

MAINE STATE LEGISLATURE

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132nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2025

Legislative Document

No. 1222

H.P. 797

House of Representatives, March 20, 2025

An Act to Limit Sovereign Immunity for Schools and School Superintendents

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative PAUL of Winterport.

Cosponsored by Representatives: COLLINS of Sidney, HAGGAN of Hampden, LYMAN of Livermore Falls, MORRIS of Turner, PERKINS of Dover-Foxcroft.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 14 MRSA §8102, sub-§3-A** is enacted to read:

3 **3-A. School administrative unit.** "School administrative unit" has the same meaning
4 as in Title 20-A, section 1, subsection 26.

5 **Sec. 2. 14 MRSA §8102, sub-§3-B** is enacted to read:

6 **3-B. School superintendent.** "School superintendent" has the same meaning as in
7 Title 20-A, section 1, subsection 39.

8 **Sec. 3. 14 MRSA §8104-A, sub-§5** is enacted to read:

9 **5. School administrative units and school superintendents.** A school administrative
10 unit or school superintendent is liable for conduct under section 8104-E, subsection 1.

11 **Sec. 4. 14 MRSA §8104-B, sub-§3**, as amended by PL 2005, c. 448, §1, is further
12 amended to read:

13 **3. Performing discretionary function.** Performing or failing to perform a
14 discretionary function or duty, whether or not the discretion is abused and whether or not
15 any statute, charter, ordinance, order, resolution or policy under which the discretionary
16 function or duty is performed is valid or invalid, except that if the discretionary function
17 involves the operation of a motor vehicle, as defined in Title 29-A, section 101, subsection
18 42, this section does not provide immunity for the governmental entity for an employee's
19 negligent operation of the motor vehicle resulting in a collision, regardless of whether the
20 employee has immunity under this chapter, and except that this section does not provide
21 immunity for conduct under section 8104-E, subsection 1, paragraph E;

22 **Sec. 5. 14 MRSA §8104-E** is enacted to read:

23 **§8104-E. School administrative units and school superintendents**

24 **1. Limited immunity for school administrative units and school superintendents.**
25 Notwithstanding the provisions of section 8103, this chapter does not apply to claims
26 against a school administrative unit or a school superintendent for certain conduct,
27 including:

28 A. A discretionary policy decision involving gross negligence or willful misconduct;

29 B. An act of negligence;

30 C. A violation of state or federal education law;

31 D. Failure to ensure student safety, including:

32 (1) Physical harm suffered by a student;

33 (2) Abuse inflicted by a student;

34 (3) Discrimination directed at a student; or

35 (4) Failure to report misconduct;

36 E. Failure to report abuse of, neglect of or threats to a student under subsection 4;

37 F. Willful misconduct; or

38 G. Criminal activity.

1 **2. Notice required.** An action for conduct under subsection 1, paragraphs A to G may
2 not be filed unless the plaintiff has provided written notice to the school administrative unit
3 or school superintendent at least 60 days prior to filing the complaint. The school
4 administrative unit or school superintendent may investigate or resolve the matter through
5 mediation or administrative review during the notice period under this subsection.

6 **3. School employees and staff.** This section does not apply to school employees or
7 staff, including teachers, acting within the course and scope of employment for the school
8 administrative unit, except in cases of gross negligence, willful misconduct or criminal
9 activity. A school administrative unit shall indemnify all staff and employees for a claim
10 arising out of an act by a school administrative unit staff member or employee performing
11 an official duty.

12 **4. Mandatory reporting.** Each school administrative unit shall establish, publish and
13 enforce a mandatory reporting policy regarding student safety concerns. Failure to report
14 abuse of, neglect of or threats to a student is a ground for legal action under subsection 1,
15 paragraph E.

16 **5. Liability insurance.** A school administrative unit shall maintain liability insurance
17 coverage sufficient to cover a potential claim involving conduct under subsection 1,
18 paragraphs A to G. The Department of Education may establish a fund or provide other
19 financial support to a school administrative unit carry out the purposes of this subsection.

20 **6. Report.** Beginning October 1, 2027, the Department of Education shall submit an
21 annual report to the joint standing committee of the Legislature having jurisdiction over
22 education matters on the impact and effectiveness of this section.

23 **Sec. 6. Effective date.** This Act takes effect October 1, 2026.

24 SUMMARY

25 This bill removes immunity under the Maine Tort Claims Act for school
26 superintendents, school administrative units or schools within the school administrative
27 unit's jurisdiction for certain conduct, including negligence, violations of state or federal
28 education law, failure to ensure student safety, failure to report abuse of, neglect of or
29 threats to a student, willful misconduct or criminal activity. The bill also requires school
30 administrative units to indemnify their staff and employees, establish mandatory reporting
31 policies regarding student safety and carry liability insurance. The bill directs the
32 Department of Education to submit an annual report to the Legislature on the impact and
33 effectiveness of these provisions and establishes an effective date of October 1, 2026.