



## Liability for Use of School Property After Hours

### An Overview of California Law

*California law offers strong protection against liability for school districts that open their property to the community after hours. This fact sheet explains the different protections afforded by state law to help districts minimize their risk of liability.*

Some school districts may be reluctant to open school property to the community after hours, concerned about the legal risks and any costs in case of injury or property damage. California law, however, gives school districts strong protections against liability. By prudently maintaining their property, carrying insurance, and requiring formal groups (like sports leagues) who use their property to maintain insurance—and by entering into formal joint use agreements with local governmental entities—districts can minimize their risk.

## Basic Tort Liability

To understand the concerns school districts may have, it is helpful to have a basic understanding of what's known as *tort liability*. A school district may be concerned about being liable, or legally obligated, for a *tort*—property damage or the injury to or death of a person. Usually, a person or entity found liable in tort must compensate the victim for the injury or harm by paying damages (money).

Four factors generally must occur for a person or entity to be found liable in tort:

1. The person or entity must have a duty or legal obligation to use care toward the victim.
2. The person or entity must be *negligent*, having failed to use reasonable care toward the victim (in other words, the person breached—violated or broke—the duty of care).
3. The negligence must have caused injury to the victim.
4. The victim must have suffered damage or harm.

Sometimes, even if a tort is caused by negligence, the negligent person may have a defense or immunity against liability. *Immunity* is a protection from tort liability; an entity with immunity cannot be found liable for damages for the tort.

Immunities may be created by legislatures or the courts. Many states have “Good Samaritan” statutes, for example, protecting citizens from liability if they attempt to help or rescue someone in imminent and serious danger. Legislatures want to encourage citizens to assist others in immediate need, so they protect those Good Samaritans from liability.

## The Tort Claims Act

In California, the Tort Claims Act (the “Act”) governs all negligence lawsuits brought against local governmental entities, including school districts.<sup>1</sup> The Act provides school districts with strong protection against liability for injuries to people using school property for recreation. Under the Act, a California school district may only be liable for an injury if a state law specifically provides for liability, such as when an entity breaches a specific duty.<sup>2</sup> (This protection holds even if the injury was caused by an action or failure to act by the district or a district employee.) The Act also limits liability by providing immunities for government entities.<sup>3</sup>

## Potential Liability

There are a few statutes imposing liability that could *potentially* apply to a school district.

First, **a school district could be liable for a “dangerous condition” on its property.** If there is a substantial risk of injury when the property is used with due (regular) care in a regular or normal manner, the property is considered to have a *dangerous condition*.<sup>4</sup> A stop sign obscured by a tree, a sidewalk with an eight-foot drop-off at the edge, and a model airplane park adjacent to uninsulated electrical wires may be considered dangerous conditions on public property.<sup>5</sup> A court has found, however, that an unlocked school playground gate or a hole in the playground fence is not a dangerous condition.<sup>6</sup>



Even if a school district has a dangerous condition on its property, the Act provides some exceptions from liability. A district is not liable for an injury caused by the dangerous condition if it establishes that (1) the act or omission that created the condition was reasonable, (2) the school took reasonable action to protect against the risk of injury created by the condition, or (3) the school's failure to take action was reasonable.<sup>7</sup> So if the school has a dangerous condition on its property that it failed to take any protective action against, and someone was engaging in recreational activity on the property in a usual way but was injured because of the dangerous condition, a court *could* find a school district to be liable. School districts, however, are certainly not likely to maintain dangerous conditions on their property, because they do not want to risk injury to their students or employees during the school day.

Second, **a school district could be liable in tort if an injury is caused by the school's failure to carry out a “mandatory duty.”**<sup>8</sup> For example, under California law,



teachers have a mandatory duty to supervise students' conduct during the school day and "on the way to and from school, on the playgrounds, or during recess."<sup>9</sup> California courts have interpreted this requirement to include a duty to supervise official school sports or activities occurring after hours or off-season.<sup>10</sup> So a school may be held liable for a student's injury during the school day, during recess, or during school-sponsored extracurricular activities if a court finds that the student's injury was caused by inadequate supervision.<sup>11</sup>

By contrast, there is *no* mandatory duty imposed on schools for injuries or other damages that occur to people who use school property outside of official school activities or the school day.<sup>12</sup> Provided that the activity occurs before or after school, and not as part of organized school or extracurricular activities, a school has no mandatory duty to supervise—and no statutory liability under the Act.



## Immunity

The Act gives schools additional protection from liability through immunity—in particular, through “hazardous recreational activity” immunity.<sup>13</sup> The Act has a two-part definition of hazardous recreational activity. First, it defines the term as “a recreational activity conducted on property of a public entity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury to a participant or a spectator.”<sup>14</sup> Second, it specifically lists certain activities as hazardous recreational activities, including all body contact sports (“sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants”), and tree climbing.<sup>15</sup>

The hazardous recreational immunity provides strong protection to school districts. As the California Supreme Court has stated: “The Legislature had in mind immunizing public entities from liability arising

from injuries sustained by members of the public during voluntary unsupervised play on public land, in order to prevent public entities from having to close off their land to such use to limit liability. Such activities may be fairly characterized as recreational.”<sup>16</sup> The courts have liberally applied this immunity to protect schools from liability for injuries to people who use school property after hours, finding school districts *not* liable (1) for injuries to an adult basketball player in a school gymnasium rented after hours from a school district, and (2) for the wrongful death of a 12-year-old boy who suffered fatal injuries when playing a skateboard version of crack-the-whip on the school playground after school hours.<sup>17</sup>

## Other Protections

California law provides school districts with other forms of protection from liability, beyond those contained in the Tort Claims Act.

- 1. State law requires schools to be insured.** Insurance is a contract by which one party (the *insurer*) agrees to protect another party (the *insured*) against risk of loss, damage, or liability. California law requires the governing body of every school district to insure against the liability of the district, board members, and district officers and employees for damages for death, injury, or property damage or loss.<sup>18</sup> A school district may purchase insurance, establish a fund for a self-insurance program, or enter into a joint powers agreement with other districts or local governmental entities to form an insurance pool.<sup>19</sup>
- 2. State law requires groups using school property to be insured.** The California Civic Center Law requires that organized groups using school property after hours carry insurance and defend themselves from claims arising from their use of the property.<sup>20</sup> In addition, a school district may require a group to pay for any damages it causes to school property.<sup>21</sup> School districts may require sports leagues or other groups to demonstrate proof of insurance before using the district's property. Individual recreational users are not required to carry insurance.
- 3. Schools may share risk through “indemnity clauses” in joint use agreements.** The Tort Claims Act governs tort liability under agreements between public entities.<sup>22</sup> It provides that the entities are “jointly and severally liable” for injuries occurring while the agreement is in effect—that is, that each entity is individually responsible for the entire

liability, but the entity may have a right to be reimbursed for all or some of the damages from the other entity.<sup>23</sup> An *indemnification* clause is a provision in an agreement in which one party agrees to be responsible for any liability the other party might incur. A government entity may agree to indemnify another.<sup>24</sup> A school district, then, can further protect itself from potential liability by entering into a joint use agreement that requires the city or town to wholly or partially indemnify the district for any potential liability under the agreement. Because opening school facilities for community use is substantially less expensive than requiring a city to construct new facilities, a city may find that indemnifying the district for any potential liability is a cost-effective strategy.

While California school districts may be concerned about potential liability in opening up their facilities to community use, state law gives them strong protections. Districts can minimize their risk of liability by prudently maintaining their property and by carrying (and requiring group users to carry) insurance, as well as by entering into formal joint use agreements with local government agencies.

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<sup>1</sup> Cal. Gov't. Code § 810 *et. seq.* The Act provides a comprehensive statutory scheme governing the procedural and substantive requirements for imposing liability on government entities in California. Unless otherwise specified, all further statutory references are to the California Government Code.

<sup>2</sup> § 815(a).

<sup>3</sup> § 815(b).

<sup>4</sup> § 835.2.

<sup>5</sup> *Bonanno v. Central Contra Cost Transit Authority*, 30 Cal. 4th 139, 149-151 (2003).

<sup>6</sup> *Bartell v. Palos Verdes Peninsula School District*, 83 Cal. App. 3d 492, 497-498 (1978).

<sup>7</sup> § 835.4.

<sup>8</sup> § 815.6

<sup>9</sup> Cal. Educ. Code § 44807.

<sup>10</sup> *Avila v. Citrus Community College District*, 38 Cal. 4th 148, 154-160 (2006) (duty to supervise students extends to school-sponsored and supervised athletic practice and play); *Dailey v. Los Angeles Unified School District*, 2 Cal. 3d 741, 747-748 (1970) (duty to supervise extends to recess); *Acosta v. Los Angeles Unified School District*, 31 Cal. App. 4th 471, 475-480 (1995) (duty to supervise extends to school-sponsored athletic practices under the supervision of school personnel after school or during the off season); *Iverson v. Muroc Unified School District*, 32 Cal. App. 4th 218, 227-228 (1995) (duty to supervise extends to physical education class required by school and conducted during school day).

<sup>11</sup> *Id.*

<sup>12</sup> *Avila v. Citrus Community College District*, *supra*, 38 Cal. 4th at pp.154-160.

<sup>13</sup> § 831.7.

<sup>14</sup> § 831.7(b).

<sup>15</sup> § 831.7(b)(1)-(3).

<sup>16</sup> *Avila v. Citrus Community College District*, *supra*, 38 Cal. 4th at p.159.

<sup>17</sup> *Yarber v. Oakland Unified School District*, 4 Cal. App. 4th 1516 (1992); *Bartell v. Palos Verdes Peninsula School District*, *supra*, 83 Cal. App. 3d at p. 500 ["We find 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."].

<sup>18</sup> Cal. Educ. Code § 35208.

<sup>19</sup> Cal. Educ. Code §§ 1274 (county superintendent may establish a fund for losses and payments to cover deductible amounts, losses or payments under self-insurance programs, or losses or payments due to noninsured perils); 35214 (authorizes self-insurance); 117566 (school district governing body may establish a fund for losses and payments, including health and welfare benefits for employees, school district property, any liability, and workers' compensation for the purpose of covering the deductible amount, losses or payments arising from self-insurance programs, or losses or payments due to noninsured perils); 17567 (authorizing school districts to enter into joint powers agreements for insurance programs or to establish insurance funds).

<sup>20</sup> Cal. Educ. Code § 38134(i) ("The district and the group shall each bear the cost of insuring against its respective risks and shall each bear the costs of defending itself against claims arising from those risks"; emphasis added); *see also* § 82548 ("The governing board of any community college district may require any person, group, or organization granted the use of community college property pursuant to this article for the purposes of athletic activities to obtain a certificate of insurance from a liability insurance carrier and to submit such certificate to the district for approval prior to using any district property. The certificate shall evidence a minimum coverage of three hundred thousand dollars (\$300,000) for any liability for injury or damage to property which may arise out of such use of community college property. The governing board of any community college may require more than such minimum coverage.").

<sup>21</sup> Cal. Educ. Code § 38134(f).

<sup>22</sup> §§ 895 - 895.8.

<sup>23</sup> § 895.2.

<sup>24</sup> § 895.4.