

(II) in an emergency, is called on to maintain discipline or ensure safety; or

(D) an individual member of a school board (as distinct from the board).

(Pub. L. 89-10, title II, §2363, as added Pub. L. 107-110, title II, §201, Jan. 8, 2002, 115 Stat. 1667.)

#### § 6734. Applicability

This subpart shall only apply to States that receive funds under this chapter, and shall apply to such a State as a condition of receiving such funds.

(Pub. L. 89-10, title II, §2364, as added Pub. L. 107-110, title II, §201, Jan. 8, 2002, 115 Stat. 1668.)

#### § 6735. Preemption and election of State nonapplicability

##### (a) Preemption

This subpart preempts the laws of any State to the extent that such laws are inconsistent with this subpart, except that this subpart shall not preempt any State law that provides additional protection from liability relating to teachers.

##### (b) Election of State regarding nonapplicability

This subpart shall not apply to any civil action in a State court against a teacher with respect to claims arising within that State if such State enacts a statute in accordance with State requirements for enacting legislation—

- (1) citing the authority of this subsection;
- (2) declaring the election of such State that this subpart shall not apply, as of a date certain, to such civil action in the State; and
- (3) containing no other provisions.

(Pub. L. 89-10, title II, §2365, as added Pub. L. 107-110, title II, §201, Jan. 8, 2002, 115 Stat. 1668.)

#### § 6736. Limitation on liability for teachers

##### (a) Liability protection for teachers

Except as provided in subsection (b) of this section, no teacher in a school shall be liable for harm caused by an act or omission of the teacher on behalf of the school if—

- (1) the teacher was acting within the scope of the teacher's employment or responsibilities to a school or governmental entity;
- (2) the actions of the teacher 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) if appropriate or required, the teacher 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 teacher's responsibilities;
- (4) the harm was not caused by 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; and
- (5) the harm was not caused by the teacher operating a motor vehicle, vessel, aircraft, or

other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to—

- (A) possess an operator's license; or
- (B) maintain insurance.

##### (b) Exceptions to teacher liability protection

If the laws of a State limit teacher liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

- (1) A State law that requires a school or governmental entity to adhere to risk management procedures, including mandatory training of teachers.
- (2) A State law that makes the school or governmental entity liable for the acts or omissions of its teachers to the same extent as an employer is liable for the acts or omissions of its employees.

ate<sup>1</sup> law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

##### (c) Limitation on punitive damages based on the actions of teachers

###### (1) General rule

Punitive damages may not be awarded against a teacher in an action brought for harm based on the act or omission of a teacher acting within the scope of the teacher's employment or responsibilities to a school or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an act or omission of such teacher that constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

###### (2) Construction

Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.

##### (d) Exceptions to limitations on liability

###### (1) In general

The limitations on the liability of a teacher under this subpart shall not apply to any misconduct that—

- (A) constitutes a crime of violence (as that term is defined in section 16 of title 18) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;
- (B) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;
- (C) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or
- (D) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.

###### (2) Hiring

The limitations on the liability of a teacher under this subpart shall not apply to mis-

<sup>1</sup> So in original. Probably should be "(3) A State".