

IN THE
SUPREME COURT OF MISSOURI

No. SC90912

CRAIG DYDELL

Appellant

V.

BERNARD TAYLOR, JR.

Respondent

APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY
SIXTEENTH JUDICIAL CIRCUIT
HONORABLE W. BRENT POWELL, JUDGE

BRIEF OF AMICUS CURIAE
MISSOURI SCHOOL BOARDS' ASSOCIATION AND
NATIONAL SCHOOL BOARDS ASSOCIATION

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STATEMENT OF INTEREST

MSBA

The Missouri School Boards' Association is a non-profit association of member districts representing more than 800,000 of the more than 920,000 public school students in the state of Missouri. The mission of the MSBA is to help public school boards succeed. In furtherance of this mission the MSBA provides education and support to member districts and advocates on behalf of Missouri public schools. The issue of immunity and liability protection for the thousands of employees of Missouri's schools is important to MSBA member districts. MSBA speaks to this court about those concerns on behalf of those members. The MSBA files this brief on behalf of its members and the National School Boards Association with the permission of both Plaintiff/Appellant and Defendant/Respondent.

NSBA

The National School Boards Association (NSBA) is a non-profit federation of state associations of school boards, representing the 95,000 school board members who govern nearly 15,000 local school districts across the United States. These local public school districts serve more than 46.5 million public school students, or approximately 90 percent of the elementary and secondary students in the nation. NSBA is committed to supporting and encouraging school boards and hundreds of thousands of local administrators in their efforts to promote safe and effective learning environments that consistently reinforce the academic lessons and civic values it is their duty to impart. NSBA strongly believes that local school

boards and administrators should be able to make and enforce reasonable and appropriate policy decisions for their schools in fulfilling this duty without undue fear of legal liability. NSBA supports an interpretation of the Coverdell Act that helps to reduce litigation and allows schools to focus on their educational mission.

STATEMENT OF JURISDICTION

This action involves an appeal of a grant of summary judgment by the Circuit Court of Jackson County (the “Trial Court”) in favor of defendant/respondent Dr. Bernard Taylor by plaintiff/appellant Dydell based on the applicability of federal law, specifically the Paul D. Coverdell Teacher Liability Protection Act (“Coverdell Act”). Plaintiff/Appellant Dydell challenges the constitutional validity of the Coverdell Act. This Court, therefore, has jurisdiction in this action under Article V, § 3 of the Missouri Constitution (“The supreme court shall have exclusive appellate jurisdiction in all cases involving the validity of a treaty or statute of the United States”) *Id.*

STATEMENT OF FACTS

Amici curiae adopt the statement of facts submitted by the defendant/respondent, Dr. Bernard Taylor in his Motion for Summary Judgment and Reply to Plaintiff’s Supplemental Suggestions in Opposition to Defendant’s Motion for Summary Judgment on the basis of the Coverdell Act filed with the Circuit Court of Jackson County.

POINTS RELIED ON

I. THE TRIAL COURT DID NOT ERR IN GRANTING TAYLOR SUMMARY JUDGEMENT UNDER THE COVERDELL ACT BECAUSE THE COVERDELL ACT PROVIDES IMMUNITY TO TEACHERS IN THAT DR. TAYLOR IS A TEACHER AS DEFINED BY THE ACT.

II. THE TRIAL COURT DID NOT ERR IN GRANTING TAYLOR SUMMARY JUDGEMENT UNDER THE COVERDELL ACT BECAUSE THE COVERDELL ACT BOTH PREEMPTS AND SUPPLEMENTS STATE LAW TO PROVIDE OFFICIAL IMMUNITY TO A BROAD ARRAY OF PROFESSIONAL EDUCATORS IN ALL STATES, IN THAT MISSOURI, AS RECIPIENT OF FEDERAL EDUCATION FUNDS, IS A STATE SUBJECT TO THE COVERDELL ACT.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN GRANTING TAYLOR SUMMARY JUDGEMENT UNDER THE COVERDELL ACT BECAUSE THE COVERDELL ACT PROVIDES IMMUNITY TO TEACHERS IN THAT DR. TAYLOR IS A TEACHER AS DEFINED BY THE ACT.

A. The purpose of the Coverdell Act is to provide immunity to teachers who are acting within the Act's parameters.

The stated purpose of the Coverdell 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.” 20 U.S.C. § 6732. Pursuant to the Act, a teacher, as defined by the Act, will be afforded immunity for harm caused by his or her “acts or omissions” if the teacher:

- Was acting within the scope of his or her employment;
- Was acting in accordance with federal, state and local laws in furtherance of efforts to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school;
- Was properly licensed; and

- Did not cause harm by his or her “willful or criminal misconduct, gross negligence, reckless misconduct or a conscious flagrant indifference to the rights or safety of the individual harmed¹.”

20 U.S.C. § 6736(a).

At no point does plaintiff/appellant claim that Taylor was not acting within the scope of his employment, that Taylor’s negligence was not related to the maintenance of order or control in the classroom or school, that Taylor was not properly licensed, or that he caused harm through his willful or criminal misconduct, gross negligence, reckless misconduct or a conscious flagrant indifference to the rights or safety of the individual harmed.

Plaintiff/Appellant does contend, however, that Taylor was not acting in accordance with “federal, state and local laws” based on his alleged failure to follow a district policy mischaracterized as the “dangerous student regulation” because he did not cause a student’s Individualized Educational Plan (IEP) to contain a section describing the student’s alleged violent tendencies.

Defendant/Respondent’s Supplemental Legal File SLF439. Policy JGF, Discipline Reporting and Records, is not a “federal, state or local law,” it is a policy adopted by the Board of Education that implements state laws regarding the sharing of information between various law enforcement and child welfare

¹ Another limitation of the Act involves operation of a motor vehicle, which is not germane to this argument.

agencies and the school district. *See, e.g.*, §§ 160.261, 167.020, 167.115, 167.117, 210.865, RSMo (2000 and Supp. 2009). However, even if this court determines that Policy JGF is a “law” for purposes of the Coverdell Act, defendant/respondent Taylor did not violate it by failing to cause a student’s IEP to include a section describing the student’s violent tendencies. Policy JGF only requires that *if* the IEP has information about violent tendencies, then that information must be shared with teachers and other employees with a need to know. SLF L440. Because the IEP did not include such information, Policy JGF was not violated by anyone, much less Dr. Taylor.

Other than the alleged failure to follow federal, state and local law, plaintiff/appellant has shown no other reason why the immunity provided by the Coverdell Act is not available to Taylor. In determining whether to deny immunity protections to defendants, other courts have required the plaintiffs to plead and prove either that an exception applied which removed the immunity shield or that defendants engaged in gross negligence, misconduct or conscious indifference. Neither is true here. In *C.B. v. Sonora School Dist.*, the court succinctly explained how immunity rules such as the Coverdell Act work: “Immunity is the rule. Exceptions are, by definition, exceptions to the rule. The rule applies unless and until Plaintiff can plead facts demonstrating that an exception applies to the facts of the case.” 621 F. Supp. 2d 1123, 1150 (E.D. Cal. 2009). In *K.R. v. School Dist. of Philadelphia*, the court concluded that the defendants were entitled to “absolute immunity”

when the plaintiff failed to show that the conduct of any of the individual defendants amounted to gross negligence, misconduct or conscious indifference to the rights or safety of K.R. 2008 WL 2609810 at *1, 8 (E.D. Pa. 2008).

B. Respondent Taylor is a teacher as defined by the Coverdell Act.

The Coverdell Act's definition of teacher is purposefully broad and includes teachers, instructors, principals, administrators, school board members or other educational professionals who work in schools; as well as any professional or nonprofessional employee who works in a school and, as part of his/her job, maintains discipline or ensures safety. 20 U.S.C. § 6733 (6). To be a teacher covered by the Act, one must hold one of the listed positions and, as part of their job, maintain discipline or ensure safety.

Taylor is a teacher as he was superintendent of schools, an administrative position. *See* Missouri School Improvement Program Standards and Indicators Manual, Fourth Cycle, Standard 4.1 (Incorporated by Reference into 5 C.S.R. 50-345.10) available at: <http://www.dese.mo.gov/divimprove/sia/msip/Fourth%20Cycle%20Standards%20and%20Indicators.pdf>. In Missouri, administrative certificates are actually "Certificates of License to Teach for Administrators." 5 CSR 80-800.220. Finally, superintendents are administrators by statute. *See* § 168.410,

RSMo, (2000). As an administrator, Dr. Taylor is a teacher under the Coverdell Act.

Dr. Taylor maintained order and discipline as a part of his job. Several statutory provisions empower superintendents in Missouri to maintain order and discipline. *See* § 160.261(Superintendents authorized to modify suspensions for weapons violations); § 167.020, (Superintendents authorized to convene hearing to determine if student applying for a waiver is dangerous); and §167.115, (Superintendent charged with receiving information about students who have committed certain acts). RSMo (2000 and Supp. 2009).

Finally, the conclusion that Taylor is a teacher is supported by the case *K.R. v. School Dist. of Philadelphia*, 2008 WL 2609810 (E.D. Pa. 2008) where a CEO², principal, assistant principal and even a school psychologist were found to be teachers pursuant to the Coverdell Act. *Id.* at 10.

C. Conclusion

Taylor is entitled to immunity pursuant to the Coverdell act because he is a teacher as defined by the Act and plaintiff/appellant has failed to demonstrate how Taylor was not acting in conformity with federal, state and local laws, or that any harm was caused by Taylor's willful or criminal

² The Philadelphia schools have a management model using a CEO (Chief Executive Officer) as the individual charged with primary responsibility for the schools in the district – similar to the duties of superintendents in Missouri.

misconduct, gross negligence, reckless misconduct or a conscious flagrant indifference to the rights or safety of the individual harmed.

II. THE TRIAL COURT DID NOT ERR IN GRANTING TAYLOR SUMMARY JUDGEMENT UNDER THE COVERDELL ACT BECAUSE THE COVERDELL ACT BOTH PREEMPTS AND SUPPLEMENTS STATE LAW TO PROVIDE OFFICIAL IMMUNITY TO TEACHERS IN ALL STATES IN THAT MISSOURI, AS A RECIPIENT OF FEDERAL EDUCATION FUNDS, IS A STATE SUBJECT TO THE COVERDELL ACT.

A. The Coverdell Act both preempts and supplements state law.

By its own declaration, the teacher liability protection conferred by the Coverdell Act preempts state law. “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.” 20 U.S.C. § 6735(a). Thus, Congress was explicit in its intent for the Coverdell Act, acting in accordance with state laws, to provide the maximum immunity protection to a broad category of educational professionals.

B. Although most states provide immunity to school administrators, Congress enacted the Coverdell Act to provide a minimal level of immunity and to provide consistency.

School administrators are professional educators charged by their states and communities with day-to-day responsibility for educating the nation's children. The U.S. Supreme Court has described education as "perhaps the most important function of state and local governments...the very foundation of good citizenship,...[and] a principle instrument in awakening the child to cultural values...." *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954) (quoted in *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 272 (1988)). To prepare students for work and citizenship, school administrators must carry out school board policies adopted to promote safe, orderly, and effective operation of our schools.³ By developing and maintaining safe learning environments, schools increase academic success and reduce health-compromising behaviors by students. Robert Blum & Heather P. Libbey, *Executive Summary*, 74 J. Sch. Health 7 (Sept. 2004) (evidence supporting the relationship between "school connectedness" and lower incidence of emotional distress, violence, suicide attempts, and drug use in students). All states recognize the importance

³ As Justice Breyer noted in his concurring opinion in *Board of Educ. v. Earls*, 536 U.S. 822, 840 (2002) (citation omitted): "Today's public expects its schools not simply to teach the fundamentals, but 'to shoulder the burden of feeding students breakfast and lunch, offering before and after school child care services, and providing medical and psychological services,' all in a school environment that is safe and encourages learning."

of promoting safe schools and the difficulties that school employees may encounter in their efforts to maintain disciplined and orderly learning environments. To allow professional educators to carry out these duties without undue fear of legal liability, most states provide some sort of statutory or common law immunity for school employees, but there is little consistency among the states as to the form or extent of that protection.

In a study of all state laws pertaining to governmental and official immunity for school districts, the authors reveal that most states provide some sort of statutory or common law protection for teachers and administrators; however, the form and manner of providing such immunity, and the extent of such immunity, varies somewhat from state to state. Peter Maher, Kelly Price & Perry A Zirkel, *Governmental and Official Immunity for School Districts and Their Employees: Alive and Well?*, 19 Kan. J.L. & Pub. Pol’y 234 (2010). This particular study used the label “governmental immunity” to describe immunity to common law negligence liability of school districts and “official immunity” to describe the law applicable to specific district employees. *Id.* at 238. The study was limited to state statutes and common law that related to immunity of K-12 public schools and their employees. *Id.* at 238-39. An adaptation of the table summarizing the status

of official immunity is attached as Appendix A.⁴ Even a cursory glance at Appendix A reveals that the clear majority of states provide immunity to teachers and administrators, including Missouri, which provides a form of discretionary or “official immunity” to school officials. *See, e.g. Boever v. Special Sch. Dist. of St. Louis County*, 296 S.W.3d 487 (Mo. Ct. App. 2009); *Davis v Bd. of Educ. of City of St. Louis*, 963 S.W.2d 679, 688-89 (Mo. Ct. App. 1991). However there are variances between states as to the form and extent of immunity, including whether there are exceptions to the immunity. For example, Ohio provides broad immunity for school employees acting within the scope of their employment while Kentucky, like Missouri, provides immunity for discretionary acts. App. A. Some states protect employees by substituting the district as the defendant. *See e.g., Massachusetts, Oklahoma, Oregon and South Carolina, Id.*) North Carolina offers broad immunity but only to a limited class of employees, with one of those being the superintendent. *Id.*

By preempting state law, the Coverdell Act establishes a baseline of immunity for teachers and thereby resolves some of the variances between

⁴ The information from the article’s table has been transferred to a more easily readable format and included in Appendix A. The information in each cell is taken from the footnotes provided in the original document. Shading is provided only to ease reading and has no contextual significance.

the states with regard to immunity for teachers and administrators. As discussed in the first point, immunity under the Coverdell Act is only available for an “act or omission” when a properly licensed “teacher” was acting within the scope of his or her employment; in accordance with federal, state and local laws and not causing harm through his or her “willful or criminal misconduct, gross negligence, reckless misconduct or a conscious flagrant indifference to the rights or safety of the individual harmed.” 20 U.S.C. § 6736 (a). In this way, the Coverdell Act provides a minimal or baseline amount of protection to teachers in all states in support of their efforts to maintain an environment conducive to learning. In addition, the Act recognizes that some states provide immunity protection beyond that provided in Coverdell Act and specifically exempts those laws from preemption. Together, these two explicit instructions from Congress fill the gaps that exist in current state laws, establish a basic level of immunity in every state, and permit states to retain or add other immunity protections if they choose.

This uniform grant of immunity to school administrators, as well as to teachers, is crucial to the operation of more than 15,000 school districts and the 225,000 school administrators across this nation charged with creating safe and disciplined learning environments for students in these districts. Fear of personal liability should not deter administrators and school leaders from making decisions regarding the disciplining of students in many situations in which regulation is proper and needed. A national survey, based on a random

sample of middle and high school teachers and parents, shows almost unanimous support for the position that schools need good discipline and behavior to flourish and that part of a school's mission is to instruct students to follow the rules in order to become productive citizens. *Teaching Interrupted, Do Discipline Policies in Today's Public Schools Foster the Common Good?*, Public Agenda (2004), www.publicagenda.org. The Coverdell Act also serves to remove the specter of personal liability that may serve as a deterrent to qualified educators becoming school administrators. Given the current shortage of administrators in many areas of this county, application of the Coverdell Act to cases such as the one before this Court is even more important to maintaining a sufficient pool of qualified administrators. Del Stover, *Looking for Leaders, Urban districts find that the pool of qualified superintendents is shrinking*, Amer. Sch. Bd. J. (December 2002) [www.asbj.com/specialreports/1202Special %20Reports/S2.html](http://www.asbj.com/specialreports/1202Special%20Reports/S2.html) (“there are too few skilled administrators moving up the supply pipeline”; identifying that the most difficult position to fill in California is the high school principalship); Lynn Olson, *Principals Wanted: Apply Just About Anywhere*, Educ. Week (Jan. 12, 2000), www.edweek.org/ew/articles/2000/01/12/17leadside.h19.html?print=1 (indicating many teachers are disinterested in becoming administrators because position lacks appeal). Individuals who are taking

these positions already do so at great personal sacrifice⁵ and should not be burdened with the fear of lawsuits and personal liability simply for carrying out their daily disciplinary duties.

C. The Coverdell Act is applicable to Missouri.

Plaintiff/Appellant questions whether the Coverdell Act is applicable in Missouri – it is. The Coverdell Act is a subpart of the No Child Left Behind Act of 2001(NCLB), which is the Reauthorization of the Elementary and Secondary Education Act (ESEA). Public Law 107-110 (2001), 20 U.S.C. § 6731 & § 6734. Missouri accepts federal education funds pursuant to the ESEA. According to the Missouri Office of Administration, The Missouri Department of Elementary and Secondary Education will receive more than \$900,000,000 in federal funds for fiscal year 2010. Office of Administration Budget Report - <http://oa.mo.gov/bp/budgetfacts/HB2.pdf>.

⁵ See, e.g., Philip A. Cusick, *The Principalship? No Thanks. Why teachers won't trade the classroom for the office*, Educ. Week (May 14, 2003), www.edweek.org/ew/articles/2003/05/14/36cusick.h22html?qs=principal_shortages&print=1 (identifying time demands, compensation issues, longer hours, and increased responsibilities of principals, which include school improvement, annual reports, accountability, core curriculum, student safety, gender and equity issues, and staff development; attributing increase in principal responsibilities to “the way Americans think about schools—that they can be all things to all students”).

See also House Bill 2 (2010). Any state that receives federal education funds, as Missouri does, is subject to the Coverdell Act. 20 U.S.C. § 6734. As a “teacher” in the State of Missouri, Taylor is entitled to protection of the Coverdell Act.

D. Conclusion

Without the Coverdell Act providing protection to all employees defined as teachers, educational professionals would be subject to varying degrees of liability from no liability to full liability for their acts or omissions in establishing and maintaining school discipline, depending on the state in which the teacher works. Given the focus of NCLB on attracting highly qualified professional educators, it is not surprising that Congress chose to include uniform immunity rules that protect school employees in carrying out their educational mission.

CONCLUSION

For the foregoing reasons, the Missouri School Boards’ Association and the National School Boards Association pray this Court uphold the trial court’s grant of summary judgment for respondent Taylor.

RULE 84.06 CERTIFICATION

I hereby certify that this brief complies with the limitations contained in Rule 84.06(b) and contains 3679 words and 459 lines. The disk submitted with this brief has been scanned for viruses and to the best of my knowledge is virus-free.

Kelli Hopkins #51101
2100 I-70 Drive SW
Columbia, MO 65203
Telephone: (573) 445-9920
Facsimilie: (573) 445-9981

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2010, I served a copy of the foregoing pleading
via first class mail upon the following counsel of record:

Alan Hallquist
Haley Hanson
Derek Teeter
Husch Blackwell Sanders LLP
4801 Main Street, Suite 1000
Kansas City, MO 64112
Attorneys for Plaintiff/Appellant

George P. Coughlin
Molly B. Bartalos
Mathew W. Geary
Dysart Taylor Lay Cotter and McMonigle, P.C.
4420 Madison Ave.
Kansas City, MO 64111
Attorneys for Defendant/Respondent

Kelli Hopkins, Mo Bar # 51101
Missouri School Boards' Association, also
working on behalf of the National School
Boards Association

**Appendix A (Part 1)
Official Immunity State by State**

**Key: X = An exception to the general rule of immunity or liability
X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
[X] = Entry based solely on case law
(X) = Partial or weaker exception**

State	Exceptions to General Rule of Immunity			
	Multiple Items	Insurance	Other Single Item	Marginal Item(s)
AL				
AK				
AZ				
AR		X Ark. Code Ann. § 21-9-301 (West 2008) Statutory immunity for negligence applied to school districts is the same as for public employees. Immunity is waived to the extent of insurance coverage.		
CA Statutes & court decision in CA are particularly complex. Legal assistance is needed to navigate them.				
CO	X Colo. Rev. Stat. § 24-10-118(2)(a) (2008) Typical			

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State	Exceptions to General Rule of Immunity			
	Multiple Items	Insurance	Other Single Item	Marginal Item(s)
	exceptions such as motor vehicles & dangerous property conditions			
CT				
DE Same immunity applies to schools as for public employees but some statutes limit the primary exceptions to school districts. See Del. Code Ann. tit. 10 §§ 4011-12 & 4013 (2008)		(X) Del. Code Ann. tit. 10 § 4013		
FL Legislation provides negligence immunity for public school employees acting within the scope of their employment by providing an exclusive remedy. Fla. Stat. § 768.28(9)(a) (2008)				
GA			[X] The courts have	

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State	Exceptions to General Rule of Immunity			
	Multiple Items	Insurance	Other Single Item	Marginal Item(s)
			interpreted the state constitution as providing official immunity to discretionary acts & established an exception for ministerial acts.	
HI Courts have ruled that public employees have qualified immunity with the exemption being clear & convincing evidence of malice. Haw. Rev. Stat. § 662-15(1) (2008)				
ID				
IL				
IN				
IA		X* Iowa Code § 670.7 (2008) Waives immunity as a result of insurance coverage.		
KS				
KY				
LA				
ME				

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State	Exceptions to General Rule of Immunity			
	Multiple Items	Insurance	Other Single Item	Marginal Item(s)
MD Md. Code Ann., Cts. & Jud. Proc. § 5-518(e) (West 2008)				
MA Mass. Gen. Laws ch. 258, § 2 Immunity for employees acting within the scope of their duties by establishing suit against districts as the exclusive remedy.				
MI Mich. Comp Laws Ann. § 691.1409 Waiving immunity within scope of employment		X Mich. Comp Laws Ann. § 691.1409		
MN				
MS Miss. Code Ann. § 11-46-7(2) (West 2008)				
MO				
MT				
NE				
NV				
NH				
NJ				

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State	Exceptions to General Rule of Immunity			
	Multiple Items	Insurance	Other Single Item	Marginal Item(s)
NM			X N.M. Stat. Ann. § 41-4-5 (West 2008) Motor vehicles	
NY				
NC Very strong immunity for a limited range of employees				
ND Public school employees do not have immunity				
OH Ohio Rev. Code Ann. § 2722.03 (A)(6) (West 2008) Broad immunity for negligence within the scope of employment			(X) Ohio Rev. Code Ann. § 2722.03 (A)(6) (c)(West 2008) Some legislation imposes expressly and specifically on employees with very limited in scope exceptions.	
OK Okla. Stat. tit. 51 § 153 (2008)				

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(X) = Partial or weaker exception**

State	Exceptions to General Rule of Immunity			
	Multiple Items	Insurance	Other Single Item	Marginal Item(s)
Immunity for employees acting within the scope of their duties by establishing suit against districts as the exclusive remedy.				
OR Or. Rev. Stat. § 30.265(1) (2008) Allocates defendant status in negligence suits against employees acting within the scope of their employment to the district				
PA	X 42 Pa. Cons. Stat. § 8545 (2008)			
RI				
SC S.C. Code Ann. § 15-78-60(5a) (2008) Allocates defendant status in negligence suits against employees acting within the scope of their employment to the district				
SD		X		

**Appendix A (Part 1)
Official Immunity State by State**

**Key: X = An exception to the general rule of immunity or liability
X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
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(X) = Partial or weaker exception**

State	Exceptions to General Rule of Immunity			
	Multiple Items	Insurance	Other Single Item	Marginal Item(s)
		S.D. Codified Laws § 21-32A-2 Statute waives immunity to the extent of insurance for ministerial & discretionary functions.		
TN				
TX Tex. Educ. Code Ann. § 22.0511 (Vernon 2008) No immunity for ministerial acts. Statute provides broad immunity to school district employees for discretionary acts in the scope of employment but has major exceptions for vehicles & “negligence resulting in bodily injury to students	X Tex. Educ. Code Ann. § 22.0511 (Vernon 2008)			
UT Utah Code Ann. § 63G-7-201 (2008) General Rule			X Utah Code Ann. § 63G-7-202(3)(C)(iii) & 63G-7-202(3)(C)(ii) (2008) Impairment by alcohol or illegal drugs	

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[X] = Entry based solely on case law
(X) = Partial or weaker exception**

State	Exceptions to General Rule of Immunity			
	Multiple Items	Insurance	Other Single Item	Marginal Item(s)
VT Official immunity is a matter of case law, not statute				
VA				
WA Difficult to characterize the general rule. State has legislatively abrogated governmental immunity for school districts so the possible summation is that liability is the general rule for employee negligence in the course of their employment. However a new general statute could be interpreted to provide an exclusive remedy.			X Wash. Rev. Code Ann. § 4.96.041 (2008)	X Wash. Rev. Code Ann. § 4.96.041 (2008)
WV			X W. Va. Code § 29-12A-5(b)(2) (2008) Only applicable exceptions to immunity	X W. Va. Code § 29-12A-11(a)(2) (2008) Districts must

**Appendix A (Part 1)
Official Immunity State by State**

**Key: X = An exception to the general rule of immunity or liability
X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
[X] = Entry based solely on case law
(X) = Partial or weaker exception**

State	Exceptions to General Rule of Immunity			
	Multiple Items	Insurance	Other Single Item	Marginal Item(s)
			are statutes specifically assigning liability.	indemnify employees acting within the scope of their employment
WI				
WY				

**Appendix A (Part 2)
Official Immunity State by State**

**Key: X = An exception to the general rule of immunity or liability
X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
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(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
AL		[X] Public employees have immunity for discretionary acts within the scope of their employment.	X Ala. Code § 6-1-24.1(g) (2008) Except in the case of excessive force or cruel & unusual punishment, no employee of any local board of education shall be civilly liable for any action carried out in conformity with state law & system or school rules regarding the control, discipline, suspension, & expulsion of students.	
AK		X Alaska Stat. § 09.65.070 (d)(2)(2008) Official immunity is qualified in terms of scope of employment & good faith.		
AZ			X	X

**Appendix A (Part 2)
Official Immunity State by State**

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(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
			Ariz. Rev. Stat. Ann. § 15-341 (A) (38)-(39) & §12-820.02 (2008) Covers certain health care measures.	Ariz. Rev. Stat. Ann. § 15-516 Concerns teachers' good faith grading of students.
AR				
CA Statutes & court decision in CA are particularly complex. Legal assistance is needed to navigate them.	X Cal. Gov't Code §830.6 (West 2009) & Cal. Educ. Code § 44808 (West 2008) Plan, design & construction of public property, listing condition of property, Injury to students off school property	X Cal. Gov't Code §820.2		
CO				
CT		X Conn. Gen. Stat. § 52-557n(a)(2)(B) (2008) Typical exceptions such as motor vehicles		

**Appendix A (Part 2)
Official Immunity State by State**

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(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary & dangerous property conditions	Other Single Item	Marginal Item(s)
DE Same immunity applies to schools as for public employees but some statutes limit the primary exceptions to school districts. See Del. Code Ann. tit. 10 §§ 4011-12 & 4013 (2008)				
FL Legislation provides negligence				

**Appendix A (Part 2)
Official Immunity State by State**

**Key: X = An exception to the general rule of immunity or liability
X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
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(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
immunity for public school employees acting within the scope of their employment by providing an exclusive remedy. Fla. Stat. § 768.28(9)(a) (2008)				
GA				
HI Courts have ruled that public employees have qualified immunity with the exemption				

**Appendix A (Part 2)
Official Immunity State by State**

**Key: X = An exception to the general rule of immunity or liability
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(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
being clear & convincing evidence of malice. Haw. Rev. Stat. § 662-15(1) (2008)				
ID		X Idaho Code Ann. § 6-904(1) (2008)	X Idaho Code Ann. § 6-904(7) (2008) Concerning Construction & improvement of property	X Idaho Code Ann. § 6-917 (2008) Judgments against districts preclude judgments against employees on the same claim
IL	X 745 Ill. Comp. Stat. 10/2-105, 10/3-102, 10/3-108 (2009) & 745 Ill. Comp. Stat. 10/2-207 (2008) There are so many exceptions that the exceptions essentially swallow the rule.	X 745 Ill. Comp. Stat. 10/2-201		
IN	X Ind. Code § 34-13-3-3	X Ind. Code § 34-13-3-3		X Ind. Code § 34-13-3-5(b)

**Appendix A (Part 2)
Official Immunity State by State**

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(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
	(2008) Unimproved property, inspections, injury to student or student property during discipline	(7)		Judgments against districts preclude judgments against employees on the same claim.
IA	X Iowa Code § 670.13 (West 2009)	X Iowa Code § 670.12 (West 2009) Extends discretionary immunity cited at § 670.4(3) to officials & public employees. The highest court in Iowa has interpreted this exception relatively narrowly.		
KS		X Kan. Stat Ann. §75-6104(e) (2008)		
KY		[X] KY highest court has established official immunity for the		

**Appendix A (Part 2)
Official Immunity State by State**

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(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
		discretionary acts of district employees. There may be an exception for ministerial acts depending on how rulings are read.		
LA		X La. Rev. Stat. Ann. § 9:2798.1 (2008)		
ME		X Me. Rev. Stat. Ann. tit. 14 8111(1)(C) (2008) Judgments against districts preclude judgments against employees on the same claim.		X Me. Rev. Stat. Ann. tit. 14 8114 (2008)
MD Md. Code Ann., Cts. & Jud. Proc. § 5-518(e) (West 2008)			X Md. Code Ann., Educ. §§ 4-105(a)-(c) & 4-106 (West 2008) Districts must insure employees for \$100,000 &	

**Appendix A (Part 2)
Official Immunity State by State**

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(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
MA Mass. Gen. Laws ch. 258, § 2 Immunity for employees acting within the scope of their duties by establishing suit against districts as the exclusive remedy.			treats coverage as immunity.	
MI Mich. Comp Laws Ann. § 691.1409 Waiving immunity within scope of				

**Appendix A (Part 2)
Official Immunity State by State**

**Key: X = An exception to the general rule of immunity or liability
X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
[X] = Entry based solely on case law
(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
employment				
MN		[X] Anderson v. Anoka Hennepin Indep. Sch. Dist., 678 N.W.3d 651 (Minn. 2004)		
MS Miss. Code Ann. § 11- 46-7(2) (West 2008)				
MO		[X] Immunity for school officials in their discretionary acts		
MT				X Mont. Code Ann. § 2-9-305 (5) (2008) Judgments against districts preclude judgments against employees on the same claim.
NE				X Neb. Rev. Stat. § 13-909

**Appendix A (Part 2)
Official Immunity State by State**

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(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
				(2008) Judgment against district precludes judgment against employee on the same claim.
NV	X Nev. Rev. Stat. § §41.033 & 41.0334 (2008) Addresses failure to inspect or discover hazards & injuries form criminal acts	X Nev. Rev. Stat. § 41.032(2)		
NH			X N.H. Rev. Stat. Ann. § 200:45 (2008) Covering automatic epinephrine injection	
NJ	X N.J. Stat. Ann. §§ 59:3-7 & 59:3-11 (West 2008) Failure to inspect or negligent inspection & Failure to supervise public recreational activities & plan or design of public property	X N.J. Stat. Ann. § 59:3-2		X N.J. Stat. Ann. § 59:9-6 Judgment against district constitutes complete claim against employee.

**Appendix A (Part 2)
Official Immunity State by State**

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(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
NM				
NY	X N.Y. Gen. Mun. Law § 50-b (McKinney 2008) & N.Y. Educ. Law § 3028-a (McKinney 2008) Districts assume liability and hold employee harmless for motor vehicle negligence & immunity for staff who report suspected drug or alcohol abuse by students under 21 to parents or to school officials.			
NC Very strong immunity for a limited range of employees		[(X)] Only applies to “public officials.” Courts have found superintendents & principals to be public officials but not teachers.		
ND Public school				

**Appendix A (Part 2)
Official Immunity State by State**

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X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
[X] = Entry based solely on case law
(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
employees do not have immunity				
OH Ohio Rev. Code Ann. § 2722.03 (A)(6) (West 2008) Broad immunity for negligence within the scope of employment				
OK Okla. Stat. tit. 51 § 153 (2008) Immunity for employees acting within the scope of their duties		X Okla. Stat. tit. 51 § 160 (2008) Judgment against district constitutes complete bar against employee Claim.		

**Appendix A (Part 2)
Official Immunity State by State**

**Key: X = An exception to the general rule of immunity or liability
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[X] = Entry based solely on case law
(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
by establishing suit against districts as the exclusive remedy.				
OR Or. Rev. Stat. § 30.265(1) (2008) Allocates defendant status in negligence suits against employees acting within the scope of their employment to the district				
PA				X 42 Pa. Cons. Stat. § 8557 Judgment against district

**Appendix A (Part 2)
Official Immunity State by State**

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X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
[X] = Entry based solely on case law
(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
				completely bars claim against employee .
RI	X R.I. Gen. Laws § 9-1-48 (2008) Immunity for coaches and use of epinephrine auto-injection devices.			
SC S.C. Code Ann. § 15-78-60(5a) (2008) Allocates defendant status in negligence suits against employees acting within the scope of their employment				

**Appendix A (Part 2)
Official Immunity State by State**

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X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
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(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
to the district				
SD				
TN			X Tenn. Code Ann. §§ 29-20-109 (2008) & 29-20-310(c)	
TX Tex. Educ. Code Ann. § 22.0511 (Vernon 2008) No immunity for ministerial acts. Statute provides broad immunity to school district employees for discretionary acts in the				

**Appendix A (Part 2)
Official Immunity State by State**

**Key: X = An exception to the general rule of immunity or liability
X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
[X] = Entry based solely on case law
(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
scope of employment but has major exceptions for vehicles & “negligence resulting in bodily injury to students				
UT Utah Code Ann. § 63G-7-201 (2008) General Rule				
VT Official immunity is a matter of case law, not statute		[X] Official immunity is a matter of case law, not statute.		
VA		[X] Official immunity is a matter of case law, not statute.		

**Appendix A (Part 2)
Official Immunity State by State**

**Key: X = An exception to the general rule of immunity or liability
X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
[X] = Entry based solely on case law
(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
WA Difficult to characterize the general rule. State has legislatively abrogated governmental immunity for school districts so the possible summation is that liability is the general rule for employee negligence in the course of their employment. However a				

**Appendix A (Part 2)
Official Immunity State by State**

**Key: X = An exception to the general rule of immunity or liability
X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
[X] = Entry based solely on case law
(X) = Partial or weaker exception**

State	Exceptions to General Rule of Liability			
	Multiple Items	Discretionary	Other Single Item	Marginal Item(s)
new general statute could be interpreted to provide an exclusive remedy.				
WV				
WI		X Wis. Stat. Ann. § 893.80(4) (West 2008)	X Wis. Stat. Ann. § 895.525(4m)(a) (West 2008) Exception for recreational activities that includes physical contact which court has held applies to cheerleading.	
WY				X Wyo. Stat. Ann. § 1-39-1116(b) (2008)

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Official Immunity State by State**

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(X) = Partial or weaker exception**

State	Other Limitations		
	Indemnification	Attorney Representation	Damages Cap(s)
AL			
AK			
AZ			
AR			
CA Statutes & court decision in CA are particularly complex. Legal assistance is needed to navigate them.		X Cal. Gov't Code §995	
CO	(X) Colo. Rev. Stat. § 24-10-110(1)(b)	X Colo. Rev. Stat. § 24-10-110(1)(a) & 24-10-110 (1.5)	X Colo. Rev. Stat. § 24-10-114 & 24-10-118
CT	X Conn. Gen. Stat. § 10-235(a)		
DE Same immunity applies to schools	X Del. Code Ann. tit. 14 § 1095 & tit. 10 § 4003	X Del. Code Ann. tit. 14 § 1095	X Del. Code Ann. tit. 10 § 4013

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Official Immunity State by State**

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(X) = Partial or weaker exception**

State	Other Limitations		
	Indemnification	Attorney Representation	Damages Cap(s)
as for public employees but some statutes limit the primary exceptions to school districts. See Del. Code Ann. tit. 10 §§ 4011-12 & 4013 (2008)			
FL Legislation provides negligence immunity for public school employees acting within the scope of their employment by providing an exclusive remedy. Fla. Stat. § 768.28(9)(a)		X Fla. Stat. § 1012.26 (2008) Mandatory reimbursement for successful defenses	

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Official Immunity State by State**

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X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
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(X) = Partial or weaker exception**

State	Other Limitations		
	Indemnification	Attorney Representation	Damages Cap(s)
(2008)			
GA	(X) Ga. Code Ann. §§ 45-9-21 & 45-9-20 (2008) Authorizes school districts to purchase insurance for purposes of indemnification.		
HI Courts have ruled that public employees have qualified immunity with the exemption being clear & convincing evidence of malice. Haw. Rev. Stat. § 662-15(1) (2008)		Haw. Rev. Stat. § 662-16 (2008)	
ID	X Idaho Code Ann. § 6-903 (b)(i) (2008)	X Idaho Code Ann. § 6-903 (b)(i) (2008)	
IL	X	(X)	

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Official Immunity State by State**

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(X) = Partial or weaker exception**

State	Other Limitations		
	Indemnification	Attorney Representation	Damages Cap(s)
	105 Ill. Comp. Stat. 5/10-20.20&5/34-18.1 School districts	105 Ill. Comp. Stat. 5/34-18.1 Large school districts	
IN	X Ind. Code § 34-13-3-5(d)	X Ind. Code § 34-13-3-5(e)	X Ind. Code § 34-13-3-4
IA	X Iowa Code § 670.8	X Iowa Code § 670.8	
KS	X Kan. Stat Ann. §75-6109 (2008)	X Kan. Stat Ann. §75-6108(a) (2008)	X Kan. Stat Ann. §75-6105 (2008) \$5000 cap unless insurance is purchased
KY			
LA			
ME	(X) Me. Rev. Stat. Ann. tit. 14 8112(1)-(3) (2008) District may indemnify employees for acts or omissions when the district is not liable but must indemnify when it is liable.	X Me. Rev. Stat. Ann. tit. 14 8112(1)-(2) (2008)	
MD Md. Code Ann., Cts. & Jud. Proc.			

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(X) = Partial or weaker exception**

State	Other Limitations		
	Indemnification	Attorney Representation	Damages Cap(s)
§ 5-518(e) (West 2008)			
MA Mass. Gen. Laws ch. 258, § 2 Immunity for employees acting within the scope of their duties by establishing suit against districts as the exclusive remedy.		(X) MA Mass. Gen. Laws ch. 258, § 2 Employee may request representation if a claim is filed.	
MI Mich. Comp Laws Ann. § 691.1409 Waiving immunity within scope of employment	(X) Mich. Comp Laws Ann. § 691.1408	(X) Mich. Comp Laws Ann. § 691.1408	
MN	X Minn. Stat. § 466.07 (2008) & Minn. Stat. § 123B.25(b) (2008) Districts shall, at the request of the	X Minn. Stat. § 466.07 (2008) & Minn. Stat. § 123B.25(b) (2008) Districts are not liable for judgments	X Minn. Stat. § 466.04 (2008) Damage Caps

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X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
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(X) = Partial or weaker exception**

State	Other Limitations		
	Indemnification	Attorney Representation	Damages Cap(s)
	teacher, provide legal counsel.	against teachers.	
MS Miss. Code Ann. § 11-46-7(2) (West 2008)	X Miss. Code Ann. § 11-46-7(2) (West 2008)	X Miss. Code Ann. § 11-46-7(3) (West 2008)	
MO			
MT	X Mont. Code Ann. § 2-9-305 (2008)	X Mont. Code Ann. § 2-9-305 (2008)	
NE	X Neb. Rev. Stat. § 13-922 (2008) Cap only applies in non- discretionary cases.		
NV	X Nev. Rev. Stat. § 41.0349	X Nev. Rev. Stat. § 41.0339	X Nev. Rev. Stat. § 41.035 (\$50,000)
NH	X N.H. Rev. Stat. Ann. § 31:105 (2008) Applying by vote of government body	(X) N.H. Rev. Stat. Ann. § 31:105 (2008) Applying by vote of government body	X N.H. Rev. Stat. Ann. § 507-B:(4) (IV) (2008)
NJ	X N.J. Stat. Ann. § 59:10-4		
NM	X N.M. Stat. Ann. § 41-4-4 (D)(West	X N.M. Stat. Ann. § 41-4-4 (B)(West	X N.M. Stat. Ann. § 41-4-19 (West

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(X) = Partial or weaker exception**

State	Other Limitations		
	Indemnification	Attorney Representation	Damages Cap(s)
	2008)	2008)	2008)
NY	X N.Y. Pub. Off. Law § 18 (4)(McKinney 2008)	X N.Y. Educ. Law § 3028 (McKinney 2008) & N.Y. Pub. Off. Law § 18 (3) (a)(McKinney 2008) School districts may provide attorney representation for suits arising out of student disciplinary actions & Public entities provide defense for public employees for negligent acts or omissions.	
NC Very strong immunity for a limited range of employees		(X) N.C. Gen. Stat. § 115C-43 (2008)	X N.C. Gen. Stat. § 143-300.16 (2008)
ND Public school employees do not have immunity			
OH Ohio Rev. Code Ann. § 2722.03	X Ohio Rev. Code Ann. § 2744.07 (West 2008)	X Ohio Rev. Code Ann. § 2744.07 (West 2008)	X Ohio Rev. Code Ann. § 2744.05 (West 2008)

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(X) = Partial or weaker exception**

State	Other Limitations		
	Indemnification	Attorney Representation	Damages Cap(s)
(A)(6) (West 2008) Broad immunity for negligence within the scope of employment			Damages not representing actual loss are capped at \$250,000 except in wrongful death.
OK Okla. Stat. tit. 51 § 153 (2008) Immunity for employees acting within the scope of their duties by establishing suit against districts as the exclusive remedy.			
OR Or. Rev. Stat. § 30.265(1) (2008) Allocates defendant status in negligence suits against employees	X Or. Rev. Stat. § 30.285(1) (2008)	X Or. Rev. Stat. § 30.285(1) (2008)	X Or. Rev. Stat. § 30.270 (2008)

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(X) = Partial or weaker exception**

State	Other Limitations		
	Indemnification	Attorney Representation	Damages Cap(s)
acting within the scope of their employment to the district			
PA	X 42 Pa. Cons. Stat. § 8548	X 42 Pa. Cons. Stat. § 8547	
RI	X R.I. Gen. Laws § 9-1-31 (2008)		
SC S.C. Code Ann. § 15-78-60(5a) (2008) Allocates defendant status in negligence suits against employees acting within the scope of their employment to the district		(X) S.C. Code Ann. § 1-7-50 (2008)	
SD	(X) S.D. Codified Laws § 3-19-1	X S.D. Codified Laws § 3-19-1	
TN	X Tenn. Code Ann. §§ 49-6-4211(b)	X Tenn. Code Ann. §§ 49-6-4211(a)	

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(X) = Partial or weaker exception**

State	Other Limitations		
	Indemnification	Attorney Representation	Damages Cap(s)
	(2008)	(2008)	
TX Tex. Educ. Code Ann. § 22.0511 (Vernon 2008) No immunity for ministerial acts. Statute provides broad immunity to school district employees for discretionary acts in the scope of employment but has major exceptions for vehicles & “negligence resulting in bodily injury to students	(X) Tex. Civ. Prac. & Rem. Code Ann. § 102.002 (Vernon 2008)	(X) Tex. Civ. Prac. & Rem. Code Ann. § 102.004 (Vernon 2008)	(X) Tex. Civ. Prac. & Rem. Code Ann. § 102.003 (Vernon 2008)
UT Utah Code Ann. § 63G-7-201 (2008) General Rule	X Utah Code Ann. § 63G-7-903 (2008)	X Utah Code Ann. § 63G-7-902 (2008)	X Utah Code Ann. § 63G-7-604 (2008)

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[X] = Entry based solely on case law
(X) = Partial or weaker exception**

State	Other Limitations		
	Indemnification	Attorney Representation	Damages Cap(s)
VT Official immunity is a matter of case law, not statute	X 16 Vt. Stat. Ann. § 1756 (2008) Interaction with 24 Vt. Stat. Ann. § 901 (2008) is not clear. Possible immunity application to limited categories of employees.	X 16 Vt. Stat. Ann. § 1756 (2008)	
VA			
WA Difficult to characterize the general rule. State has legislatively abrogated governmental immunity for school districts so the possible summation is that liability is the general rule for employee negligence in the course of their employment.			

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Official Immunity State by State**

**Key: X = An exception to the general rule of immunity or liability
X* = State insurance statute waives immunity granted as an exception to the general rule of immunity
[X] = Entry based solely on case law
(X) = Partial or weaker exception**

State	Other Limitations		
	Indemnification	Attorney Representation	Damages Cap(s)
However a new general statute could be interpreted to provide an exclusive remedy.			
WV		X W. Va. Code § 29-12A-12(a)(1) (2008) Districts must defend employees acting within the scope of their employment unless action is commenced by district.	X W. Va. Code § 29-12A-7 (2008) No limit for econ. Damages. \$500,000 on noneconomic.
WI	X Wis. Stat. Ann. § 895.46 (West 2008) Indemnification in excess of insurance	X Wis. Stat. Ann. § 895.46 (West 2008) District covers the cost of defense if insurance does not.	
WY	X Wyo. Stat. Ann. § 1-39-104 (c) (2008)	X Wyo. Stat. Ann. § 1-39-104 (b) (2008)	X Wyo. Stat. Ann. § 1-39-118 (2008)