

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3146

By: Derby

4  
5  
6 AS INTRODUCED

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

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; and

15       4. The harm was not caused by the employee operating a motor  
16 vehicle, vessel, aircraft, or other vehicle for which the operator  
17 or the owner of the vehicle, craft, or vessel is required to possess  
18 an operator license or maintain insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21        H. Nothing in this act shall be construed to affect any civil  
22 action brought by any school against any education employee or any  
23 civil action brought by any education employee against any school  
24 district or other education employee.

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

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

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

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

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

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

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

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

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

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

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

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

23 No attorney shall charge, demand, receive, or collect for  
24 services rendered, fees in excess of twenty-five percent (25%) of

1 any civil judgment rendered against a school or education employee,  
2 or of any settlement made pursuant to the laws of this state.

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

11 SECTION 9. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 6-148 of Title 70, unless there  
13 is created a duplication in numbering, reads as follows:

14 The School Protection Act shall be in addition to and shall not  
15 limit or amend the Governmental Tort Claims Act or any other  
16 applicable law.

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

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