4</sup>

*Because liability issues are very fact dependent, you may wish to consult with a local lawyer about your specific issues and figure out how best to structure your SRTS program to minimize liability concerns.*

Walking or bicycling to school is a simple way for children to get more physical activity, lower their risk of obesity, and improve their overall health.<sup>5</sup> When children exercise before school, they arrive focused and ready to learn.<sup>6</sup> Walking and bicycling to school reduces air pollution and traffic congestion around schools and

neighborhoods. Because fewer car trips mean lower greenhouse gas emissions, walking and bicycling to school also helps the environment.<sup>7</sup>

Although some children walk or bicycle without an organized program, many schools, parent groups, nonprofits, and collaborations have adopted formal programs to encourage more children to walk and bike to school. SRTS initiatives can range from the exploratory—hosting an annual Walk to School Day, for instance—to the robust. A strong SRTS program involves many pieces: safety audits that result in more infrastructure and traffic enforcement near schools,

maps and recommendations for safer routes, and organized “walking school buses” or “bicycle trains” in which adults supervise groups of children as they walk or bike to school together. In California, funding for SRTS programs and improvements is available from the federal government and the state government.<sup>8</sup> Caltrans (the California State Department of Transportation) oversees both state and federal funding streams, which support not only school encouragement programs but also safety improvements to sidewalks and street crossings near schools.

Despite the important benefits of SRTS, fear of liability can keep schools from embracing these programs. But such fears can be largely alleviated by bearing these key facts in mind:

- To date, there are no known lawsuits involving an injury to a child in an organized SRTS program, although there are programs in place at more than 4,500 schools around the country.
- Concerns about liability are often much greater than actual risks.<sup>9</sup>
- Commonsense precautions go a long way toward avoiding liability risk. In fact, SRTS programs can *decrease* schools’ liability exposure by addressing hazards systematically.<sup>10</sup>
- School districts in California have meaningful protection against liability through “governmental immunity” (discussed later in this fact sheet).

## Understanding Negligence

The key to preventing liability is to avoid being negligent. *Negligence* occurs when a person or entity doesn’t act as carefully as an ordinary, reasonable person would under the circumstances, and as a result someone is injured or property is damaged. The biggest reason to avoid negligence in setting up and running SRTS programs is to protect the safety of the children involved, of course. In addition, avoiding negligence is crucial to minimizing the risk of liability, because even if someone does get hurt, there will generally be no liability if the harm was not caused by negligence.

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Liability for negligence requires that all four of the following elements be present: *duty*, *breach*, *causation*, and *damages*.

*Duty* refers to a legal obligation to act with a required level of care toward another person.<sup>11</sup> Schools in California have a duty to exercise “reasonable care” in supervising children during the school day,<sup>12</sup> but generally do not have this duty after children have left school property.<sup>13</sup> (Whether or not a school had a duty in any given case, however, can be a very complex question.<sup>14</sup>)

*Breach* is a failure to comply with a duty. In this case, it is usually a failure to act with reasonable care.

*Causation* means that the breach of duty must cause the harm that occurred.

*Damages* refer to the injury or harm that results from the breach.

Negligence is very dependent on the circumstances: many actions are reasonable in some situations but not in others. It might be negligent to let a young child in your care run ahead of you on a busy street, for example, but not in a park.

Even where the four elements of negligence are present, the negligent person or entity may still have

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some protection from a charge of negligence. For instance, some individuals and entities are granted *immunity* as a matter of public policy,<sup>16</sup> and no liability will be found even if negligence can be

shown. School districts have a type of immunity known as *governmental immunity*. The protections provided to schools by governmental immunity are discussed in more detail below, in “Special Tips for Schools.”

At its core, negligence is a practical, commonsense concept that turns on whether a person has behaved with reasonable care in a particular situation. Districts and SRTS program organizers need to act with reasonable care to anticipate and prevent injuries, but they do not need to guarantee safety to avoid liability.

## Reducing Risks Through SRTS

Before adopting any school program, districts assess the risks and benefits. In SRTS programs, the risks are manageable, while the benefits for children’s short-term and long-term health are considerable. As with other school programs, risk management—the process of analyzing exposure to risk and determining how best to handle it—can help school districts adopting SRTS programs minimize their risk.

SRTS programs can play an important role in risk management for districts<sup>15</sup> by identifying possible dangers to children as they travel to and from school and then instituting reasonable precautions to protect against these dangers. For example, by reducing the number of cars near schools, and making sure they drive at slower speeds, SRTS programs make areas near schools safer for children. The programs also educate children about traffic safety, and infrastructure upgrades help eliminate hazards for everyone on the road—bicyclists, pedestrians, and cars too.

As a result, SRTS programs actually decrease the likelihood of an injury occurring in the first place and can reduce the risk of liability if there is an injury—not only for children who begin walking to school as a result of a new SRTS program, but also for children who are already walking or bicycling to school without a formal program in place.



## Reducing Liability Risk: Practical Tips

This checklist offers suggestions to reduce liability and increase children’s safety for anyone running a SRTS program—school districts, community and parent groups, or local agencies. For specific recommendations and considerations for school districts, see “Special Tips for Schools,” on page 5.

### For all SRTS programs:

- Think through the possible dangers that exist near your school.
- If it’s reasonably easy to eliminate or avoid specific dangers, do so. Is there something broken or poorly designed that can be fixed reasonably easily? By working with the city or county, you can potentially increase traffic safety near the school. Or, children may be able to avoid the danger by entering or leaving the school through a different door or gate, or by taking a different route.
- Take other reasonable actions to reduce the danger. Encouraging certain behaviors—such as holding a buddy’s hand while walking past a mild danger—can keep children safer. Use your judgment to decide whether encouraging a specific action is a good idea under the circumstances.
- Educate children so that they act safely. Local police are often available to provide bicycle, pedestrian, and traffic safety training, as are trainers from local bicycle shops and nonprofit organizations.<sup>17</sup>
- If you’ve put meaningful effort into reviewing and addressing possible hazards, document the steps you’ve taken.
- Comply with relevant school district policies or state and local laws.
- Where possible, make sure your insurance covers your activities. In California, state PTA insurance may provide coverage for some liability risks if the PTA has endorsed a SRTS program.

### If your SRTS program creates maps with suggested routes to school:

- Engage your city or county staff—especially transportation, law enforcement, and public works officials in identifying suggested routes. Providing good routes to schools is part of local government’s responsibility, and the collaboration may also help you form relationships that will lead to improved infrastructure and law enforcement near your schools.

- Explain orally and in writing that parents remain responsible for getting their children to and from school safely, and that neither the school nor the SRTS organizer is taking responsibility for those travels by providing suggested routes.
- Emphasize that new hazards or conditions may arise, and that parents and children should exercise common sense in following the maps.
- Preferably, refer to routes as “recommended” or “suggested” routes rather than “safe routes.”

### If you are implementing a “walking school bus” or “bicycle train” program:

- Identify any hazardous areas on the routes before beginning the program and adopt reasonable precautions to avoid or protect against dangers.
- Develop safety rules for the walking school bus or bicycle train. Educate participating children, and give them opportunities to practice the rules under supervision. Bear in mind the ages of the children who will participate. Children’s ability to comply with safety rules varies with their age, and negligence law takes these differences into account.

### If you are working with volunteers:

- Screen volunteers. All communities should have some sort of screening procedure to confirm that potential volunteers understand the importance of acting with reasonable care, in light of the fact that children’s safety will be in their hands. In addition, it’s wise to routinely check potential volunteers against the California Department of Justice’s Sexual Offender (Megan’s Law) website ([www.meganslaw.ca.gov](http://www.meganslaw.ca.gov)) to ensure that convicted sex offenders are not permitted to volunteer.
- Some communities may wish to engage in more extensive volunteer screening, such as criminal background checks. For other communities, such checks may be prohibitively expensive or may have unintended consequences, such as discouraging volunteer participation.<sup>18</sup>
- Train and monitor volunteers.
- Occasionally, volunteers themselves express concern about their potential liability. The federal Volunteer Protection Act shields volunteers in California and most other states from liability for actual or alleged negligence. (See PHLP’s “Volunteers and Liability” fact sheet for more information about liability protections for volunteers.<sup>19</sup>)

## Special Tips for Schools: The Ins and Outs of Immunity

Because school districts have additional liability protection provided through governmental immunity, they should consider some additional points about SRTS and liability that do not apply to other groups.

**Governmental immunity protects California school districts from liability.** Governmental immunity shields public money and governmental decision-making from lawsuits.<sup>20</sup> Under California law, immunity protects districts for “discretionary” actions and decisions.<sup>21</sup> Although it is hard to definitively figure out exactly what is and is not a “discretionary” decision, court cases tell us that in California, discretionary decisions that are immune from liability:

- *Certainly* include simply sponsoring or endorsing SRTS programs that are run by others.<sup>22</sup>
- *Probably* include planning or setting up a program.<sup>23</sup>
- *May* include specific decisions made while running a program that are “discretionary.”<sup>24</sup>

*School districts and nonprofits can manage the risks of liability by taking commonsense precautions and addressing hazards responsibly.*

### **Sponsoring or endorsing a SRTS program will rarely subject a school district to any direct liability.**

The extent of protection provided by governmental immunity varies from state to state.<sup>25</sup> However, in California and other states, school districts are entirely immune from liability for

sponsoring or endorsing a program.<sup>26</sup> Sponsoring a program can involve permitting it to take place, informing families about it, or providing funding or other support. Sponsoring is distinct from *implementing*, which involves structuring a program, setting it up, and actually running it.

When a school district is simply sponsoring a SRTS program that is being run by others, it is not responsible for how the program is run. However, if the district becomes aware of a safety problem—for example, a volunteer who is failing to supervise children adequately—it should not continue to sponsor the

program without taking action. The district should let families know there is a problem, make sure the problem is resolved, and stop supporting the program if the problem is not adequately addressed.

### **School districts can also plan and run SRTS programs.**

In California, districts likely also have immunity for *planning* SRTS programs, though probably not for running them.<sup>27</sup> However, even though districts in California are not clearly immune from liability when they plan and run SRTS programs, this does not need to discourage districts’ involvement in these activities. Districts can engage in these activities even where they’re not immune, although of course they should follow the general tips outlined earlier to minimize liability. By acting responsibly and making sure that activities are covered by insurance or a liability risk pool, districts can plan and run SRTS programs without taking on unnecessary risk.

**Be explicit about whether or not you are taking on a new duty toward students.** Remember, people and organizations are only liable for negligence if they had a legal obligation to exercise care (a duty) toward the person injured. In California, school districts generally do not have a legal responsibility to protect students from harm on the way to and from school, unless specific exemptions apply.<sup>28</sup> In other words, districts are immune from liability for injuries to students that occur off-campus, except under certain circumstances, such as when the district

provides school bus transportation or if a district “specifically assumed such responsibility.”<sup>29</sup> Schools should be clear with families about what responsibilities they are or are not taking on. For example, California schools may want to explicitly state that they have not assumed responsibility for the safety of walking or bicycling routes, and clarify that families should determine for themselves whether the routes are suitable for their children.

*Supporting and implementing SRTS programs can help schools and other organizations decrease their liability exposure while giving children the physical activity they need to be healthy and learn well.*





**Exercise “reasonable care” in what you do.** When a school has assumed a duty, it must be reasonable in carrying it out. For example, if a school voluntarily chooses to provide a crossing guard, it should not simply discontinue this service without at a minimum providing ample notice to parents and students. Schools should exercise care in how they dismiss children from school for the day, and take precautions to avoid harm to children from known dangers on or near the school property. These are good practices even where immunity will protect the school from liability.

**Insurance provides an important back-up protection.**

Where possible, school districts should make sure their insurance or liability risk pool covers their SRTS activities, as protection against the chance that something unexpected could occur.

**In Summary**

School districts and nonprofits can manage the risks of liability associated with setting up and running SRTS programs—risks that are often exaggerated—by taking commonsense precautions and addressing hazards responsibly. Supporting and implementing SRTS programs can help schools and other organizations decrease their liability exposure while giving children the physical activity they need to be healthy and learn well.

**Additional Resources**

**Safe Routes to School National Partnership Resources:**

More resources are available from the Safe Routes to School National Partnership, which advocates for safe bicycling and walking to and from school at local, state, and national levels.

[www.saferoutespartnership.org](http://www.saferoutespartnership.org)

**More PHLP resources:**

PHLP’s “Safe Routes to School: An Overview for California Advocates” provides more background and resources on SRTS programs.

[www.phlpnet.org/phlp/products/SRTS-CA-resources](http://www.phlpnet.org/phlp/products/SRTS-CA-resources)

PHLP’s “Liability for After-Hours Use of School Facilities” fact sheet has additional general background on liability, myths and reality of liability, the elements of negligence, governmental immunity, and more.

[www.nplan.org/nplan/products/liabilitysurvey.30](http://www.nplan.org/nplan/products/liabilitysurvey.30)

PHLP’s “Volunteers and Liability” fact sheet has more information about protections for volunteers against liability.

[www.phlpnet.org/childhood-obesity/products/SRTS-resources](http://www.phlpnet.org/childhood-obesity/products/SRTS-resources).

**The National Center for Safe Routes to School has a variety of helpful resources on safety and liability, including:**

“10 Tips for Safe Routes to School Programs and Liability.”

[www.saferoutesinfo.org/resources/collateral/liabilitytipsheet.pdf](http://www.saferoutesinfo.org/resources/collateral/liabilitytipsheet.pdf)

“Tips for Creating Walking and Bicycling Route Maps.”

[www.saferoutesinfo.org/resources/collateral/walkbikeroutetipsheet.pdf](http://www.saferoutesinfo.org/resources/collateral/walkbikeroutetipsheet.pdf)

“Assessing Walking and Bicycling Routes: A Selection of Tools.”

[www.saferoutesinfo.org/resources/collateral/Assessing\\_Walking\\_and\\_Bicycling\\_Routes.pdf](http://www.saferoutesinfo.org/resources/collateral/Assessing_Walking_and_Bicycling_Routes.pdf).

- <sup>1</sup> The Safe Routes to School National Partnership ([www.saferoutespartnership.org](http://www.saferoutespartnership.org)) and National Center for Safe Routes to School ([www.saferoutesinfo.org](http://www.saferoutesinfo.org)) both have considerable information on best practices for running SRTS programs.
- <sup>2</sup> California Department of Education. *Healthy Children Ready to Learn: A White Paper on Health, Nutrition, and Education*. 2005, available at: [www.cde.ca.gov/eo/in/se/yr05healthychildrenwp.asp](http://www.cde.ca.gov/eo/in/se/yr05healthychildrenwp.asp); Center for Disease Control and Prevention – Diabetes Public Health Resources – Publications and Products. *National Diabetes Fact Sheet – Prevalence of Diagnosed Diabetes in People Younger Than 20 Years of Age, United States, 2007*, available at: [www.cdc.gov/diabetes/pubs/estimates07.htm#3](http://www.cdc.gov/diabetes/pubs/estimates07.htm#3).
- <sup>3</sup> Centers for Disease Control and Prevention. *Overweight and Obesity. Contributing Factors*. 2009; Jebb S and Moore M. “Contribution of a sedentary lifestyle and inactivity to the etiology of overweight and obesity: current evidence and research issues.” *Med. Sci. Sports Exerc.*, 31 (11): S534-S541, 1999.
- <sup>4</sup> California Department of Education. *Healthy Children Ready to Learn: A White Paper on Health, Nutrition, and Education*. Back to State of Education Address, January 24, 2005. Available at: [www.cde.ca.gov/eo/in/se/yr05healthychildrenwp.asp](http://www.cde.ca.gov/eo/in/se/yr05healthychildrenwp.asp).
- <sup>5</sup> Active Living Research. *Walking and Biking to School, Physical Activity and Health Outcomes*. May 2009. Available at: [http://216.92.169.205/files/ALR\\_Brief\\_ActiveTransport.pdf](http://216.92.169.205/files/ALR_Brief_ActiveTransport.pdf).
- <sup>6</sup> See, e.g., Sibley B & Etnier J. “The relationship between physical activity and cognition in children: A meta-analysis.” *Pediatric Exercise Science*, 15: 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*. June 2010, pp. 6-12, available at: [www.saferoutespartnership.org/media/file/EducatorsGuide.pdf](http://www.saferoutespartnership.org/media/file/EducatorsGuide.pdf); *Active Living Research. Active Education: Physical Education, Physical Activity and Academic Performance*. Summer 2009. Available at: [http://216.92.169.205/files/Active\\_Ed\\_Summer2009.pdf](http://216.92.169.205/files/Active_Ed_Summer2009.pdf).
- <sup>7</sup> US Environmental Protection Agency. *Climate Change – What You Can Do*. Available at: [www.epa.gov/climatechange/wycd/road.html](http://www.epa.gov/climatechange/wycd/road.html).
- <sup>8</sup> [www.dot.ca.gov/hq/LocalPrograms/saferoutes/saferoutes.htm](http://www.dot.ca.gov/hq/LocalPrograms/saferoutes/saferoutes.htm); see also Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), 23 U.S.C.A. §§ 148(a)(3)(B)(xix), 402 (West 2010).
- <sup>9</sup> Baker T. *Overview Memo for Liability Risks for After-Hours Use of Public School Property to Reduce Obesity: A Fifty-State Survey*. March 2010, pp. 2-3. Available at: [www.nplan.org/system/files/Overview\\_JointUse\\_Final\\_SP\\_KW\\_20100602.pdf](http://www.nplan.org/system/files/Overview_JointUse_Final_SP_KW_20100602.pdf).
- <sup>10</sup> Gavin K. “Safe Routes to School: Putting Traffic Safety First – How Safe Routes to School Initiatives Protect Children Walking and Bicycling.” *Safe Routes to School National Partnership*. December 2009.
- <sup>11</sup> Cal. Civ. Code. § 1714(a) (West 2011).
- <sup>12</sup> *Brownell v. Los Angeles Unified School District*, 4 Cal. App. 4th 787, 795-796 (1992).
- <sup>13</sup> Cal. Educ. Code § 44808 (West 2010).
- <sup>14</sup> If an action taken while a child is in the school’s custody is the cause of later injury—for example, failing to supervise a child so that she wanders away from the school and is later hurt—negligence may be found despite the fact that the school did not have a duty to supervise at the time the injury occurred.
- <sup>15</sup> Gavin K. *supra* note 10.
- <sup>16</sup> In some states, nonprofit organizations may qualify for a defense of charitable immunity. See, e.g., *Univ. of Va. Health Serv.s. Found. v. Morris*, 657 S.E.2d 512, 517 (Va. 2008). This doctrine is not as widely available as governmental immunity, but does provide an additional layer of protection for nonprofit organizations when applicable. However, charitable immunity is not available in California. *Malloy v. Fong*, 232 P.2d 241 (Cal. 1951).
- <sup>17</sup> In *Castaneda v. Community Unit School District No. 200*, the court, rejecting liability for a collision during a class bicycling outing, emphasized the extensive safety instruction provided to student bicyclists by their teacher. 268 Ill. App. 3d. 99, 106 (1994).
- <sup>18</sup> Rogers J. “Research Brief: Safe and Participatory Public Schools.” *UCLA, Institute for Democracy, Education, and Access*. June 2010 (discussing racial dimensions of mismatch between drug users and those convicted of drug related offenses, and exploring related negative effects on school volunteerism in communities of color). Available at: <http://idea.gseis.ucla.edu/publications/files/s-pschools5.pdf>.
- <sup>19</sup> Public Health Law & Policy. *Volunteers and Liability fact sheet*. Available at: [www.phlpnet.org/childhood-obesity/products/SRTS-resources](http://www.phlpnet.org/childhood-obesity/products/SRTS-resources).
- <sup>20</sup> Sovereign and governmental immunity (jointly discussed here under the term “governmental immunity”) describe the concept that the government cannot be sued unless it has agreed to allow such suits through, for example, a statute.
- <sup>21</sup> Cal. Gov. Code § 820.2 (West 2011).
- <sup>22</sup> See, e.g., *Ramirez v. Long Beach Unified School District*, 105 Cal. App. 4th 182, 190-192 (2002).
- <sup>23</sup> *Caldwell v. Montoya*, 897 P.2d 1320, 1325-1326 (Cal. 1995).
- <sup>24</sup> Decisions or actions made in implementing a program are generally considered not to be discretionary, and so not to be immune. *Id.*; *Barner v. Leeds*, 13 P.3d 704, 709 (Cal. 2000). However, courts have found schools’ implementation actions to be discretionary in the discipline arena, which might reflect a trend toward expanded immunity for schools’ implementation decisions. See *Davison ex rel. Sims v. Santa Barbara High School Dist.*, 48 F. Supp. 2d 1225, 1232 (C.D. Cal. 1998); *Skinner v. Vacaville Unified School Dist.*, 37 Cal. App. 4th 31, 39 (1995).
- <sup>25</sup> Georgia, for example, has extremely broad immunity for school districts and school officials, see *Kaylor v. Rome City Sch. Dist.*, 600 S.E.2d 723, 726 (Ga. App. 2004); *McDowell v. Smith*, 678 S.E.2d 922 (Ga. 2009), whereas the scope of governmental immunity in Oklahoma is considerably narrower, see *Robinson v. City of Bartlesville Bd. of Educ.*, 700 P.2d 1013, 1015-16 (Okla. 1985).
- <sup>26</sup> *Ramirez v. Long Beach Unified School Dist.*, *supra*, 105 Cal. App. 4th at 190-92.
- <sup>27</sup> *Caldwell v. Montoya*, *supra*, 897 P.2d at 1325-26.
- <sup>28</sup> Cal. Educ. Code § 44808.
- <sup>29</sup> *Id.*
- <sup>30</sup> For more about California law and school liability, see [www.nplan.org/nplan/products/liability-use-school-property-after-hours-overview-california-law](http://www.nplan.org/nplan/products/liability-use-school-property-after-hours-overview-california-law).



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