



Aida S. Montano

Bill Analysis
Legislative Service Commission

H.B. 486

126th General Assembly
(As Introduced)

Reps. Faber, Wagner, Uecker, J. McGregor, Aslanides, Fessler, Willamowski, Seitz, Core, Widowfield, Calvert, Flowers, Gibbs, Williams, Martin, Webster, Raga, Otterman, Hartnett, Reinhard, Schaffer, Hoops, Hagan, Buehrer, Setzer, Gilb, Trakas, D. Evans

BILL SUMMARY

- Grants civil immunity to a city, exempted village, local, or joint vocational school district or educational service center, community school, or nonpublic school or an employee of any city, exempted village, local, or joint vocational school district or educational service center, community school, or nonpublic school for injury, death, or loss to person or property that a student or other person allegedly sustains as a result of an employee's discipline of a student.
- Provides that the above civil immunity does not apply if the discipline used by the employee results in student endangerment.
- Provides that nothing in the bill is to be construed to affect any provision in existing law pertaining to the procedures for permitting or prohibiting corporal punishment in the schools.

CONTENT AND OPERATION

Operation of the bill

The bill generally grants qualified civil immunity to specified educational entities and their employees for injury allegedly sustained as a result of an employee's discipline of a student.

Qualified civil immunity

The bill provides that a city, exempted village, local, or joint vocational school district or educational service center, community school, or nonpublic

school or an *employee* of any city, exempted village, local, or joint vocational school district or educational service center, community school, or nonpublic school is not liable in damages in a civil action to a student or any other person for injury, death, or loss to person or property that the student or other person allegedly sustains as a result of an employee's discipline of a student. The immunity provided in this section does not apply if the discipline used by the employee results in *student endangerment*. (R.C. 3313.473(B).) (See "*Definitions*," below, for the definitions of the italicized terms.)

The bill provides that its grant of immunity as described above does not eliminate, limit, or reduce any other immunity or defense that a school district or school district employee may be entitled to under R.C. Chapter 2744. (Political Subdivision Sovereign Immunity Law) or any other provision of the Revised Code or under Ohio common law. It further provides nothing in the bill is to be construed to affect any of the provisions set forth in R.C. 3319.41 (see **COMMENT**).

Definitions

For purposes of its grant of civil immunity as described above, the bill defines the following terms (R.C. 3313.473(A)):

"Student endangerment" means any of the following: (1) the abuse of a student, (2) the administration of a physical disciplinary measure, or physical restraint of a student in a cruel manner or for a prolonged period, that is excessive under the circumstances and creates a substantial risk of serious physical harm to the student, or (3) the repeated administration of unwarranted disciplinary measures to a student, when there is a substantial risk that the unwarranted disciplinary measures, if continued, will seriously impair or retard the student's mental health or development.

"Employee" means any person, whether or not compensated and whether full-time or part-time, who is authorized to act and is acting within the scope of employment for a city, exempted village, local, or joint vocational school district or educational service center, community school, or nonpublic school.

Political subdivision and employee defenses and immunities

Background and existing law

The existing Political Subdivision Sovereign Immunity Law provides that in a civil action brought against a political subdivision or an employee of a political subdivision to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with a

governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability (R.C. 2744.03):

(1) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.

(2) The political subdivision is immune from liability if the conduct of the employee involved that gave rise to the claim of liability: (a) was not negligent conduct and was required or authorized by law, or (b) was necessary or essential to the exercise of powers of the political subdivision or employee.

(3) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

(4) The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense and who, at the time of the injury or death, was serving any portion of the person's sentence by performing community service work for or in the political subdivision whether pursuant to R.C. 2951.02 or otherwise, or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision in accordance with the order of a juvenile court entered pursuant to R.C. 2152.19 or 2152.20, and if, at the time of the person's or child's injury or death, the person or child was covered for purposes of R.C. Chapter 4123. (Workers' Compensation Law) in connection with the community service or community work for or in the political subdivision.

(5) The political subdivision is immune from liability if the injury, death, or loss to person or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

(6) *In addition to any immunity or defense referred to in paragraph (7), below, and in circumstances not covered by that provision or R.C. 3314.07¹ and*

¹ R.C. 3314.07, not in the bill, provides civil immunity for sponsors of community schools and their officers, directors, or employees.

3746.24,² *the employee is immune from liability unless one of the following applies: (a) the employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities, (b) the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner, or (c) civil liability is expressly imposed upon the employee by a section of the Revised Code. Civil liability is not to be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because that section provides for a criminal penalty, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term "shall" in a provision pertaining to an employee.*

(7) The political subdivision, and an employee who is a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or a judge of a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.

Any immunity or defense conferred upon, or referred to in connection with, an employee by paragraph (6) or (7), above, does not affect or limit any liability of a political subdivision for an act or omission of the employee as provided in R.C. 2744.02 (R.C. 2744.03(B)).

Operation of the bill

The bill modifies paragraph (6) under "**Background and existing law,**" above, by providing that the qualified immunity granted in that paragraph applies *in circumstances not covered by the bill* (R.C. 2744.03(A)(6)).

COMMENT

R.C. 3319.41, not in the bill, generally provides the following:

(1) Beginning September 1, 1994, and except as described in paragraph (3), below, no person employed or engaged as a teacher, principal, administrator, nonlicensed school employee, or bus driver in a public school may inflict or cause to be inflicted corporal punishment as a means of discipline upon a pupil attending

² *R.C. 3746.24, not in the bill, provides qualified immunity for certain persons or entities in tort actions resulting from the presence of hazardous substances or petroleum at, or the release of hazardous substances or petroleum from, a property where a voluntary action is being or has been conducted under the laws pertaining to the voluntary cleanup of contaminated property.*

such school, unless the board of education of the school district in which the school is located adopts a resolution no later than September 1, 1994, to permit corporal punishment as a means of discipline and does not adopt a resolution prohibiting corporal punishment pursuant to paragraph (2), below. No board can adopt a resolution *permitting* corporal punishment before receiving and studying the report of the local discipline task force appointed under existing law to conduct a study of effective discipline measures that are appropriate for that school district. (Existing law provides for the appointment, members, public meetings, public notice of meetings, and written report and recommendations of the local discipline task force.)

(2)(a) At any time after September 1, 1996, the board of education of any city, local, exempted village, or joint vocational school district in which corporal punishment is permitted may adopt a resolution to *prohibit* corporal punishment. After the adoption of such a resolution prohibiting corporal punishment, the board of education of any city, local, exempted village, or joint vocational school district may adopt a resolution *permitting* corporal punishment after complying with paragraph (2)(c), below.

(b) At any time after September 1, 1998, the board of education of any city, local, exempted village, or joint vocational school district that did not adopt a resolution permitting corporal punishment as a means of discipline pursuant to paragraph (1), above, may adopt a resolution *permitting* corporal punishment after complying with paragraph (2)(c), below.

(c) The board of education of each city, local, exempted village, and joint vocational school district that intends to adopt a resolution *permitting* corporal punishment as a means of discipline pursuant to paragraph (2)(a) or (b), above, may adopt that resolution permitting corporal punishment as a means of discipline only after receiving and studying the report of the secondary local discipline task force appointed to conduct a study of effective discipline measures that are appropriate for that school district. (Existing law provides for the appointment, members, public meetings, public notice of meetings, and written report and recommendations of the secondary local discipline task force.)

(3) The prohibition of corporal punishment by paragraph (1), above, or by a resolution adopted under paragraph (2), above, does not prohibit the use of reasonable force or restraint in accordance with paragraph (7), below.

(4) If the board of education of any city, local, exempted village, or joint vocational school district does not prohibit corporal punishment on the effective date of R.C. 3319.41 but at any time after that date corporal punishment will be prohibited in the district pursuant to paragraph (1) or (2), above, the board must do both of the following prior to the date on which the prohibition takes effect: (a)

adopt a disciplinary policy for the district that includes alternative disciplinary measures, and (b) consider what in-service training, if any, school district employees might need as part of implementing that disciplinary policy.

(5) A person employed or otherwise engaged as a teacher, principal, or administrator by a board of education permitting corporal punishment pursuant to paragraph (1), above, or by a nonpublic school, except as otherwise provided by the governing authority of the nonpublic school, may inflict or cause to be inflicted *reasonable corporal punishment* upon a pupil attending the school to which the person is assigned whenever such punishment is reasonably necessary in order to preserve discipline while the student is subject to school authority.

(6) A board of education of a school district that permits the use of corporal punishment as a means of discipline pursuant to a resolution adopted by the board pursuant to paragraph (1), above: (a) must permit as part of its discipline policy the parents, guardian, or custodian of a child that is attending any school within the school district to request that corporal punishment not be used as a means of discipline on that child, (b) upon the receipt of a request of that nature, must ensure that an alternative disciplinary measure is applied with respect to that child, and (c) must include a procedure for the exercise of that option in the resolution adopted pursuant to paragraph (1), above.

(7) Persons employed or engaged as teachers, principals, or administrators in a school, whether public or private, and nonlicensed school employees and school bus drivers may, within the scope of their employment, use and apply such amount of force and restraint as is reasonable and necessary to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property.

HISTORY

ACTION	DATE
Introduced	01-25-06

H0486-I-126.doc/jc

