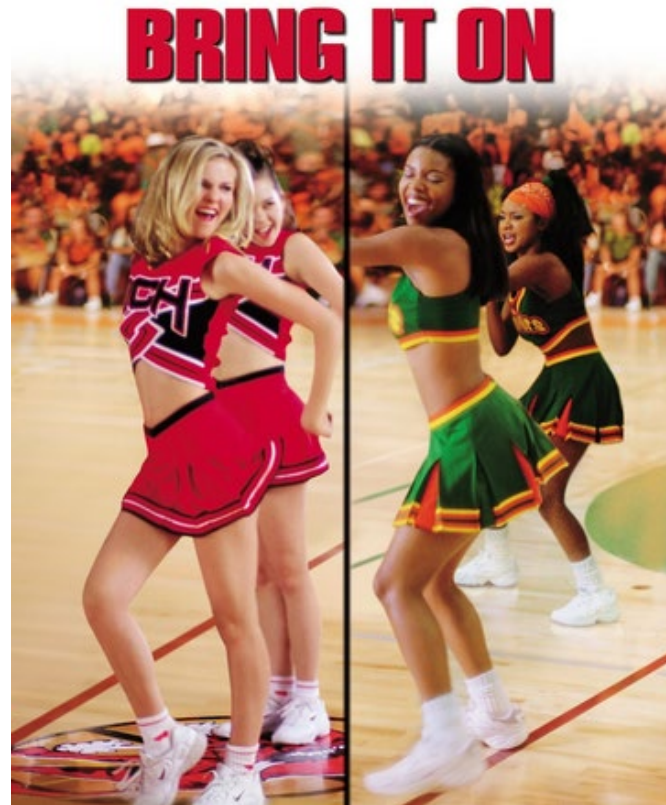


Recent Developments in Immunity for School District Litigation

School Law Section, Lunch Duty CLE Series

May 13, 2026

Lawsuit Filed by Parent Angry that Daughter Was Selected as Co-Captain of Cheer Team



No. 13-25-00343-CV

IN THE THIRTEENTH COURT OF APPEALS
CORPUS CHRISTI-EDINBURG, TEXAS

La Joya Independent School District

Appellant

v.

Laura Varela, Individually and a/n/f K.R.

Appellee



NUMBER 13-25-00391-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

NO. 13-25-00388-CV

IN THE THIRTEENTH COURT OF APPEALS
CORPUS CHRISTI-EDINBURG, TEXAS

In re LA JOYA INDEPENDENT SCHOOL DISTRICT

Relator

Paxton v. City of Austin

722 S.W.3d 50 (15th Court 2024)

The 15th Court recognized that in *Thomas v. Long*, 207 S.W.3d 334, 338 (Tex. 2006), the Texas Supreme Court held that an order ruling on the merits of an issue without explicitly rejecting a jurisdictional attack has implicitly denied the jurisdictional challenge.

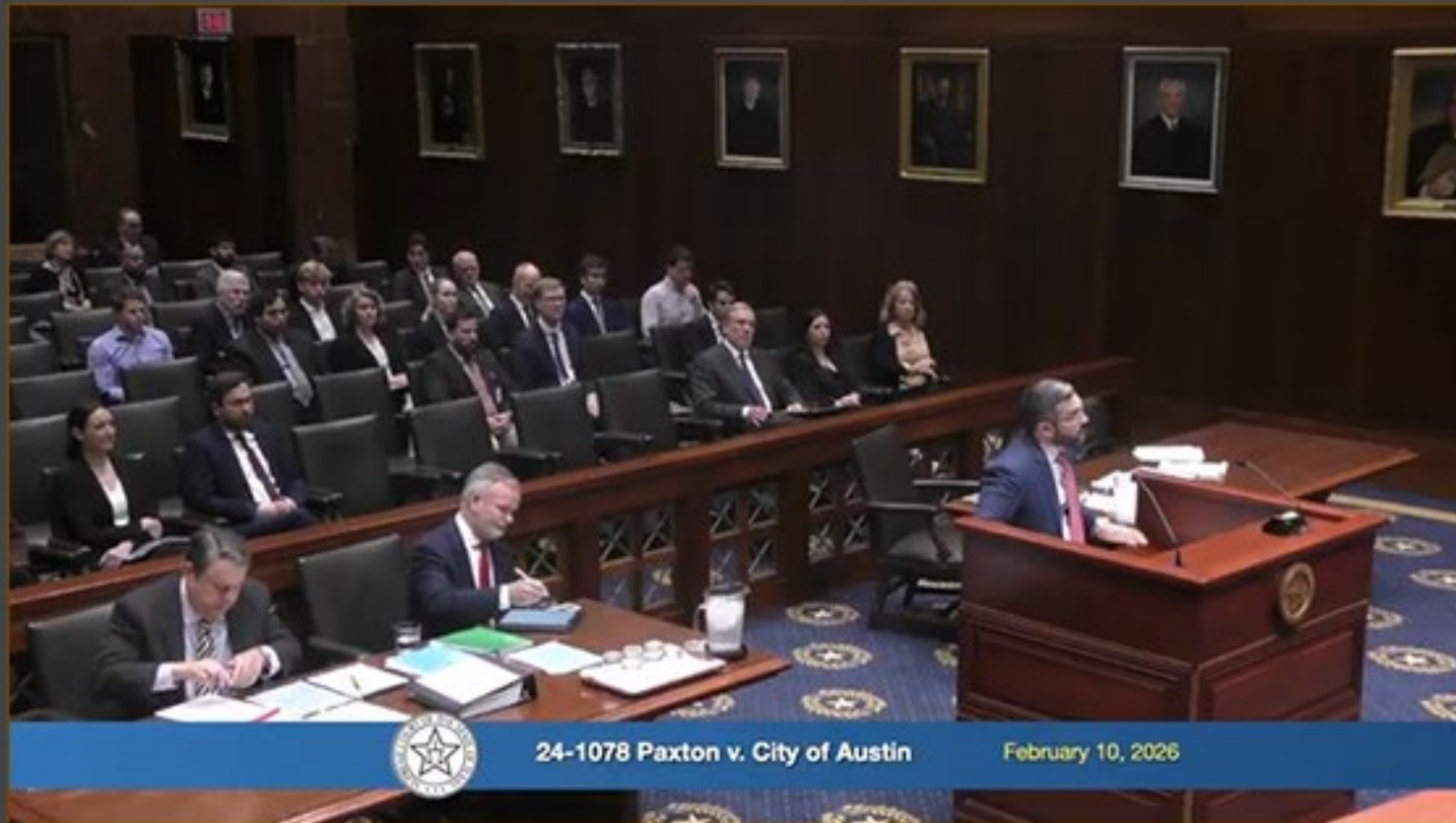
(In *Thomas v. Long*, the trial court had granted a plaintiff's motion for summary judgment without addressing jurisdictional arguments raised by the defendant.)

Paxton v. City of Austin

722 S.W.3d 50 (15th Court 2024)

“The facts and procedure in this case are distinguishable for two reasons. First, the trial court explicitly stated that it declined to rule on the plea to the jurisdiction. Second, the trial court did not issue an order or any ruling on the merits but rather proceeded to trial. In this case, our record does not contain any merits order that could be construed as an implicit denial of the plea to the jurisdiction as the court did in *Thomas*.”

Cause No. 24-1078 - PAXTON V. CITY OF AUSTIN



Busse, et al. v. South Texas ISD

No. 24-0782

I. Background

Before federal law required public schools to provide free and appropriate education for students with disabilities, Texas enacted Education Code Chapter 26, which authorized the creation of “Rehabilitation Districts” to “provide education, training, special services, and guidance” for persons with mental or physical disabilities. Act of May 1, 1963, 58th Leg., R.S., ch. 106, § 2, 1963 Tex. Gen. Laws 186, 187 (repealed 1995); *see* Act of June 2, 1969, 61st Leg., R.S., ch. 889, §§ 26.01–.72, 1969 Tex. Gen. Laws 2735, 2974–83 (codifying Education Code Chapter 26). The enabling legislation authorized counties to

Busse, et al. v. South Texas ISD

No. 24-0782

A. The Taxpayers have standing

In reversing the trial court's denial of STISD's plea to the jurisdiction, the court of appeals viewed the Taxpayers' claims through the lens of the taxpayer standing doctrine and reasoned that taxpayer standing was lacking due to "equitable considerations." 696 S.W.3d at 785. This was error. For the reasons discussed below, we conclude the Taxpayers' allegations demonstrate standing under our traditional three-part constitutional standing test. *See Heckman*, 369 S.W.3d at 154–55.

Busse, et al. v. South Texas ISD

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The court's "significant disruption" rationale seemingly was premised on its overreading *Bland*. In *Bland*, two taxpayers sued to

Whether substantial disruption would result from a court's judgment is not a proper standing inquiry. It does not inform whether there is a real controversy between parties for a court to resolve. *See Heckman*, 369 S.W.3d at 154. Nor is it tethered to our standing test's constitutional underpinnings. *See Inman*, 252 S.W.3d at 304 (explaining that the standing requirement derives from our Constitution's provisions

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From *Bland*:

“The potential for disruption of government operations is too great to allow a taxpayer with no special injury distinct from the general public’s to sue to prohibit the government from paying for goods and services it has already received and placed in permanent use.”

Busse, et al. v. South Texas ISD

No. 24-0782

JUSTICE YOUNG, with whom Justice Devine, Justice Sullivan, and Justice Hawkins join, concurring.

To that end, I note that the Court's clean resolution of the dispute before us may come at a delayed reckoning with the concept of "taxpayer standing."

Busse, et al. v. South Texas ISD

No. 24-0782

A separate doctrine of “taxpayer standing” is no more necessary for someone trying to avoid paying an illegal tax than a separate doctrine of “property-owner standing” is necessary for someone demanding just compensation for a taking. The general rules of constitutional standing authorize both suits because both plaintiffs allege an individualized injury traceable to the defendant and redressable by a judgment; neither suit needs an “exception.” Our cases, indeed, never have required any such

Webb CISD v. Marshall

No. 24-0339

The Texas Education Code recognizes that school-board members acting in their official capacities have “an inherent right of access to information, documents, and records maintained by the [school] district.” TEX. EDUC. CODE § 11.1512(c). The Code provides those board

Webb CISD v. Marshall

No. 24-0339

The United States Supreme Court recently opined on the very issue now before us: whether a preliminary injunction confers prevailing-party status for attorney’s-fees purposes in an otherwise moot case. *See Lackey v. Stinnie*, 604 U.S. 192 (2025). In *Lackey*, drivers

We agree with this analysis, which properly interprets the statutory term “prevail.” *Id.* at 199–201. “For more than a century,”

Webb CISD v. Marshall

No. 24-0339

However, the administrative-exhaustion requirement is subject to “limited statutory exceptions.”⁷ *Id.* We agree with the court of appeals that Section 11.1512 creates such an exception. “When

Jones v. Hanvey
No. 05-25-01127-CV
2026 WL 448819

- Election of Remedies immunity under Section 101.106(f) and Professional Immunity under Section 22.0511(a)
- Cheerleader complained that cheer coaches had forced her to do “fifty modified burpees”
- Cheerleader suffered Exertional Rhabdomyolysis (“An acute, fulminating, potentially fatal disease of skeletal muscle that entails destruction of muscle, as evidenced by myoglobinemia and myoglobinuria.”)

Jones v. Hanvey

No. 05-25-01127-CV

2026 WL 448819

The operative question is whether there is a connection between the employee's job duties and the alleged tortious conduct. *Laverie v. Wetherbe*, 517 S.W.3d 748, 753 (Tex. 2017). The answer may be yes even if the employee performs negligently or is motivated by ulterior motives or personal animus so long as the conduct itself was pursuant to her job responsibilities.

Jones v. Hanvey

No. 05-25-01127-CV

2026 WL 448819

“The focus is therefore on whether the general conduct was within the scope of employment, rather than whether the specific act was wrongful, negligent, or incompetently performed. Conduct falls outside the scope of employment when it occurs within an independent course of conduct not intended by the employee to serve *any* purposes of the employer.”

HB 4623: Sexual Misconduct Liability

CHAPTER 118. LIABILITY OF PUBLIC SCHOOLS AND PROFESSIONAL EMPLOYEES OF PUBLIC SCHOOLS FOR CERTAIN ACTS OR OMISSIONS

Sec. 118.001. DEFINITIONS. In this chapter:

- (1) "Open-enrollment charter school" has the meaning assigned by Section 5.001, Education Code.
- (2) "Professional school employee" includes:
 - (A) a superintendent or administrator serving as educational leader and chief executive officer of the school, principal or equivalent chief operating officer, teacher, including a substitute teacher, supervisor, social worker, school counselor, nurse, and teacher's aide employed by a public school;
 - (B) a teacher employed by a company that contracts with a public school to provide the teacher's services to the school;
 - (C) a student in an education preparation program participating in a field experience or internship;
 - (D) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety of the State of Texas;
 - (E) a member of the board of trustees of an independent school district or a member of the governing body of an open-enrollment charter school; and
 - (F) any other person employed by a public school whose employment requires certification and the exercise of discretion.
- (3) "Public school" means an independent school district or an open-enrollment charter school.
- (4) "Sexual misconduct" means sexual abuse or conduct described by Section 20A.02, 21.02, 21.07, 21.09, 21.11, 21.12, 21.15, 21.16, 21.165, 21.17, 21.18, 21.19, 22.011, 22.012, 22.021, or 43.25, Penal Code.

Added by Acts 2025, 89th Leg., R.S., Ch. 949 (H.B. 4623), Sec. 1, eff. September 1, 2025.

Sec. 118.002. LIABILITY. (a) A public school that is grossly negligent or reckless, or engages in intentional misconduct, in hiring, supervising, or employing a professional school employee is liable for an act or omission that is committed by the employee against a student enrolled in the school and that is:

- (1) sexual misconduct; or
- (2) failure to report suspected child abuse or neglect under Section 261.101, Family Code.

(b) In an action against a public school under this chapter, the professional school employee who committed the act or omission on which the claim is based must be named as a defendant.

Added by Acts 2025, 89th Leg., R.S., Ch. 949 (H.B. 4623), Sec. 1, eff. September 1, 2025.

Sec. 118.003. DAMAGES. A claimant who prevails in an action under this chapter shall be awarded actual damages in a maximum amount of \$500,000 for each claimant.

Added by Acts 2025, 89th Leg., R.S., Ch. 949 (H.B. 4623), Sec. 1, eff. September 1, 2025.

Sec. 118.004. COURT COSTS AND ATTORNEY'S FEES. A party who prevails in an action under this chapter is entitled to:

- (1) court costs; and
- (2) reasonable and necessary attorney's fees.

Added by Acts 2025, 89th Leg., R.S., Ch. 949 (H.B. 4623), Sec. 1, eff. September 1, 2025.

Sec. 118.005. REMEDIES NOT EXCLUSIVE. The remedies authorized by this chapter are in addition to any other legal remedies.

Added by Acts 2025, 89th Leg., R.S., Ch. 949 (H.B. 4623), Sec. 1, eff. September 1, 2025.

Sec. 118.006. WAIVER OF GOVERNMENTAL IMMUNITY; OFFICIAL IMMUNITY ABOLISHED. (a) A public school's governmental immunity to suit and from liability is waived to the extent of liability created by this chapter.

(b) A professional school employee may not assert official immunity under Subchapter B, Chapter 22, Education Code, the common law, or any other law in an action brought under this chapter.

Added by Acts 2025, 89th Leg., R.S., Ch. 949 (H.B. 4623), Sec. 1, eff. September 1, 2025.

HB 4623: Sexual Misconduct Liability



- ▶ “Relating to liability of public schools and professional school employees for sexual misconduct involving students”
- ▶ Adds Chapter 118 to Texas Civil Practice & Remedies Code: “Liability of Public Schools and Professional Employees of Public Schools for Certain Acts or Omissions”
- ▶ Applies to public K-12 and charter schools
- ▶ **Effective September 1, 2025**

House Bill 4623: Snapshot

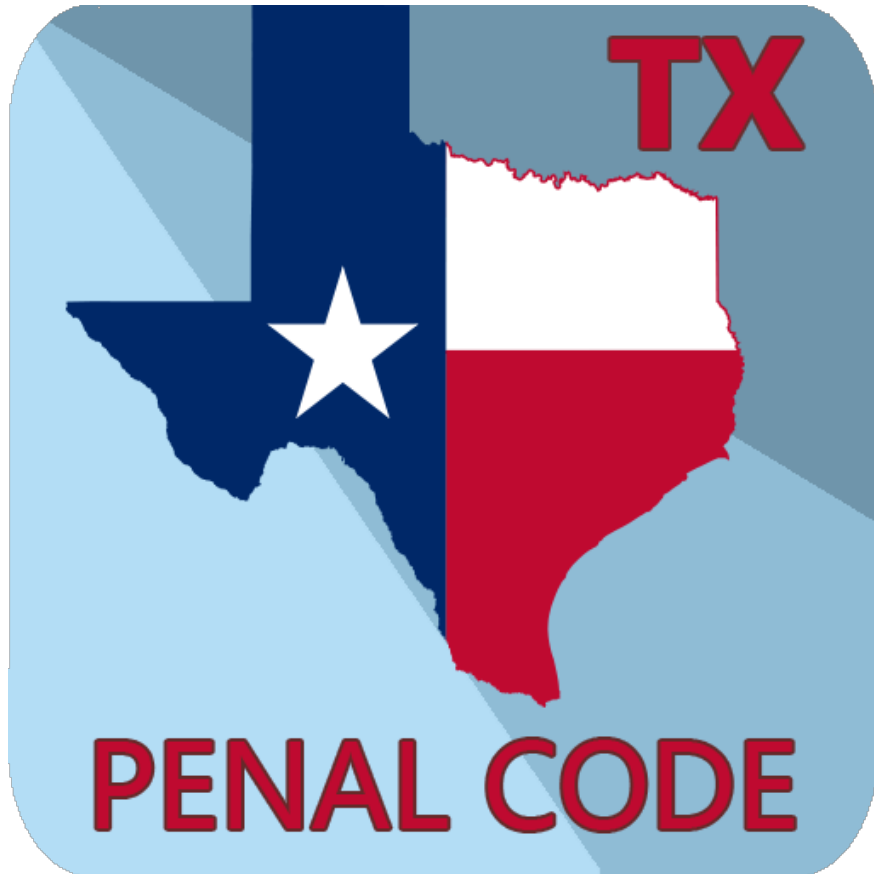


- ▶ Effective Sept. 1, 2025, for the first time ever, public schools may be sued under Texas law for educator sexual misconduct against students.
 - Damages available up to \$500,000 per claimant (plus attorneys' fees)
 - Damages may include claims for emotional distress (not available under Title IX)
 - Questions remain how this new law will operate
- ▶ Legislative history indicates the Texas Legislature was concerned about the number of reports made to TEA between 2021 and 2024 via the educator misconduct portal.

Texas Civil Practice & Remedies Code Liability (§ 118.002)

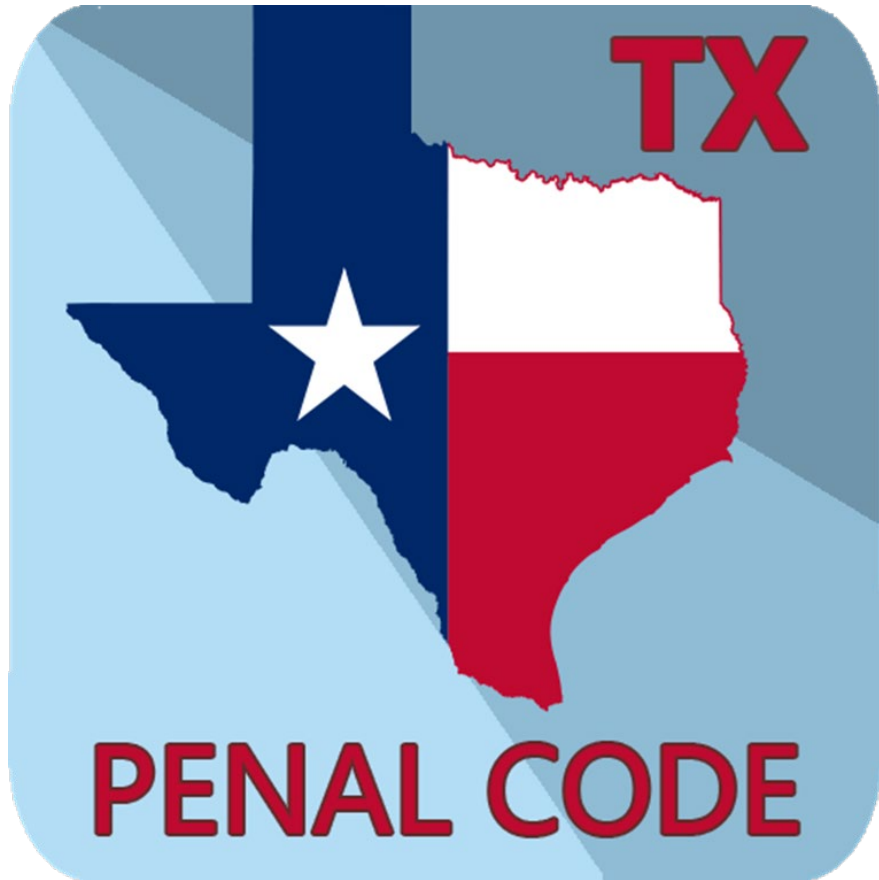
- a) A public school that is **grossly negligent** or **reckless**, or engages in **intentional misconduct**, in **hiring, supervising, or employing** a professional school employee is liable for an act or omission that is committed by the employee against a student enrolled in the school and that is:
- (1) sexual misconduct; or
 - (2) failure to report suspected child abuse or neglect under Section 261.101 of the Family Code.

What Is “Sexual Misconduct”?



- ▶ Trafficking of persons (Texas Penal Code §20A.02)
- ▶ Continuous sexual abuse of young child or disabled individual (§ 21.02)
- ▶ Public lewdness (§ 21.07)
- ▶ Indecent exposure (§ 21.08)
- ▶ Indecency with a child (§ 21.11)
- ▶ Improper relationship between educator and student (§ 21.12)
- ▶ Invasive visual recording (§ 21.15)
- ▶ Unlawful disclosure or promotion of intimate visual material (§ 21.16)

What Is “Sexual Misconduct”?



- ▶ Unlawful production / distribution of certain sexually explicit videos (Texas Penal Code §21.165)
- ▶ Voyeurism (§ 21.17)
- ▶ Sexual coercion (§ 21.18)
- ▶ Unlawful electronic transmission of sexually explicit visual material (§ 21.19)
- ▶ Sexual assault (§ 22.011)
- ▶ Indecent assault (§ 22.012)
- ▶ Aggravated sexual assault (§ 22.021)
- ▶ Sexual performance by a child (§ 43.25)

Texas Civil Practice & Remedies Code Liability (§ 118.002)

- ▶ The employee who engaged in misconduct must be named as a defendant
- ▶ Texas Civil Practice & Remedies Code § 118.002(b):

“In an action against a public school under this chapter, the professional employee who committed the act or omission on which the claim is based must be named as a defendant.”

§ 118.003 - Damages



- ▶ “A claimant who prevails in an action under this chapter shall be awarded actual damages in a maximum amount of \$500,000 for each claimant.”
- ▶ Damages
 - Capped at \$500k “actual damages” per claimant
 - Actual damages = economic and noneconomic damages
 - Emotional distress damages are recoverable

Texas Civil Practice & Remedies Code §118.004 “Court Costs and Attorney’s Fees”



“A party who prevails in an action under this chapter is entitled to:

- 1) court costs; and
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Questions and Concerns

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- ▶ If not, is there any claim against an employee if the school district is not negligent?

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(1) sexual misconduct; or

(2) failure to report suspected child abuse or neglect under Section 261.101, Family Code.

(b) In an action against a public school under this chapter, the professional school employee who committed the act or omission on which the claim is based must be named as a defendant.

Added by Acts 2025, 89th Leg., R.S., Ch. 949 (H.B. 4623), Sec. 1, eff. September 1, 2025.

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- ▶ Causation?

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- ▶ How much insurance coverage does a school district need? (Is excess coverage necessary?)
- ▶ How often will conflict counsel be necessary?

Thanks!

