

# LEGAL MAILBAG – NOVEMBER 7, 2024



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*The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: [legalmailbag@casciac.org](mailto:legalmailbag@casciac.org).*

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Dear Legal Mailbag,

We have a new security guard at my school this year, and he is causing me concern. His predecessor was a take-charge kind of guy. This new guard, however, is mellow, and doesn't want to get his hands dirty. Last week, for example, two students started fighting, but this fellow just stood by and watched without intervening. To his credit, he was shouting “knock it off,” but to little effect. Finally, as the students tired, two teachers pulled the students apart to end the fight.

As the principal, I called him in to debrief about this incident. It may have been my tone of voice, and as he was coming into my office, he asked whether he needed union representation. I assured him that it was not necessary to get the union involved because I just wanted to talk. With that settled, I just told him that I was disappointed at how passive he was when the students were fighting. “Weren't you worried,” I asked, “that one or both of the students could have been hurt while they were whaling away at each other?”

He surprised me with his answer. He told me that he is worried about getting sued if he gets directly involved. “You know how litigious people are these days,” he said. “Who knows what will happen if I mix it up with students who are fighting?” Given his concerns, he explained, he stays out of the fray because he does not want to risk getting sued.

I was tempted to tell him that he is in the wrong line of work, but maybe Legal Mailbag can suggest a better response. I confess that I have never worried about getting sued because I have been told that I am protected by law. Is that protection something that applies just to certified staff members?

Signed,  
*Wondering*

Dear Wondering:

Your security guard may indeed be in the wrong line of work. But you can tell him that his concern is unfounded. You are right about the protection that you have. But that protection is not limited to certified staff members. Conn. Gen. Stat. § 10-235 is called the indemnity statute, and it provides that all board of education employees are indemnified and held harmless if they are sued for actions they take in the scope of their employment unless their actions are “wanton, reckless or malicious.” Significantly, this protection includes any payment for attorneys’ fees that the employee incurs in defending against any such claim. Typically, the defense in such cases is picked up by the district’s insurance carrier.

As noted above, this protection applies to *all* board employees, not just certified staff. In fact, the protection of the indemnity statute also extends to board of education members and even to volunteers in activities approved by the board that are supervised by certified staff members. As long as the security guard intervenes in fights in a reasonable manner, he is fully protected, and you should let him know. If he continues to watch passively when students fight, you should help him explore alternative careers.

Legal Mailbag offers another observation that may provide additional comfort to the security guard. The law protects you, the security guard and all board of education employees in another way. Conn. Gen. Stat. § 10-236a provides that school employees who are assaulted in the line of duty are entitled to paid leave without charge to sick or vacation time, and it further provides that the medical expenses related to any such assault are also fully paid.

Finally, Legal Mailbag has some advice for you, not the security guard. It is the rare circumstance when it is appropriate to discourage an employee from having a union representative when you are sitting the employee down to discuss concerns you have. A union employee is entitled to union representation whenever the employer is asking questions about matters over which the employee could reasonably fear for his or her job security. If an employer denies a request for union representation and then goes forward with such a meeting (called an “investigatory interview” when you ask questions and expect answers), the employer cannot later use anything that the employee says in that meeting for any subsequent disciplinary action.