

THE HOUSE OF REPRESENTATIVES  
Thursday, March 6, 2008

Committee Substitute for  
House Bill No. 3146

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3146 - By: DERBY, CANNADAY,  
DORMAN, INMAN, PROCTOR AND SEARS of the House and BROGDON of the Senate.

An Act relating to schools; creating the School Protection Act; providing short title; stating purpose of the act; providing definitions; limiting liability of certain persons for certain acts or omissions; limiting liability for use of corporal punishment under certain conditions; establishing burden of proof and level of evidence; specifying certain conditions; making certain conditions consistent with act; prohibiting punitive damages against certain persons; providing certain exceptions; clarifying application of prohibition; specifying certain exceptions to the limitation of liability; limiting certain applications; making certain reports unlawful; providing punishment; limiting application for certain statements; providing for effect on other laws; providing for the 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.

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

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

4           This act shall be known and may be cited as the “School Protection Act”.

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

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

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

10 As used in the School Protection Act:

- 11 1. "Education employee" means any individual who is an employee of a school;
- 12 2. "Harm" means physical, nonphysical, economic, and noneconomic losses; and
- 13 3. "School" means a public school district, governmental entity that employs  
14 teachers as defined in Section 1-116 of Title 70 of the Oklahoma Statutes, or private  
15 kindergarten, elementary, or secondary school.

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

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

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 H. Nothing in this act shall be construed to affect any civil action brought by any  
5 school against any education employee or any civil action brought by any education  
6 employee against any school district or other education employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,  
12 dated 03-05-08 - DO PASS, As Amended and Coauthored.