

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 802
Judiciary

(Delegate Cox, *et al.*)

Judicial Proceedings

Civil Actions - Civil Immunity - Educator Intervention in Student Violence
(Good Teacher Protection Act)

This bill establishes that a member of the administrative, educational, or support staff of any public, private, or parochial school acting in an official capacity is immune from civil liability for any personal injury or property damage resulting from an intervention in an altercation between students or other student disturbance if (1) the member intervened in a reasonably prudent manner and (2) the member's actions do not constitute grossly negligent, willful, wanton, or intentionally tortious conduct.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law:

Violence Prevention/Intervention by School Employee: A principal, teacher, school security guard, or other school system personnel in any public school may take reasonable action necessary to prevent violence on school premises or on a school-sponsored trip, including intervening in a fight or physical struggle that takes place in his or her presence, whether the fight is among students or other individuals. The degree and force of the intervention may be as reasonably necessary to prevent violence, restore order, and to

protect the safety of the combatants and surrounding individuals. If the preventer/intervening individual is hurt while taking preventive action or intervening in a fight (1) the county board must compensate the individual for any necessary medical expenses that are a direct result of the preventive action or intervention and (2) the individual may not lose any compensation for any time lost from school duties as a direct result of the individual's preventive action/intervention, subject to a potential reduction in compensation because of payments made under the Maryland Workers' Compensation Act.

In any suit, claim, or criminal charge brought by a parent or other claimant of one of the combatants against the preventer/intervening individual because of the preventive action or intervention, the county board (1) must provide legal counsel for the preventer/intervening individual or may provide reimbursement for the reasonable expenses of the legal defense of any criminal charge if the county board considers it appropriate and (2) must save the preventer/intervening individual harmless from any award or decree against him.

Federal Statutes: The Paul D. Coverdell Teacher Protection Act, which was passed as part of the No Child Left Behind Act of 2001, provides protection from liability for teachers and school professionals acting within the scope of employment to maintain order or control in the classroom or school. The Act contains several exceptions, including cases involving willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the teacher. The Act, which applies to states that receive Title I funding, also contains extensive preemption and applicability provisions.

Limits on Liability for County Boards of Education: County boards of education are not covered under the Local Government Tort Claims Act. However, a county board of education may raise the defense of sovereign immunity to any amount claimed above the limit of its insurance policy or, if self-insured or a member of an insurance pool, above \$400,000. A county board of education may not raise the defense of sovereign immunity to any claim of \$400,000 or less. A county board employee acting within the scope of employment, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability is provided for the county board, including damages that exceed the limitation on the county board's liability.

Each county board of education must carry comprehensive liability insurance to protect the board and its agents and employees. The purchase of this insurance is a valid educational expense. The State Board of Education must establish standards for these insurance policies, including a minimum liability coverage of not less than \$400,000 for each

occurrence. The policies purchased must meet the standards established by the State Board of Education.

A county board complies with this requirement if it (1) is individually self-insured for at least \$400,000 for each occurrence under the rules and regulations adopted by the Insurance Commissioner or (2) pools with other public entities for the purpose of self-insuring property or casualty risks.

Gross Negligence: Gross negligence involves “an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them. Stated conversely, a wrongdoer is [liable] of gross negligence or acts wantonly and willfully only when he inflicts injury intentionally or is so utterly indifferent to the rights of others that he acts as if such rights did not exist.” *Barbre v. Pope*, 402 Md. 157, 187 (2007) (citations omitted). Gross negligence is a level of neglect more egregious than simple negligence. *Holloway-Johnson v. Beall*, 220 Md. App. 195 (2014). However, “...a fine line exists between allegations of negligence and gross negligence.” *Barbre* at 187. The existence of gross negligence depends on the facts and circumstances of the case. *Rodriguez v. State*, 218 Md. App. 573 (2014).

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Montgomery and Prince George’s counties; Maryland State Treasurer’s Office; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Department of Legislative Services

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