Input on HB 4623

Relating to the waiver of immunity for schools.

April 9, 2025

The **Association of Texas Professional Educators (ATPE)** offers the following input on **House Bill (HB) 4623** by Rep. Mitch Little.

ATPE is deeply committed to ensuring all educational settings are safe and secure environments where students, school employees, and volunteers can be productive. In particular, we are dedicated to high professional and ethical standards for educators, in addition to high educational standards.

ATPE has supported strengthening the educator pipeline, including ensuring that all potential educators are screened prior to serving in a classroom and that they undergo meaningful professional practice and ethics training. We have opposed the Texas Education Agency's attempts to remove the testing of teacher ethics from educator certification examinations. We have also supported the removal of any person who abuses their position as a school employee to engage in an inappropriate romantic or physical relationship with a student, including placement of that individual on a do-not-hire registry. Under current law, school staff are only immune from liability as it relates to acts that are "… incident to or within the scope of the duties of the employee's position …". It is hard, if not impossible, to imagine a scenario where sexual misconduct, as defined by the bill, could ever be considered incident to or within the scope of an employee's duties. Therefore, the immunity Texas Education Code Section 22.0511 currently provides would not exist for public school employees in these circumstances.

While we support the goal of vigorously discouraging anyone who would commit an act defined by Section 118.001(4) from being employed in a public school, or in any school, the bill goes substantially and problematically beyond that goal. First, the bill creates a new cause of action against school districts that places strict liability on a district for the actions of its employees and, in some cases volunteers, regardless of fault or failure to properly discharge its supervisory duties. Under current law, districts and individual administrators are liable under 42 U.S.C. § 1983 if employees are supervised in a manner that manifests deliberate indifference to the constitutional rights of citizens. Students have a liberty interest in their bodily integrity that is protected by the Due Process Clause of the Fourteenth Amendment, a constitutional right which physical sexual abuse by a school employee violates. Where a district employee in a supervisory role learns of facts or a pattern of behavior that plainly points to a conclusion that a subordinate is sexually abusing a student; the supervisor fails to take action that was obviously necessary to prevent or stop the abuse; and the failure causes a constitutional injury to the student, neither the district nor the supervisor will be able to rely on immunity. Under this bill however, the district would not be absolved of liability even if its administrative employees and board had done their due diligence in

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following state, and federal, laws in the hiring of educators, including checking the do-not-hire registry, as well as following regulations and generally accepted practices in managing employees. In fact, the act or omission that results in the liability need not even occur at school or a school-related event. If the student and employee attend the same church or participate in a club sports team together, or if the employee is a family friend, and the act or omission occurs in one of those spaces, the district would still be liable under the language of this bill as drafted. Second, under section 118.002(a)(3), the bill opens this new strict liability on districts for any act or omission that results in any physical or mental injury. For example, if a coach intentionally puts a player into a game in the normal course and scope of their duties, and that action results in the player, through no fault of anyone, being injured, e.g., breaking an arm or leg, the district would be liable, and, because they are made jointly and severally liable, so would the employee. The situation would be the same if an elementary student were rough housing and subsequently hurt on the playground. Many activities we expect to be made available for students carry varying degrees of inherent risk. The bill as drafted seriously disincentivizes employees from agreeing to supervise these activities and makes offering them a significant financial liability to the district. Further, at a time when the Legislature is contemplating legislation to decrease an educator's ability to maintain any awareness of a student's mental health, the bill invites lawsuits from parents grieving the loss of a child who has tragically taken their own life by asserting that an employee failed to prevent it. Finally, we are concerned that the bill will also have additional unintended consequences. For example, teachers, like many professionals and, to a lesser degree, all Texans, already have a duty to report suspected child abuse or neglect under the Family Code. This is a duty educators take seriously and one that already carries the significant penalty of a class A misdemeanor and potential loss of certification if the educator fails to discharge that duty. The majority of cases observed and reported by educators are instances of abuse and neglect at the hands of a close family member of the child, not another educator. The Family Code calls on the educator to have reasonable cause before requiring a report; however, there is concern that placing too great a liability on the informant would make them more likely to call in reports that a reasonable person not under duress would not find likely to be a result of abuse or neglect. When this is the case, it would spread even more thin an understaffed and overworked CPS system while putting families not in the wrong in that system's path. Additionally, these reports are confidential, and ISDs are not one of the entities to which an educator reports under the statute, so there would be no reason for an ISD to know whether an employee made or didn't make a report—yet the bill would make a district liable if the employee did fail to report.

We stand by your side in the desire to reduce sexual misconduct in public schools to zero. However, this bill seems unlikely to significantly move the state toward that goal, but it does seem likely to imperil significant taxpayer funds through a new and potentially faultless cause of action. For this and all of the reasons above, ATPE urges you not to pass HB 4623 as currently drafted. We offer ourselves up as a partner to work with the author or committee members to improve this bill. For additional information, contact ATPE Governmental Relations at (800) 777-2873 or government@atpe.org.

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