

Crossing with Confidence

Managing Risk When Creating
Crossing Guard Programs in California



With careful planning and implementation, schools, cities, and counties can reduce their risk of liability when creating and operating crossing guard programs.

CROSSING GUARD PROGRAMS

Many California jurisdictions have set up successful crossing guards programs. However, some worry that implementing a program could significantly increase their risk of liability in the event of an injury. Others often assume that existing morning and afternoon routines are safest simply because everyone is used to them. But that's not always true. This fact sheet discusses the legal implications of establishing a crossing guard program and identifies concrete steps public entities – including school districts – can take to minimize their exposure to liability. Armed with in-depth knowledge of the key issues, school districts, municipalities, and active transportation advocates can protect themselves from liability while creating safe and effective crossing guard programs.

THE BENEFITS OF WALKING AND BICYCLING TO SCHOOL

As the Safe Routes to School movement continues to gain momentum across the country, it is clear that in many communities, not all children can easily and safely walk or bicycle to school, especially if their school is located near a busy or dangerous intersection. With proper training and equipment, crossing guards can play a critical role in ensuring that students who walk or bicycle to school arrive safely. Getting more children out of their parents' cars and onto their own feet also means that they – and their community – can take advantage of the many benefits that result from actively commuting to and from school:

Healthier Kids with Better Academic Performance

Students who walk and bicycle to school reduce their risk of obesity and diabetes, and improve their overall health.¹ They also start the school day more focused and engaged, get better grades,² and miss fewer days of school.³

Traffic Safety

Ten to 14 percent of morning rush-hour traffic is attributable to families driving their children to school.⁴ Getting children to walk to school reduces traffic congestion and lowers the risk of collisions.⁵

Improved Environment

Fewer car trips mean reduced greenhouse gas emissions and less air pollution.⁶ This, in turn, minimizes children's exposure to pollutants, which is of particular benefit to students with asthma.⁷

THE BASICS

California law does not require schools, cities, or counties to use crossing guards.⁸ The law does, however, expressly authorize school districts to employ crossing guards and seek reimbursement of the costs from traffic fines collected by the city or county in which the district operates.⁹

Many cities and counties voluntarily establish crossing guard programs under their inherent powers to protect the health and safety of the community. Such programs are usually operated by the police or sheriff's department or another municipal agency. In some cases, a school district and city or county jointly operate a program. Entities that run their own programs can either employ their own crossing guards, contract with a company that supplies crossing guards, or work with volunteers. Some communities simply hire outside contractors to run their programs.



Starting a Crossing Guard Program

The California Department of Transportation provides guidance for public entities that want to start school crossing guard programs.¹⁰

MANAGING RISK

Although establishing crossing guard programs can sometimes create risk, whatever risks that may arise can be readily managed with common sense measures. In fact, the same strategies that ensure a safe and effective crossing guard program can also minimize any related exposure to liability for schools, cities, and counties alike.

If a school district, city, or county voluntarily chooses to operate a crossing guard program, the district, city, or county owes students a legal duty to operate that program with reasonable care.¹¹ This does not mean that the jurisdiction must guarantee student safety; rather, the law simply requires that the jurisdiction take reasonable precautions when creating, implementing, and operating a crossing guard program.

Regardless of the entity operating the program, the following strategies will offer significant protection from liability and simultaneously enhance program effectiveness:

Clearly Specify When and Where Crossing Guards Will Operate

Public entities should identify the exact intersections where crossing guards will be located, specify the hours crossing guards will be on duty, and set a start date. As a general rule, schools with crossing guard programs will be protected from liability if a student is injured while crossing outside of a scheduled crossing guard shift or location.¹² Jurisdictions should work together (e.g., school districts should consult with law enforcement and transportation departments) to gather relevant information about traffic patterns, roadway hazards, etc. All of these decisions should be clearly documented.

Properly Screen, Train, and Equip Crossing Guards

Crossing guards have the important responsibility of ensuring a safe crossing for students. Therefore, they must be carefully selected, trained, and equipped. Crossing guards should be criminally screened¹³ and receive proper training.¹⁴ Crossing guards should also be outfitted with the proper equipment, such as vests and stop signs.

Prepare for Crossing Guard Absences and Changes in School Schedules

Once a program is established, school staff, parents, and children will rely on it. So it's essential that there are contingency plans to provide substitute crossing guards when there are absences or changes in school schedules.

Educate Teachers, School Staff, Students, and Families about the Program

It's important that teachers and other school staff understand the hours of program operation and other program parameters. The same is true for students and their families. Principals must also ensure that teachers release children from school while crossing guards are working.¹⁵

Verify Adequate Insurance

Insurance provides additional protection for public entities. Before beginning any new program, public entities should review their insurance policies. If a school or municipality hires an outside contractor to operate the program, make sure the contractor is adequately insured. If the program uses adult volunteers, consider extending workers' compensation coverage to them to protect both the volunteers and the public entity.

Weighing the Risks

Any risks associated with implementing a crossing guard program must be weighed against the risks of not using crossing guards (i.e., students crossing streets without supervision). Such risks should also be evaluated in light of the important benefits that come from making it safer for children to walk and bicycle to school.





IMMUNITY FOR PUBLIC ENTITIES AND EMPLOYEES

Public entities – and their employees – have an absolute defense of immunity from liability, even if their failure to act with reasonable care causes an injury. If immunity applies, the public entity or employee pays no damages regardless of their actions. While this immunity does not prevent a school or public employee from being sued, it does protect them from being held responsible.

Although there is no blanket immunity for crossing guard programs, public officials and employees generally have immunity for what are called “discretionary” actions.¹⁶ Discretionary actions generally cover all policy level decisions; in the context of crossing guard programs, this would include decisions about how to structure the program, the specific scope of the program (i.e., where to place crossing guards and during what hours), and whether to start or discontinue a program.

Additional Immunity for Schools

In California, schools generally are not responsible for students’ off-campus conduct or safety, even while students are traveling to and from school. This means that schools have special immunity protecting them from certain lawsuits involving student injuries that occur off campus.¹⁷

One exception to this special immunity occurs when a school provides transportation for students, or voluntarily assumes responsibility for their safety while off school premises, and an injury occurs while the student was (or should have been) under the immediate and direct supervision of a school employee.¹⁸ Because crossing guard programs assume a responsibility for students’ safety while they cross intersections, this exception would likely apply should an injury occur. But if a school were to use crossing guards who were *not* school employees, a school would likely still benefit from the special immunity since students would not be crossing under the immediate and direct supervision of a school employee. This is an important factor that schools may want to consider when determining how to structure their crossing guard program.



INDEPENDENT CONTRACTORS AND VOLUNTEERS

Depending on the circumstances, public entities sometimes can be liable for the negligent conduct of their independent contractors.¹⁹ Schools that use an outside contractor for all or part of their crossing guard program should make sure that any agreement provides that the contractor will reimburse the school district in the event that the district is held liable for the contractor's negligence.

Public entities generally have no liability for the acts of their volunteers,²⁰ including volunteer adult crossing guards or student safety patrols. Volunteers also have substantial protection for themselves under the federal Volunteer Protection Act.²¹

Volunteers and Workers' Compensation Insurance

Public entities may want to consider providing volunteers with workers' compensation insurance in case they are injured while volunteering.²² Expanding workers' compensation coverage to volunteers is often a fair and cost-effective way to protect the volunteers and the public entity.

Selecting Qualified Volunteers

Even if volunteers or contractors are responsible for operating the crossing guard program, or are serving as the crossing guards, the public entity must still use reasonable care in selecting qualified volunteers and contractors (and in the case of volunteers, take reasonable care to ensure they are properly trained and supervised). Otherwise, the public entity could be subject to liability for its own misconduct in failing to exercise reasonable care in its use of volunteers or contractors.

Case Study: Humboldt County Crossing Guard Program

In 2011, the Humboldt County Department of Health and Human Services (DHHS) received a five-year Safe Routes to School grant from the California Department of Transportation to develop a crossing guard program. DHHS developed the materials and curriculum to train local law enforcement, who in turn trained crossing guards who were already employed by school districts throughout the County. The training was successful; it provided consistency for crossing guards across different districts and allowed time to reinforce best practices.

Other schools in the county have been reluctant to start a crossing guard program because of limited resources. DHHS is therefore partnering with Eureka schools to pilot a volunteer crossing guard program. Using media and community outreach, the schools and DHHS are developing a volunteer recruitment plan. They are also establishing proper roles and responsibilities and identifying a coordinator to oversee scheduling and substitutes. The volunteer crossing guards will receive the same training as those in the other districts. They will also receive reflective jackets, stop signs, vests, and whistles. DHHS is working with the school district's risk management department to strategize ways to reduce the schools' exposure to liability.

Parents and school district officials have been very supportive of the program, and parents have stated that they are more likely to allow their children to walk to school.



THE BOTTOM LINE

When evaluating whether to create a crossing guard program, decision makers must examine existing practices, together with the proposed program, and carefully determine what would best serve the interests of students, their parents, and the surrounding community. Every option involves risks, and existing routines are not necessarily safer just because everyone is used to them. With careful planning and implementation, jurisdictions can significantly minimize their risk of liability when creating and operating crossing guard programs.²³

RESOURCE LIST

CALIFORNIA SAFE ROUTES TO SCHOOL TECHNICAL ASSISTANCE RESOURCE CENTER

www.casaferroutestoschool.org

CALIFORNIA DEPARTMENT OF TRANSPORTATION

Manual on Uniform Traffic Control Devices - Traffic Control for School Areas

www.dot.ca.gov/hq/traffops/engineering/mutcd/pdf/camutcd2012/Part7.pdf

NATIONAL CENTER FOR SAFE ROUTES TO SCHOOL

Adult School Crossing Guard Guidelines

http://guide.saferoutesinfo.org/crossing_guard/index.cfm

CHANGELAB SOLUTIONS

Get Out & Get Moving: Opportunities to Walk to School Through Remote Drop-Off Programs

www.changelabsolutions.org/publications/SRTS_remote_drop_off

Volunteers and Liability: The Federal Volunteer Protection Act

www.changelabsolutions.org/publications/SRTS-resources

Minimizing Liability Risk: A Fact Sheet about Safe Routes to School Programs

www.changelabsolutions.org/publications/SRTS-resources

Safe Routes to School District Policy Workbook

www.changelabsolutions.org/safe-routes/welcome



Learn More About CA4Health

CA4Health is the Public Health Institute's Community Transformation Grant, funded by the Centers for Disease Control and Prevention, that is focused on reducing the burden of chronic disease in California counties with populations under 500,000. CA4Health partners with some of the state's leading technical assistance providers and content experts to provide local county partners with tools, training and guidance to make their communities healthier. CA4Health's four strategic directions are reducing consumption of sugary beverages, increasing availability of smoke-free housing, creating safe routes to schools, and providing people with chronic disease with skills and resources to better manage their health.

See all of ChangeLab Solutions Resources on Safe Routes to School

www.changelabsolutions.org/childhood-obesity/safe-routes-schools

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ENDNOTES

- ¹ Davison KK, Werder JL and Lawson CT. "Children's Active Commuting to School: Current Knowledge and Future Directions." *Preventing Chronic Disease*, 5(3): 1-11, 2008. Available at: www.ncbi.nlm.nih.gov/pmc/articles/PMC2483568/pdf/PCD53A100.pdf; McMillan T. *Walking and Biking to School, Physical Activity and Health Outcomes*. San Diego: Active Living Research, 2009. Available at: http://activelivingresearch.org/files/ALR_Brief_ActiveTransport_0.pdf; see also Centers for Disease Control and Prevention (hereinafter, "CDC"). *Adolescent and School Health*. 2012. Available at: www.cdc.gov/healthyyouth/physicalactivity/facts.htm.
- ² See, e.g., Singh A, Uijtdeuwilgen L, Twisk JWR, et al. "Physical Activity and Performance at School: A Systemic Review of the Literature Including a Methodological Quality Assessment." *Archives of Pediatric and Adolescent Medicine*, 166(1): 49-55, 2012. Available at: <http://archpedi.jamanetwork.com/article.aspx?articleid=1107683>; Trost SG. *Active Education: Physical Education, Physical Activity and Academic Performance*. San Diego: Active Living Research, 2009. Available at: www.activelivingresearch.org/files/ALR_Brief_ActiveEducation_Summer2009.pdf.
- ³ Geier AB, Foster GD, Womble LG, et al. "The Relationship between Relative Weight and School Attendance Among Elementary Schoolchildren." *Obesity*, 15(8): 2157-61, 2007.
- ⁴ McDonald N, Brown A, Marchetti L, et al. "U.S. School Travel, 2009: An Assessment of Trends." *American Journal of Preventive Medicine*, 41(2): 146-151, 2011. www.sciencedirect.com/science/article/pii/S0749379711002637; U.S. Department of Transportation. National Household Travel Survey: Congestion - Who is Traveling in the Peak? Washington, DC: U.S. Dept. of Transportation. August, 2007, p. 1 (finding that 10.8% of peak commute traffic is due to school drop-offs after which the parent or driver does not continue on to work or another destination). <http://financecommission.dot.gov/Documents/NHTS%20Fact%20Sheet%20on%20Congestion%20and%20Peak%20Travelers.pdf>
- ⁵ Dimaggio C and Li G. "Effectiveness of a Safe Routes to School Program in Preventing School-Aged Pedestrian Injury." *Pediatrics*, 131(2): 290-296, 2013.
- ⁶ US Environmental Protection Agency. 2013. "Climate Change: What You Can Do On the Road." Accessed August 6, 2014. www.epa.gov/climatechange/wycd/road.html.
- ⁷ Gauderman JW, Avol E, Lurmann F, et al. "Childhood Asthma and Exposure to Traffic and Nitrogen Dioxide." *Epidemiology*. 16(6): 737-743, 2005; see also Brandt SJ, Perez L, Künzli N, et al. "Costs of Childhood Asthma Due to Traffic-Related Pollution in Two California Communities." *European Respiratory Journal*, 40(2): 363-370, 2012. Available at: <http://erj.ersjournals.com/content/early/2012/01/24/09031936.00157811.full.pdf>.
- ⁸ See Cal. Educ. Code § 45450 (2013) (authorizing school districts to hire crossing guards); *Searcy v. Hemet Unified School Dist.*, 177 Cal. App. 3d 792, 804-05 (1986).
- ⁹ See Cal. Educ. Code §§ 45450-45451 (2013) (authorizing school districts to hire school crossing guards); Cal. Educ. Code § 49300 (2013) (authorizing school boards to establish a school safety patrol at any district school); Cal. Veh. Code §§ 42200-42201 (2014) (authorizing cities and counties, respectively, to hire crossing guards and use some of the proceeds from fines from criminal violations to pay for non-police school crossing guards).
- ¹⁰ California Manual on Uniform Traffic Control Devices ch. 7D (Cal. Dep't of Transp. 2012). Available at: www.dot.ca.gov/hq/traffops/engineering/mutcd/pdf/camutcd2012/Part7.pdf.
- ¹¹ Although no California court has directly addressed the issue of district, city, or county liability for a student injury relating to a crossing guard program, case law overwhelmingly suggests that the entity would owe a legal duty to students to operate the program with reasonable care. See, e.g., *Scott v. Farrar*, 139 Cal. App. 3d 462, 466-67 (1983) (finding that the "special relationship" doctrine did not apply because student was injured prior to start of crossing guard's shift); *Williams v. State of California*, 34 Cal. 3d 18 (1983) (discussing the "special relationship doctrine" in the context of police officers); *Cerna v. City of Oakland*, 161 Cal.App.4th 1340, 1360 (2008) ("[School] crossing guards provide essentially a police function in providing traffic control.").
- ¹² See e.g., *Scott v. Farrar*, 139 Cal. App. 3d 462 (1983); *Gilmore v. City of Zion*, 605 N.E.2d 110 (Ill. App. Ct. 1992); *Honeycutt v. City of Wichita*, 836 P.2d 1128 (Kan. 1992).
- ¹³ Cal. Penal Code § 11105.3 (2014).
- ¹⁴ Excellent, free training resources are available for this purpose. In 2014, the California Safe Routes to School Technical Assistance Resource Center (TARC) will release a new training guide for adult crossing guards. Visit www.casaferoutestoschool.org/ for more details. See also California Manual on Uniform Traffic Control Devices ch. 7D (Cal. Dep't of Transp. 2012). Available at: www.dot.ca.gov/hq/traffops/engineering/mutcd/pdf/camutcd2012/Part7.pdf; National Center for Safe Routes to School. "Adult School Crossing Guard Guidelines." Accessed August 6, 2014. http://guide.saferoutesinfo.org/crossing_guard/index.frm.
- ¹⁵ In *Perna v. Conejo Valley Unified School Distr.*, 143 Cal. App. 3d 292 (1983), the court found that a teacher was potentially negligent because she encouraged a student to stay late, knowing it would cause her to go home after the crossing guard shift ended. The student was injured when crossing unsupervised. Although *Perna* was decided over 30 years ago, it is the only case finding potential liability for an injury that occurred outside the established locations and times of a school crossing guard program.
- ¹⁶ Cal. Gov't Code § 820.2 (2014). This section provides that "a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." *San Mateo Union High Sch. Dist. v. Cnty. of San Mateo*, 213 Cal. App. 4th 418, 433 (2013).
- ¹⁷ Cal. Educ. Code § 44808 (2013).
- ¹⁸ *Id.*
- ¹⁹ Cal. Gov't Code § 815.4 (2014).
- ²⁰ *Munoz v. City of Palmdale*, 75 Cal. App. 4th 367 (1999); Cal. Labor Code § 3352(i) (2013).
- ²¹ 42 U.S.C. § 14503 (2012).
- ²² Cal. Labor Code §§ 3363.5, 3364.5 (2013) (authorizing the governing body of the public agency or school district to adopt a resolution declaring volunteers to be deemed employees of the agency/district for purposes of workers' compensation coverage).
- ²³ For specific legal advice regarding a crossing guard program in your community, contact an attorney licensed to practice in your state.



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