

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1598 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Daniel Sullivan _____

Adopted: _____

Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1598

By: Sullivan

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to schools; prohibiting certain
9 persons from certain involvement in due process
10 hearings; creating the School Protection Act;
11 providing short title; stating purpose; defining
12 terms; making it unlawful to make a false criminal
13 report against an education employee; providing
14 punishment; limiting application for statements
15 against certain persons; providing for award of
16 costs and certain fees; providing that existence of
17 liability insurance is not a waiver of any defense;
18 prohibiting students from assaulting or acting in a
19 manner that causes harm to an education employee or
20 certain other persons; providing for suspension of
21 students found guilty of such actions; requiring a
22 leave of absence for certain injured education
23 employees; providing for the applicability of other
24 laws; amending 70 O.S. 2001, Section 24-101.3, as
last amended by Section 2, Chapter 210, O.S.L. 2006
(70 O.S. Supp. 2008, Section 24-101.3), which
relates to out-of-school suspensions; requiring
suspension of certain students for certain actions
against school employees or certain other persons;
allowing modification of suspension by the
superintendent; allowing a school district to
restrict enrollment of students suspended for
certain actions; amending 51 O.S. 2001, Section 155,
as last amended by Section 1, Chapter 381, O.S.L.
2004 (51 O.S. Supp. 2008, Section 155), which
relates to exemptions from liability; adding certain
exemptions; providing for codification; and
providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 6-101.7 of Title 70, unless
4 there is created a duplication in numbering, reads as follows:

5 An attorney, representative, or other designee of the school
6 district who has represented or represents a school district or the
7 administration of a school district at a hearing held for the
8 purpose of affording due process rights and requirements for an
9 administrator as provided for in Section 6-101.13 of Title 70 of the
10 Oklahoma Statutes, a teacher as provided for in Section 6-101.26 of
11 Title 70 of the Oklahoma Statutes, or a support employee as provided
12 for in Section 6-101.46 of Title 70 of the Oklahoma Statutes or who
13 has been involved or participated in any prehearing actions of the
14 school district with respect to a recommendation for the termination
15 of employment or nonreemployment of an administrator, teacher, or
16 support employee shall not:

17 1. Conduct or preside as the hearing officer or judge at a due
18 process hearing or hearings; and

19 2. Attend, advise at, or in any way influence an executive
20 session of the school district board of education that is held in
21 conjunction with a due process hearing or hearings if the attorney,
22 representative, or other designee of the school district conducted
23 or presided over the due process hearing or hearings as the hearing
24 officer or judge.

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

4 Sections 3 through 10 of this act shall be known and may be
5 cited as the "School Protection Act".

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

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

13 SECTION 4. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 6-142 of Title 70, unless there
15 is created a duplication in numbering, reads as follows:

16 As used in the School Protection Act:

17 1. "Education employee" means any individual who is an employee
18 of a school; and

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

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1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6-143 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 6-144 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 party. The court in its discretion may determine
11 whether the fees and costs are to be borne by the attorney of the
12 nonprevailing party, the nonprevailing party, 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 6-145 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 6-146 of Title 70, unless there
5 is created a duplication in numbering, reads as follows:

6 No student enrolled in a school shall assault, attempt to cause
7 physical bodily injury, or act in a manner that could reasonably
8 cause bodily injury to an education employee or a person who is
9 volunteering for the school. Any student in grades six through
10 twelve who violates the provisions of this section shall be subject
11 to out-of-school suspension as provided for in Section 24-101.3 of
12 Title 70 of the Oklahoma Statutes.

13 SECTION 9. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 6-147 of Title 70, unless there
15 is created a duplication in numbering, reads as follows:

16 An education employee who is injured as a result of an assault
17 or battery upon the person of the employee while the employee is in
18 the performance of any duties as an education employee shall be
19 entitled to a leave of absence from employment with the school
20 without a loss of leave benefits.

21 SECTION 10. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 6-148 of Title 70, unless there
23 is created a duplication in numbering, reads as follows:

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

4 SECTION 11. AMENDATORY 70 O.S. 2001, Section 24-101.3,
5 as last amended by Section 2, Chapter 210, O.S.L. 2006 (70 O.S.
6 Supp. 2008, Section 24-101.3), is amended to read as follows:

7 Section 24-101.3 A. Any student who is guilty of an act
8 described in paragraph 1 of subsection C of this section may be
9 suspended out-of-school in accordance with the provisions of this
10 section. Each school district board of education shall adopt a
11 policy with procedures which provides for out-of-school suspension
12 of students. The policy shall address the term of the out-of-school
13 suspension, provide an appeals process as described in subsection B
14 of this section, and provide that before a student is suspended out-
15 of-school, the school or district administration shall consider and
16 apply, if appropriate, alternative in-school placement options that
17 are not to be considered suspension, such as placement in an
18 alternative school setting, reassignment to another classroom, or
19 in-school detention. The policy shall address education for
20 students subject to the provisions of subsection D of this section
21 and whether participation in extracurricular activities shall be
22 permitted.

23 B. 1. Students suspended out-of-school for ten (10) or fewer
24 days shall have the right to appeal the decision of the

1 administration as provided in the policy required in subsection A of
2 this section. The policy shall specify whether appeals for short-
3 term suspensions as provided in this subsection shall be to a local
4 committee composed of district administrators or teachers or both,
5 or to the district board of education. Upon full investigation of
6 the matter, the committee or board shall determine the guilt or
7 innocence of the student and the reasonableness of the term of the
8 out-of-school suspension. If the policy requires appeals for short-
9 term suspensions to a committee, the policy adopted by the board
10 may, but is not required to, provide for appeal of the committee's
11 decision to the board.

12 2. Students suspended out-of-school for more than ten (10) days
13 and students suspended pursuant to the provisions of paragraph 2 of
14 subsection C of this section may request a review of the suspension
15 with the administration of the district. If the administration does
16 not withdraw the suspension, the student shall have the right to
17 appeal the decision of the administration to the district board of
18 education. Except as otherwise provided for in paragraph 2 of
19 subsection C of this section, no out-of-school suspension shall
20 extend beyond the current semester and the succeeding semester.
21 Upon full investigation of the matter, the board shall determine the
22 guilt or innocence of the student and the reasonableness of the term
23 of the out-of-school suspension. A board of education may conduct
24 the hearing and render the final decision or may appoint a hearing

1 officer to conduct the hearing and render the final decision. The
2 decision of the district board of education or the hearing officer,
3 if applicable, shall be final.

4 C. 1. Students who are guilty of any of the following acts may
5 be suspended out-of-school by the administration of the school or
6 district:

7 a. violation of a school regulation,

8 b. immorality,

9 c. adjudication as a delinquent for an offense that is
10 not a violent offense. For the purposes of this

11 section, "violent offense" shall include those
12 offenses listed as the exceptions to the term

13 "nonviolent offense" as specified in Section 571 of

14 Title 57 of the Oklahoma Statutes. "Violent offense"

15 shall include the offense of assault with a dangerous
16 weapon but shall not include the offense of assault,

17 d. possession of an intoxicating beverage, low-point

18 beer, as defined by Section 163.2 of Title 37 of the

19 Oklahoma Statutes, or missing or stolen property if

20 the property is reasonably suspected to have been

21 taken from a student, a school employee, or the school
22 during school activities, and

23 e. possession of a dangerous weapon or a controlled

24 dangerous substance, as defined in the Uniform

1 Controlled Dangerous Substances Act. Possession of a
2 firearm shall result in out-of-school suspension as
3 provided in paragraph 2 of this subsection.

4 2. Any student found in possession of a firearm while on any
5 public school property or while in any school bus or other vehicle
6 used by a public school for transportation of students or teachers
7 shall be suspended out-of-school for a period of not less than one
8 (1) year, to be determined by the district board of education
9 pursuant to the provisions of this section. The term of the
10 suspension may be modified by the district superintendent on a case-
11 by-case basis. For purposes of this paragraph the term "firearm"
12 shall mean and include all weapons as defined by 18 U.S.C., Section
13 921.

14 3. Any student in grades six through twelve found to have
15 assaulted, attempted to cause physical bodily injury, or acted in a
16 manner that could reasonably cause bodily injury to a school
17 employee or a person volunteering for a school as prohibited
18 pursuant to Section 8 of this act shall be suspended for the
19 remainder of the current semester and the next consecutive semester,
20 to be determined by the board of education pursuant to the
21 provisions of this section. The term of the suspension may be
22 modified by the district superintendent on a case-by-case basis.

23 D. At its discretion a school district may provide an education
24 plan for students suspended out-of-school for five (5) or fewer days

1 pursuant to the provisions of this subsection. The following
2 provisions shall apply to students who are suspended out-of-school
3 for more than five (5) days and who are guilty of acts listed in
4 subparagraphs a, b, c and d of paragraph 1 of subsection C of this
5 section. Upon the out-of-school suspension, the parent or guardian
6 of a student suspended out-of-school pursuant to the provisions of
7 this subsection shall be responsible for the provision of a
8 supervised, structured environment in which the parent or guardian
9 shall place the student and bear responsibility for monitoring the
10 student's educational progress until the student is readmitted into
11 school. The school administration shall provide the student with an
12 education plan designed for the eventual reintegration of the
13 student into school which provides only for the core units in which
14 the student is enrolled. A copy of the education plan shall also be
15 provided to the student's parent or guardian. For the purposes of
16 this section, the core units shall consist of the minimum English,
17 mathematics, science, social studies and art units required by the
18 State Board of Education for grade completion in grades kindergarten
19 through eight and for high school graduation in grades nine through
20 twelve. The plan shall set out the procedure for education and
21 shall address academic credit for work satisfactorily completed.

22 E. A student who has been suspended out-of-school from a public
23 or private school in the State of Oklahoma or another state for a
24 violent act or an act showing deliberate or reckless disregard for

1 the health or safety of faculty or other students shall not be
2 entitled to enroll in a public school of this state, and no public
3 school shall be required to enroll the student, until the terms of
4 the suspension have been met or the time of suspension has expired.

5 F. No public school of this state shall be required to provide
6 education services in the regular school setting to any student who
7 has been adjudicated as a delinquent for an offense defined in
8 Section 571 of Title 57 of the Oklahoma Statutes as an exception to
9 a nonviolent offense or convicted as an adult of an offense defined
10 in Section 571 of Title 57 of the Oklahoma Statutes as an exception
11 to a nonviolent offense ~~or~~, who has been removed from a public or
12 private school in the State of Oklahoma or another state by
13 administrative or judicial process for a violent act or an act
14 showing deliberate or reckless disregard for the health or safety of
15 faculty or other students, or who has been suspended as provided for
16 in paragraph 3 of subsection C of this section until the school in
17 which the student is subsequently enrolled determines that the
18 student no longer poses a threat to self, other students or school
19 district faculty or employees. Until the school in which such
20 student subsequently enrolls or re-enrolls determines that the
21 student no longer poses a threat to self, other students or school
22 district faculty or employees, the school may provide education
23 services through an alternative school setting, home-based
24 instruction, or other appropriate setting. If the school provides

1 education services to such student at a district school facility,
2 the school shall notify any student or school district faculty or
3 employee victims of such student, when known, and shall ensure that
4 the student will not be allowed in the general vicinity of or
5 contact with a victim of the student, provided such victim notifies
6 the school of the victim's desire to refrain from contact with the
7 offending student.

8 G. Students suspended out-of-school who are on an
9 individualized education plan pursuant to the Individuals with
10 Disabilities Education Act, P.L. No. 101-476, or who are subject to
11 the provisions of subsection F of this section and who are on an
12 individualized education plan shall be provided the education and
13 related services in accordance with the student's individualized
14 education plan.

15 H. A student who has been suspended for a violent offense which
16 is directed towards a classroom teacher shall not be allowed to
17 return to that teacher's classroom without the approval of that
18 teacher.

19 I. No school board, administrator or teacher may be held
20 civilly liable for any action taken in good faith which is
21 authorized by this section.

22 SECTION 12. AMENDATORY 51 O.S. 2001, Section 155, as
23 last amended by Section 1, Chapter 381, O.S.L. 2004 (51 O.S. Supp.
24 2008, Section 155), is amended to read as follows:

1 Section 155. The state or a political subdivision shall not be
2 liable if a loss or claim results from:

3 1. Legislative functions;

4 2. Judicial, quasi-judicial, or prosecutorial functions, other
5 than claims for wrongful criminal felony conviction resulting in
6 imprisonment provided for in Section 154 of this title;

7 3. Execution or enforcement of the lawful orders of any court;

8 4. Adoption or enforcement of or failure to adopt or enforce a
9 law, whether valid or invalid, including, but not limited to, any
10 statute, charter provision, ordinance, resolution, rule, regulation
11 or written policy;

12 5. Performance of or the failure to exercise or perform any act
13 or service which is in the discretion of the state or political
14 subdivision or its employees;

15 6. Civil disobedience, riot, insurrection or rebellion or the
16 failure to provide, or the method of providing, police, law
17 enforcement or fire protection;

18 7. Any claim based on the theory of attractive nuisance;

19 8. Snow or ice conditions or temporary or natural conditions on
20 any public way or other public place due to weather conditions,
21 unless the condition is affirmatively caused by the negligent act of
22 the state or a political subdivision;

23 9. Entry upon any property where that entry is expressly or
24 implied authorized by law;

1 10. Natural conditions of property of the state or political
2 subdivision;

3 11. Assessment or collection of taxes or special assessments,
4 license or registration fees, or other fees or charges imposed by
5 law;

6 12. Licensing powers or functions including, but not limited
7 to, the issuance, denial, suspension or revocation of or failure or
8 refusal to issue, deny, suspend or revoke any permit, license,
9 certificate, approval, order or similar authority;

10 13. Inspection powers or functions, including failure to make
11 an inspection, review or approval, or making an inadequate or
12 negligent inspection, review or approval of any property, real or
13 personal, to determine whether the property complies with or
14 violates any law or contains a hazard to health or safety, or fails
15 to conform to a recognized standard;

16 14. Any loss to any person covered by any workers' compensation
17 act or any employer's liability act;

18 15. Absence, condition, location or malfunction of any traffic
19 or road sign, signal or warning device unless the absence,
20 condition, location or malfunction is not corrected by the state or
21 political subdivision responsible within a reasonable time after
22 actual or constructive notice or the removal or destruction of such
23 signs, signals or warning devices by third parties, action of
24 weather elements or as a result of traffic collision except on

1 failure of the state or political subdivision to correct the same
2 within a reasonable time after actual or constructive notice.
3 Nothing herein shall give rise to liability arising from the failure
4 of the state or any political subdivision to initially place any of
5 the above signs, signals or warning devices. The signs, signals and
6 warning devices referred to herein are those used in connection with
7 hazards normally connected with the use of roadways or public ways
8 and do not apply to the duty to warn of special defects such as
9 excavations or roadway obstructions;

10 16. Any claim which is limited or barred by any other law;

11 17. Misrepresentation, if unintentional;

12 18. An act or omission of an independent contractor or
13 consultant or his or her employees, agents, subcontractors or
14 suppliers or of a person other than an employee of the state or
15 political subdivision at the time the act or omission occurred;

16 19. Theft by a third person of money in the custody of an
17 employee unless the loss was sustained because of the negligence or
18 wrongful act or omission of the employee;

19 20. Participation in or practice for any interscholastic or
20 other athletic contest sponsored or conducted by or on the property
21 of the state or a political subdivision;

22 21. Participation in any activity approved by a local board of
23 education and held within a building or on the grounds of the school

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1 district served by that local board of education before or after
2 normal school hours or on weekends;

3 22. Any court-ordered or Department of Corrections approved
4 work release program; provided, however, this provision shall not
5 apply to claims from individuals not in the custody of the
6 Department of Corrections based on accidents involving motor
7 vehicles owned or operated by the Department of Corrections;

8 23. The activities of the National Guard, the militia or other
9 military organization administered by the Military Department of the
10 state when on duty pursuant to the lawful orders of competent
11 authority:

- 12 a. in an effort to quell a riot,
- 13 b. in response to a natural disaster or military attack,
- 14 or
- 15 c. if participating in a military mentor program ordered
16 by the court;

17 24. Provision, equipping, operation or maintenance of any
18 prison, jail or correctional facility, or injuries resulting from
19 the parole or escape of a prisoner or injuries by a prisoner to any
20 other prisoner; provided, however, this provision shall not apply to
21 claims from individuals not in the custody of the Department of
22 Corrections based on accidents involving motor vehicles owned or
23 operated by the Department of Corrections;

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1 25. Provision, equipping, operation or maintenance of any
2 juvenile detention facility, or injuries resulting from the escape
3 of a juvenile detainee, or injuries by a juvenile detainee to any
4 other juvenile detainee;

5 26. Any claim or action based on the theory of manufacturer's
6 products liability or breach of warranty, either expressed or
7 implied;

8 27. Any claim or action based on the theory of indemnification
9 or subrogation;

10 28. Any claim based upon an act or omission of an employee in
11 the placement of children;

12 29. Acts or omissions done in conformance with then current
13 recognized standards;

14 30. Maintenance of the state highway system or any portion
15 thereof unless the claimant presents evidence which establishes
16 either that the state failed to warn of the unsafe condition or that
17 the loss would not have occurred but for a negligent affirmative act
18 of the state;

19 31. Any confirmation of the existence or nonexistence of any
20 effective financing statement on file in the office of the Secretary
21 of State made in good faith by an employee of the office of the
22 Secretary of State as required by the provisions of Section 1-9-
23 320.6 of Title 12A of the Oklahoma Statutes;

24 32. Any court-ordered community sentence; ~~or~~

1 33. Remedial action and any subsequent related maintenance of
2 property pursuant to and in compliance with an authorized
3 environmental remediation program, order, or requirement of a
4 federal or state environmental agency;

5 34. The use of necessary and reasonable force by a school
6 district employee to control and discipline a student during the
7 time the student is in attendance or in transit to and from the
8 school, or any other function authorized by the school district; or

9 35. Actions taken in good faith by a school district employee
10 for the out-of-school suspension of a student pursuant to applicable
11 Oklahoma Statutes.

12 SECTION 13. This act shall become effective November 1, 2009.

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