

Teacher Liability Protection Act

On January 8, 2002, President Bush signed the Elementary and Secondary Education Act (the Act), Public Law 107-110. The Act contains the Paul D. Coverdell Teacher Protection Act of 2001, Sections 2361 through 2368 of the ESEA (copy enclosed). These provisions take effect on April 8, 2002.

The Act applies not only to teachers but to all officers (i.e., school board members) and employees of the school district. The Act does not apply to school districts as an entity. Section 2362 states that the purpose of the Act is to provide teachers, principals, and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline and an appropriate educational environment.

The Act applies to states that receive Title I funds and is a condition of the state receiving Title I funds. Section 2366 of the Act limits the liability of school officers and employees for acts or omissions on behalf of the school if:

1. The officer or employee was acting within the scope of employment or responsibilities to a school or governmental entity;
2. The actions of the officer or employee were carried out in conformity with federal, state and local laws (including rules and regulations) in furtherance of efforts to control, discipline, expel or suspend a student or maintain order or control in the classroom or school;
3. The officer or employee was properly licensed, certified or authorized by the appropriate authorities for the activities or practice involved in the state in which the harm occurred, where the activities were or practice was undertaken within the scope of the officer or employee's responsibility, if appropriate or required;
4. The harm was not caused by willful or criminal misconduct, gross negligence, recklessness misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the officer or employee, and;
5. The harm was not caused by the officer or employee operating a motor vehicle, vessel, aircraft or other vehicle for which the state requires the operator or owner of the vehicle, craft or vessel to possess an operator's license or maintain insurance.

Section 2365 indicates that the Act preempts the laws of any state to the extent such laws are inconsistent with the Act but does not preempt any state law that provides additional protection from liability for school officers and employees. The Act does not apply to any civil action in a state if the state legislature enacts a state statute which cites the authority of Section 2365, declares the election of the state legislature that Section 2365 shall not apply and containing no other provisions.

Section 2366(b) states that a state law, despite the preemption of the Act, may:

1. Require a school or governmental entity to adhere to risk management procedures including mandatory training of teachers;
2. Make the school or governmental entity liable for the acts or omissions of its officers or employees to the same extent as an employer is liable for the acts or omissions of its employees;
3. Limit liability if the civil action was brought by an officer of a state or local government pursuant to state or local law.

Section 2366(c) states that punitive damages may not be awarded against a school officer or an employee in an action brought for harm based on the act or omission of an officer or employee acting within the scope of the officer or employee's employment or responsibilities to a school or governmental agency unless the plaintiff establishes by clear and convincing evidence that the harm was proximately caused by an act or omission of such officer or employee that constitutes willful or criminal conduct or a conscious flagrant indifference to the rights or safety of the individual harmed.

Section 2366(c) authorizes other federal and state laws to further limit the award of punitive damages. Section 2366(d) states that the limitations on the liability of a school officer or employee shall not apply to any misconduct that:

1. Constitutes a crime of violence or act of international terrorism for which the defendant has been convicted in a court;
2. Involves a sexual offense as defined by applicable state law for which the defendant has been convicted in any court;
3. Involves misconduct for which the defendant has been found to have violated a federal or state civil rights law, or;
4. Where the defendant was under the influence of intoxicating alcohol or any drug at the time of misconduct as determined pursuant to applicable state law.

In addition, Section 2366(d) states that the limitations on liability under the Act shall not apply to misconduct during background investigations or during other actions involved in the hiring of a school officer or employee. Section 2366(e) states that nothing in the Act shall be construed to affect any civil action brought by any school or governmental entity against any school officer or employee of such school or to affect any state or local law, rule or regulation or policy pertaining to the use of corporal punishment.

Section 2367 limits the amount of liability of each defendant who is a school officer employee to the amount of noneconomic laws allocated to that defendant in direct proportion to the percentage of responsibility of that defendant for harm to the plaintiff. Section 2367 requires the court to render a separate judgment against each defendant and requires the trier of fact (i.e., a jury in a jury trial or the judge in a court trial) to determine the percentage of responsibility of each person responsible for the plaintiff's harm whether or not such person is a party to the action.

Under present law, an individual defendant can be required to pay the entire judgment and then seek reimbursement from the other defendant. Section 2367 will require the plaintiff to seek recovery from each defendant in proportion to their percentage of responsibility.

However, in most cases, under state law, the public agency will be required to defend all school officers and employees and pay the judgment. See Government Code Sections 995 et seq. Section 2368 states that the Act shall apply to any claim for harm caused by an act or omission of a school officer or employee if that claim is filed on or after April 8, 2002, without regard to whether the harm that is the subject of the claim or the conduct that caused the harm occurred before April 8, 2002.

In summary, the provision of this federal Act limits the individual liability of school board members and employees. The provisions of the Act do not, however, limit the liability of the school district itself.