

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 137
Judiciary

(Delegate Grammer)

Judicial Proceedings

Civil Actions - Civil Immunity - Educator Intervention

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 (§ 7-307 of the Education Article)

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 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 the individual.

Limits on Liability for County Boards of Education (§ 5-518 of the Courts and Judicial Proceedings Article)

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.

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.

Recent Court Decision

In *Gambrill v. Board of Education of Dorchester County*, 481 Md. 274 (2022), the Court of Appeals (now the Supreme Court of Maryland) held that the federal Coverdell Act does not preempt § 5-518 of the Courts and Judicial Proceedings Article because (1) the Coverdell Act provides teachers with liability protection for harm they cause through negligent acts or omissions within the scope of employment, not immunity from suit for those acts or omissions and (2) § 5-518 of the Courts and Judicial Proceedings Article falls within the Coverdell Act's exception to its preemption provisions for a "state law that makes the school or governmental entity liable for the acts or omissions of its employees to the same extent as an employer is liable for the acts or omissions of its employees."

The case involved a negligence action filed by the parents of a student against the Dorchester County Board of Education and teachers and administrators at their daughter's middle school for injuries their daughter sustained at the hands of her fellow students during a series of incidents that occurred during the course of a school year. The parents alleged that the defendants failed to supervise the students, which resulted in the bullying and physical assault of their daughter. In addition to its determination of the preemption issue discussed above, the court also held that the parents' negligence claim did not fall within the educational malpractice doctrine, under which courts decline to recognize a cause of action based on academic decision-making or educational placement. According to the court, the parents' negligence claim was centered on the duty of school employees and their employer to use reasonable measures to protect their daughter while she was on school grounds, which they breached when they failed to properly supervise students and take precautions to protect their daughter's physical safety; these allegations were not connected to the educational placement of their daughter or academic decisions regarding her educational needs. In its analysis, the court also determined that the policy reasons against recognizing a cause of action for educational malpractice (*e.g.*, lack of a satisfactory standard of care applicable to a teacher's or administrator's conduct, uncertainty in

determination of damages, and an extreme burden on the school system's resources) did not apply to the parents' negligence claim.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1363 of 2022; HB 828 of 2021; and HB 802 of 2020.

Designated Cross File: None.

Information Source(s): Baltimore City; Howard and Prince George's counties; State Treasurer's Office; Judiciary (Administrative Office of the Courts); Anne Arundel County Public Schools; Department of Legislative Services

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