

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 3146

6 By: Derby

7 COMMITTEE SUBSTITUTE

8 An Act relating to schools; creating the School
9 Protection Act; providing short title; stating
10 purpose of the act; providing definitions; limiting
11 liability of certain persons for certain acts or
12 omissions; limiting liability for use of corporal
13 punishment under certain conditions; establishing
14 burden of proof and level of evidence; specifying
15 certain conditions; making certain conditions
16 consistent with act; prohibiting punitive damages
17 against certain persons; providing certain
18 exceptions; clarifying application of prohibition;
19 specifying certain exceptions to the limitation of
20 liability; limiting certain applications; making
21 certain reports unlawful; providing punishment;
22 limiting application for certain statements;
23 providing for effect on other laws; providing for the
24 award of costs and attorney fees; limiting
application to certain action or proceedings;
authorizing expert witness fees; providing for waiver
of a defense under certain circumstances; providing
for the applicability of other laws; providing for
codification; and providing an effective date.

21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 6-140 of Title 70, unless there
24 is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "School
2 Protection Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 6-141 of Title 70, unless there
5 is created a duplication in numbering, reads as follows:

6 The purpose of the School Protection Act is to provide teachers,
7 principals, and other school professionals the tools they need to
8 undertake reasonable actions to maintain order, discipline, and an
9 appropriate educational environment.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 6-142 of Title 70, unless there
12 is created a duplication in numbering, reads as follows:

13 As used in the School Protection Act:

14 1. "Education employee" means any individual who is an employee
15 of a school;

16 2. "Harm" means physical, nonphysical, economic, and
17 noneconomic losses; and

18 3. "School" means a public school district, governmental entity
19 that employs teachers as defined in Section 1-116 of Title 70 of the
20 Oklahoma Statutes, or private kindergarten, elementary, or secondary
21 school.

22 SECTION 4. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 6-143 of Title 70, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Except as provided in subsection D of this section, no
2 education employee in a school shall be liable for harm caused by an
3 act or omission of the employee on behalf of the school if:

4 1. The employee was acting within the scope of employment or
5 responsibilities to a school;

6 2. The actions of the employee were carried out in conformity
7 with federal, state, and local laws, rules or policies in
8 furtherance of efforts to control, grade, discipline, expel, or
9 suspend a student or maintain order or control in the classroom or
10 school; and

11 3. The harm was not caused by willful or criminal misconduct,
12 gross negligence, reckless misconduct, or a conscious, flagrant
13 indifference to the rights or safety of the individual harmed by the
14 employee.

15 B. Except as provided in subsection D of this section, an
16 education employee shall not be subject to liability for using
17 corporal punishment, to the extent allowed by law, when and to the
18 extent reasonably necessary and appropriate to maintain discipline
19 or to promote student welfare.

20 C. The burden of proof to show violation of federal, state, or
21 local laws, rules or policies shall rest with the plaintiff and
22 shall be established by clear and convincing evidence to the court
23 as part of a summary proceeding.

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1 D. If any state law limits liability subject to one or more of
2 the following conditions, such conditions shall not be construed as
3 inconsistent with this section:

4 1. A state law that requires a school or governmental entity to
5 adhere to risk management procedures, including mandatory training
6 of employees;

7 2. A state law that makes the school liable for the acts or
8 omissions of its employees to the same extent as an employer is
9 liable for the acts or omissions of its employees; or

10 3. A state law that makes a limitation of liability
11 inapplicable if the civil action was brought by an officer of a
12 state or local government pursuant to state or local law.

13 E. 1. Punitive damages shall not be awarded against an
14 education employee in an action brought for harm based on the act or
15 omission of an employee acting within the scope of employment or
16 responsibilities of the employee to a school unless the claimant
17 establishes by clear and convincing evidence that the harm was
18 proximately caused by an act or omission of the employee that
19 constitutes willful or criminal misconduct, or a conscious, flagrant
20 indifference to the rights or safety of the individual harmed.

21 2. This subsection shall not create a cause of action for
22 punitive damages and does not preempt or supersede any federal or
23 state law to the extent that it would further limit the award of
24 punitive damages.

1 F. The limitations on the liability of an education employee
2 provided for pursuant to this section shall not apply to any
3 misconduct:

4 1. That constitutes a crime of violence or act of international
5 terrorism for which the defendant has been convicted in any court;

6 2. That involves a sexual offense, as defined by applicable
7 state law, for which the defendant has been convicted in any court;

8 3. That involves misconduct for which the defendant has been
9 found to have violated federal or state civil rights law; or

10 4. Where the defendant was under the influence, as determined
11 by applicable state law, of intoxicating alcohol or any drug at the
12 time of the misconduct.

13 G. The limitations on the liability of an education employee
14 provided for pursuant to this section shall not apply to misconduct
15 during background investigations, or during other actions, involved
16 in the hiring of an employee.

17 H. Nothing in this act shall be construed to affect any civil
18 action brought by any school against any education employee or any
19 civil action brought by any education employee against any school
20 district or other education employee.

21 I. Nothing in this section shall be construed to affect any
22 state or local law or school policy pertaining to the use of
23 corporal punishment.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6-144 of Title 70, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Except as otherwise provided in this section, any person
5 eighteen (18) years of age or older who acts with specific intent in
6 making a false accusation of criminal activity against an education
7 employee to law enforcement authorities or school district
8 officials, or both, shall be guilty of a misdemeanor and, upon
9 conviction, punished by a fine of not more than Two Thousand Dollars
10 (\$2,000.00).

11 B. Except as otherwise provided in this section, any student
12 between seven (7) years of age and seventeen (17) years of age who
13 acts with specific intent in making a false accusation of criminal
14 activity against an education employee to law enforcement
15 authorities or school district officials, or both, shall, upon
16 conviction, at the discretion of the court, be subject to any of the
17 following:

18 1. Community service of a type and for a period of time to be
19 determined by the court; or

20 2. Any other sanction as the court in its discretion may deem
21 appropriate.

22 C. The provisions of this section shall not apply to statements
23 regarding individuals elected or appointed to an educational entity.

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1 D. This section is in addition to and does not limit the civil
2 or criminal liability of a person who makes false statements
3 alleging criminal activity by another.

4 SECTION 6. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 6-145 of Title 70, unless there
6 is created a duplication in numbering, reads as follows:

7 A. In any civil action or proceeding against a school or an
8 education employee in which the school or education employee
9 prevails, the court shall award costs and reasonable attorney fees
10 to the prevailing defendant or defendants. The court in its
11 discretion may determine whether the fees and costs are to be borne
12 by the plaintiff's attorney, the plaintiff, or both. In any civil
13 action or proceeding by or between any education employee and a
14 school or other education employee, the provisions of this section
15 shall not apply.

16 B. Expert witness fees may be included as part of the costs
17 awarded under this section.

18 SECTION 7. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 6-146 of Title 70, unless there
20 is created a duplication in numbering, reads as follows:

21 Unless otherwise provided by law, the existence of any policy of
22 insurance indemnifying a school or an education employee against
23 liability for damages is not a waiver of any defense otherwise
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1 available to the educational entity or its employees in the defense
2 of the claim.

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 6-147 of Title 70, unless there
5 is created a duplication in numbering, reads as follows:

6 The School Protection Act shall be in addition to and shall not
7 limit or amend The Governmental Tort Claims Act or any other
8 applicable law.

9 SECTION 9. This act shall become effective November 1, 2008.

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11 51-2-10533 SD 03/04/08

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