

(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.

ate¹ 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-

¹ So in original. Probably should be "(3) A State".

conduct during background investigations, or during other actions, involved in the hiring of a teacher.

(e) Rules of construction

(1) Concerning responsibility of teachers to schools and governmental entities

Nothing in this section shall be construed to affect any civil action brought by any school or any governmental entity against any teacher of such school.

(2) Concerning corporal punishment

Nothing in this subpart shall be construed to affect any State or local law (including a rule or regulation) or policy pertaining to the use of corporal punishment.

(Pub. L. 89-10, title II, §2366, as added Pub. L. 107-110, title II, §201, Jan. 8, 2002, 115 Stat. 1668.)

§ 6737. Allocation of responsibility for non-economic loss

(a) General rule

In any civil action against a teacher, based on an act or omission of a teacher acting within the scope of the teacher's employment or responsibilities to a school or governmental entity, the liability of the teacher for non-economic loss shall be determined in accordance with subsection (b) of this section.

(b) Amount of liability

(1) In general

(A) Liability

Each defendant who is a teacher shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable.

(B) Separate judgment

The court shall render a separate judgment against each defendant in an amount determined pursuant to subparagraph (A).

(2) Percentage of responsibility

For purposes of determining the amount of noneconomic loss allocated to a defendant who is a teacher under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant's harm, whether or not such person is a party to the action.

(c) Rule of construction

Nothing in this section shall be construed to preempt or supersede any Federal or State law that further limits the application of joint liability in a civil action described in subsection (a) of this section, beyond the limitations established in this section.

(Pub. L. 89-10, title II, §2367, as added Pub. L. 107-110, title II, §201, Jan. 8, 2002, 115 Stat. 1670.)

§ 6738. Effective date

(a) In general

This subpart shall take effect 90 days after January 8, 2002.

(b) Application

This subpart applies to any claim for harm caused by an act or omission of a teacher if that claim is filed on or after the effective date of the No Child Left Behind Act of 2001 without regard to whether the harm that is the subject of the claim or the conduct that caused the harm occurred before such effective date.

(Pub. L. 89-10, title II, §2368, as added Pub. L. 107-110, title II, §201, Jan. 8, 2002, 115 Stat. 1670.)

REFERENCES IN TEXT

For the effective date of the No Child Left Behind Act of 2001, referred to in subsec. (b), see section 5 of Pub. L. 107-110, set out as an Effective Date of 2002 Amendment note under section 6301 of this title.

PART D—ENHANCING EDUCATION THROUGH TECHNOLOGY

§ 6751. Short title

This part may be cited as the "Enhancing Education Through Technology Act of 2001".

(Pub. L. 89-10, title II, §2401, as added Pub. L. 107-110, title II, §201, Jan. 8, 2002, 115 Stat. 1671.)

PRIOR PROVISIONS

A prior section 2401 of Pub. L. 89-10 was classified to section 6701 of this title, prior to the general amendment of this subchapter by Pub. L. 107-110.

§ 6752. Purposes and goals

(a) Purposes

The purposes of this part are the following:

(1) To provide assistance to States and localities for the implementation and support of a comprehensive system that effectively uses technology in elementary schools and secondary schools to improve student academic achievement.

(2) To encourage the establishment or expansion of initiatives, including initiatives involving public-private partnerships, designed to increase access to technology, particularly in schools served by high-need local educational agencies.

(3) To assist States and localities in the acquisition, development, interconnection, implementation, improvement, and maintenance of an effective educational technology infrastructure in a manner that expands access to technology for students (particularly for disadvantaged students) and teachers.

(4) To promote initiatives that provide school teachers, principals, and administrators with the capacity to integrate technology effectively into curricula and instruction that are aligned with challenging State academic content and student academic achievement standards, through such means as high-quality professional development programs.

(5) To enhance the ongoing professional development of teachers, principals, and administrators by providing constant access to training and updated research in teaching and learning through electronic means.

(6) To support the development and utilization of electronic networks and other innovative methods, such as distance learning, of delivering specialized or rigorous academic