WEST VIRGINIA CODE: §18-5-19D

§18-5-19d. Conditional immunity from liability for community activities; liability insurance; authority of State Board of Risk and Insurance Management.

(a)(1) If the requirements of this subsection are met, the board of education is not liable under any theory of vicarious or imputed liability for the acts or omissions of:

(A) Any person, organization or association using school property for a community activity described in section nineteen of this article;

(B) Any member, employee or agent of such person, organization or association; or

(C) Any person attending or participating in the community activity other than an employee of the board while acting within the scope of employment.

(2) The limitation of liability extended the board of education pursuant to this subsection does not apply unless:

(A) The person, organization or association using school property for a community activity has in effect, at the time of the act or omission described in subdivision (1) of this subsection, a contract of insurance which provides general comprehensive liability coverage of any claim, demand, action, suit or judgment by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person arising out of the use of school property for a community activity described in subdivision (1) of this subsection;

(B) The contract of insurance provides for the payment of any attorney fees, court costs and other litigation expenses incurred by the board in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act; and

(C) The insurance coverage is in the amounts specified in the provisions of section five-a, article twelve, chapter twenty-nine of this code.

(3)(A) The insurance described in subdivision (2) of this subsection may be obtained privately or may be obtained pursuant to the provisions of this subdivision. If requested by any person, organization or association seeking such insurance coverage, the State Board of Risk and Insurance Management is authorized to provide such insurance and to enter into any necessary contract of insurance to further the intent of this subdivision.

(B) Where provided by the State Board of Risk and Insurance Management, the cost of the insurance, as determined by the such board, shall be paid by the person, organization or association and may include administrative expenses. All funds received by such board shall be deposited with the West Virginia Board of Investments for investment purposes.

(C) The State Board of Risk and Insurance Management is hereby authorized and

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empowered to negotiate and effect settlement of any and all claims covered by the insurance provided by such board pursuant to this subdivision to the extent the board is authorized and empowered to negotiate and effect settlement of claims described in section five, article twelve, chapter twenty-nine of this code.

(4) As used in this subsection, "organization" or "association" means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, eleemosynary, incorporated or unincorporated association or organization or a rescue unit or other similar volunteer community service organization or association, but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon.

(b) In addition to the liability protection for organized use outlined in this section, county boards are not liable for any loss or injury arising from the use of school property made available for unorganized recreation. County boards are liable for their acts or omissions which constitute gross negligence or willful and wanton conduct which is the proximate cause of injury or property damage.

(c) Nothing in this section shall affect the rights, duties, defenses, immunities or causes of action under other statutes or the common law of this state which may be applicable to boards of education.

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