



**NATIONAL POLICY & LEGAL ANALYSIS NETWORK  
TO PREVENT CHILDHOOD OBESITY**



# Overcoming the Fear of Liability

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# Today's Roadmap

Introduction

How to Approach Liability Risk

Tort Liability 101: Overview

Tips for Specific SRTS Situations



**Ignoring dangers  
in the current  
environment can  
increase risk of  
liability.**



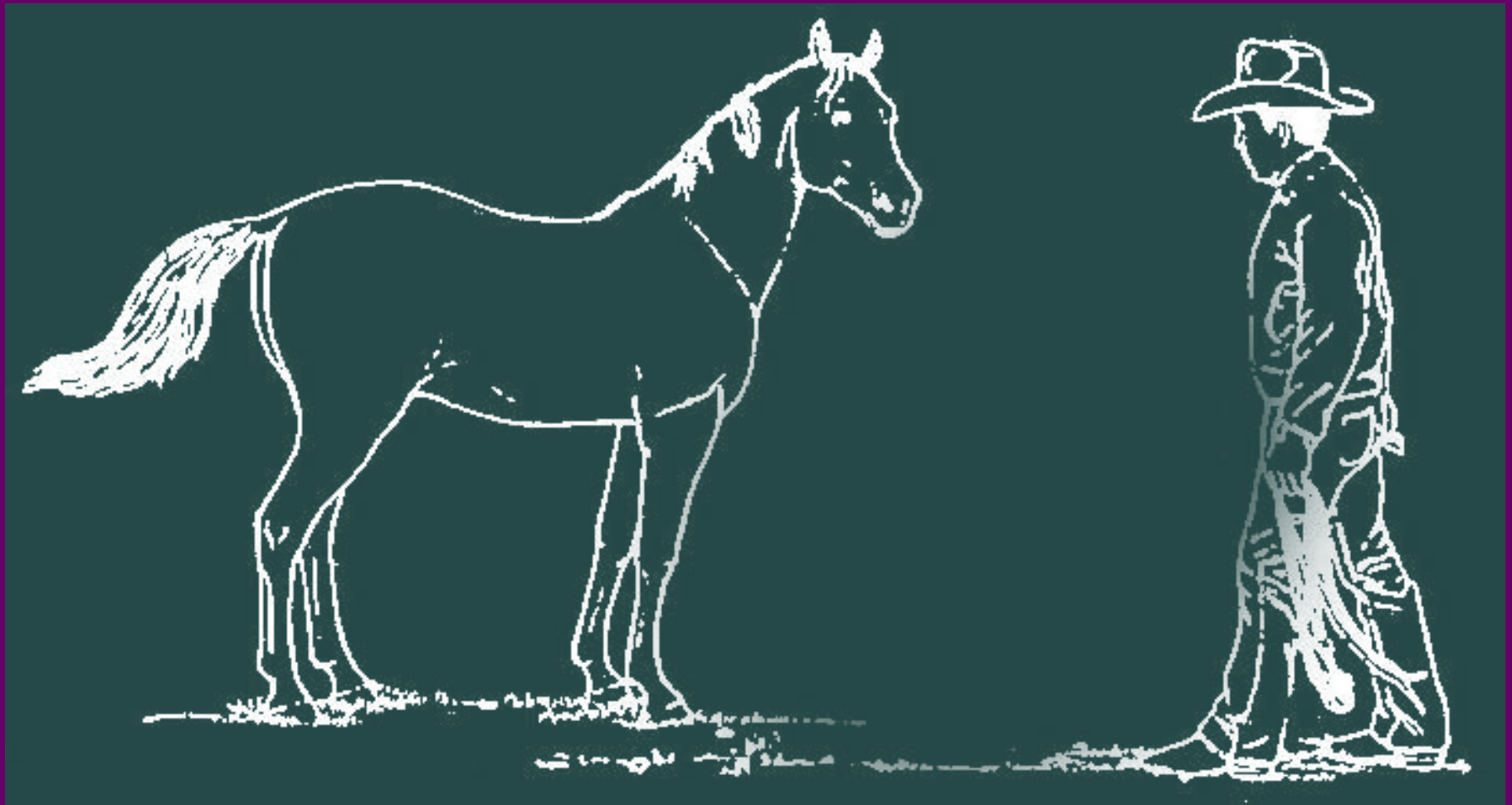
# What's the best way to avoid liability?

Avoid injury in the first place.

SRTS is a risk management program that can decrease children's likelihood of injury.



# How should you approach liability risk?



# Step One: Relax

*Liability risks are exaggerated.*

*Not a single case has been decided involving an injury that occurred as part of a SRTS program.*



# Step Two: Be Responsible

- Follow **sensible, standard** procedures.
- Use **reasonable care** in both setting up and running programs.
- Anticipate potential dangers



# Step Three: Have a Back Up Plan

*Insurance provides a final layer of protection*



# TORT LIABILITY 101

# What is a tort?



# A tort is:

An act (or omission) that injures someone in a way that the law deems worthy of compensation.

- Matter of state law
- The relevant tort here is **NEGLIGENCE**

# What Is Negligence?



*A practical, common-sense concept*

*The key: has a person behaved with reasonable care in the situation in question?*

# Elements of Negligence



Duty



Breach



Causation



Damages

# The Upshot: No Liability Unless...

- ✓ Someone did not act with reasonable care
- ✓ That carelessness caused the injury



# Duty

- Common sense not as helpful
- Legal duties don't necessarily align with moral imperatives
- Districts may increase their liability by taking on new areas of responsibility



# Defenses

- ✓ School districts
- ✓ Nonprofits
- ✓ Volunteers



# Elements of Negligence



Duty



Breach



Causation



Damages



Defenses

# Defense for Schools: Immunity

- No liability even though each element of negligence present.
- How it works varies by state.



# School Immunity in California



In California, immunity protects districts for **discretionary or planning** actions and decisions.

- *Certainly* includes simply sponsoring or endorsing SRTS programs that are run by others.
- *Probably* includes planning or setting up a program.
- *May* include specific “discretionary” decisions made while running a program.

# Defense for Nonprofits

No immunity in California



# Protections for Volunteers

Federal law: Volunteer Protection Act  
(applies in all states other than New Hampshire)

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## Volunteers and Liability The Federal Volunteer Protection Act

Volunteers are crucial to the fight against childhood obesity—leading kids in physical activity through Safe Routes to School programs and after-school activities, teaching cooking and gardening classes, and encouraging healthy lifestyles through many other programs. Volunteers often make it possible for financially stretched schools, nonprofits, cities, and counties to do more to create healthy communities and help children lead healthier lives.

But people sometimes worry that they could be at risk of liability if an injury occurs while they are volunteering. Fortunately, a federal law—the Volunteer Protection Act—provides volunteers with significant protections from liability associated with volunteer activity<sup>1</sup> in every state but one.<sup>2</sup> Some states also have laws that provide additional protections for volunteers.

The Volunteer Protection Act protects volunteers under many circumstances, although it does not eliminate the possibility of a lawsuit. It does not shield the nonprofit or governmental agency using the volunteer's services from liability; it only protects the volunteers themselves.

*People who volunteer for a nonprofit or school may be concerned about a lawsuit if an injury occurs. This fact sheet provides an overview of legal protections designed to shield volunteers from liability.*

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# The Act provides significant protection for:

- **Volunteers**
- **Acting in the scope of volunteer duty**
- **Who are negligent (or accused of negligence)**



# The Act does not protect:

- Volunteers who act with **extreme negligence or recklessness**
- Volunteers under the influence of **drugs or alcohol**
- **Nonprofit organizations**

# Tips for Specific Situations





# Walking School Buses

- ✓ Screen, train, and monitor volunteers
- ✓ Train kids on pedestrian safety rules
- ✓ Identify hazards and adopt reasonable precautions



# Recommended Routes

*If you create maps with suggested routes...*

- ✓ Work with your city to select routes & avoid hazards.
- ✓ Consider calling routes recommended or suggested routes, rather than safe routes.
- ✓ Revise the maps if you learn of new hazards.



# Insurance

- ✓ This area is confusing!
- ✓ When partners collaborate, insurance coverage from one may or may not protect another.
- ✓ Still, more sources of insurance are definitely better.



For more tips on how to minimize liability, consult our factsheet (at [www.nplan.org](http://www.nplan.org)).



## Safe Routes to School: Minimizing Your Liability Risk

*Safe Routes to School (SRTS) programs can help reduce schools' risk of liability while making it safer for students to walk or bike. This fact sheet explains why liability fears shouldn't keep schools from supporting SRTS programs, and offers practical tips for schools and community advocates.*

Some schools have been reluctant to support Safe Routes to School (SRTS) programs due to concerns about being sued if an injury or problem arises. But such fears are largely unwarranted. By acting responsibly and understanding the liability issues in question, schools, nonprofits, and parent groups can help students reap the health and academic benefits of SRTS programs while minimizing the risk of a lawsuit. In fact, well-run SRTS programs can even reduce schools' risk of liability by identifying potential dangers and putting measures in place to protect children against injury.

Because nonprofits, parent groups, and schools may all be involved in SRTS programs, it can be important for each of these groups to understand SRTS and liability. 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 and others can reduce their risk of liability.

Because liability issues vary from state to state, consulting with a local lawyer may be helpful in understanding your specific issues, as well as in structuring SRTS programs to minimize liability concerns.

# In Conclusion

*A general presentation such as this one cannot substitute for advice from a lawyer about your particular situation.*





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