

1 ENGROSSED HOUSE  
2 BILL NO. 1598

By: Sullivan, Billy, Kern,  
Peterson, Hoskin, Tibbs,  
Sears, Blackwell, Osborn,  
Cox, McDaniel (Jeannie) and  
Trebilcock of the House

4  
5 and

6 Sykes and Ford of the  
7 Senate

8  
9 An Act relating to schools; prohibiting certain  
10 persons from certain involvement in due process  
11 hearings; creating the School Protection Act;  
12 providing short title; stating purpose; defining  
13 terms; making it unlawful to make a false criminal  
14 report against an education employee; providing  
15 punishment; limiting application for statements  
16 against certain persons; providing for award of costs  
17 and certain fees; providing that existence of  
18 liability insurance is not a waiver of any defense;  
19 prohibiting students from assaulting or acting in a  
20 manner that causes harm to an education employee or  
21 certain other persons; providing for suspension of  
22 students found guilty of such actions; providing for  
23 application of other law; requiring a leave of  
24 absence for certain injured education employees;  
providing for the applicability of other 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, the court may award costs and reasonable  
9 attorney fees to the prevailing party. In any civil action or  
10 proceeding by or between any education employee and a school or  
11 other education employee, the provisions of this section shall not  
12 apply.

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

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

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

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1           SECTION 8.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 6-146 of Title 70, unless there  
3 is created a duplication in numbering, reads as follows:

4           No student enrolled in a school shall assault, attempt to cause  
5 physical bodily injury, or act in a manner that could reasonably  
6 cause bodily injury to an education employee or a person who is  
7 volunteering for the school. Any student in grades six through  
8 twelve who violates the provisions of this section shall be subject  
9 to out-of-school suspension as provided for in Section 24-101.3 of  
10 Title 70 of the Oklahoma Statutes. This section shall be in  
11 addition to and does not limit the criminal liability of a person  
12 who causes or commits an assault, battery, or assault and battery  
13 upon a school employee as provided for in Section 650.7 of Title 21  
14 of the Oklahoma Statutes.

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

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

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

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

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

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

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1 and whether participation in extracurricular activities shall be  
2 permitted.

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

16 2. Students suspended out-of-school for more than ten (10) days  
17 and students suspended pursuant to the provisions of paragraph 2 of  
18 subsection C of this section may request a review of the suspension  
19 with the administration of the district. If the administration does  
20 not withdraw the suspension, the student shall have the right to  
21 appeal the decision of the administration to the district board of  
22 education. Except as otherwise provided for in paragraph 2 of  
23 subsection C of this section, no out-of-school suspension shall  
24 extend beyond the current semester and the succeeding semester.

1 Upon full investigation of the matter, the board shall determine the  
2 guilt or innocence of the student and the reasonableness of the term  
3 of the out-of-school suspension. A board of education may conduct  
4 the hearing and render the final decision or may appoint a hearing  
5 officer to conduct the hearing and render the final decision. The  
6 decision of the district board of education or the hearing officer,  
7 if applicable, shall be final.

8 C. 1. Students who are guilty of any of the following acts may  
9 be suspended out-of-school by the administration of the school or  
10 district:

- 11 a. violation of a school regulation,
- 12 b. immorality,
- 13 c. adjudication as a delinquent for an offense that is  
14 not a violent offense. For the purposes of this  
15 section, "violent offense" shall include those  
16 offenses listed as the exceptions to the term  
17 "nonviolent offense" as specified in Section 571 of  
18 Title 57 of the Oklahoma Statutes. "Violent offense"  
19 shall include the offense of assault with a dangerous  
20 weapon but shall not include the offense of assault,
- 21 d. possession of an intoxicating beverage, low-point  
22 beer, as defined by Section 163.2 of Title 37 of the  
23 Oklahoma Statutes, or missing or stolen property if  
24 the property is reasonably suspected to have been

1 taken from a student, a school employee, or the school  
2 during school activities, and

3 e. possession of a dangerous weapon or a controlled  
4 dangerous substance, as defined in the Uniform  
5 Controlled Dangerous Substances Act. Possession of a  
6 firearm shall result in out-of-school suspension as  
7 provided in paragraph 2 of this subsection.

8 2. Any student found in possession of a firearm while on any  
9 public school property or while in any school bus or other vehicle  
10 used by a public school for transportation of students or teachers  
11 shall be suspended out-of-school for a period of not less than one  
12 (1) year, to be determined by the district board of education  
13 pursuant to the provisions of this section. The term of the  
14 suspension may be modified by the district superintendent on a case-  
15 by-case basis. For purposes of this paragraph the term "firearm"  
16 shall mean and include all weapons as defined by 18 U.S.C., Section  
17 921.

18 3. Any student in grades six through twelve found to have  
19 assaulted, attempted to cause physical bodily injury, or acted in a  
20 manner that could reasonably cause bodily injury to a school  
21 employee or a person volunteering for a school as prohibited  
22 pursuant to Section 8 of this act shall be suspended for the  
23 remainder of the current semester and the next consecutive semester,  
24 to be determined by the board of education pursuant to the

1 provisions of this section. The term of the suspension may be  
2 modified by the district superintendent on a case-by-case basis.

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

1 twelve. The plan shall set out the procedure for education and  
2 shall address academic credit for work satisfactorily completed.

3 E. A student who has been suspended out-of-school from a public  
4 or private school in the State of Oklahoma or another state for a  
5 violent act or an act showing deliberate or reckless disregard for  
6 the health or safety of faculty or other students shall not be  
7 entitled to enroll in a public school of this state, and no public  
8 school shall be required to enroll the student, until the terms of  
9 the suspension have been met or the time of suspension has expired.

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

1 student subsequently enrolls or re-enrolls determines that the  
2 student no longer poses a threat to self, other students or school  
3 district faculty or employees, the school may provide education  
4 services through an alternative school setting, home-based  
5 instruction, or other appropriate setting. If the school provides  
6 education services to such student at a district school facility,  
7 the school shall notify any student or school district faculty or  
8 employee victims of such student, when known, and shall ensure that  
9 the student will not be allowed in the general vicinity of or  
10 contact with a victim of the student, provided such victim notifies  
11 the school of the victim's desire to refrain from contact with the  
12 offending student.

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

20 H. A student who has been suspended for a violent offense which  
21 is directed towards a classroom teacher shall not be allowed to  
22 return to that teacher's classroom without the approval of that  
23 teacher.

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

4 SECTION 12. AMENDATORY 51 O.S. 2001, Section 155, as  
5 last amended by Section 1, Chapter 381, O.S.L. 2004 (51 O.S. Supp.  
6 2008, Section 155), is amended to read as follows:

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

- 9 1. Legislative functions;
- 10 2. Judicial, quasi-judicial, or prosecutorial functions, other  
11 than claims for wrongful criminal felony conviction resulting in  
12 imprisonment provided for in Section 154 of this title;
- 13 3. Execution or enforcement of the lawful orders of any court;
- 14 4. Adoption or enforcement of or failure to adopt or enforce a  
15 law, whether valid or invalid, including, but not limited to, any  
16 statute, charter provision, ordinance, resolution, rule, regulation  
17 or written policy;
- 18 5. Performance of or the failure to exercise or perform any act  
19 or service which is in the discretion of the state or political  
20 subdivision or its employees;
- 21 6. Civil disobedience, riot, insurrection or rebellion or the  
22 failure to provide, or the method of providing, police, law  
23 enforcement or fire protection;
- 24 7. Any claim based on the theory of attractive nuisance;

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

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

7 10. Natural conditions of property of the state or political  
8 subdivision;

9 11. Assessment or collection of taxes or special assessments,  
10 license or registration fees, or other fees or charges imposed by  
11 law;

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

16 13. Inspection powers or functions, including failure to make  
17 an inspection, review or approval, or making an inadequate or  
18 negligent inspection, review or approval of any property, real or  
19 personal, to determine whether the property complies with or  
20 violates any law or contains a hazard to health or safety, or fails  
21 to conform to a recognized standard;

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

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1        15. Absence, condition, location or malfunction of any traffic  
2 or road sign, signal or warning device unless the absence,  
3 condition, location or malfunction is not corrected by the state or  
4 political subdivision responsible within a reasonable time after  
5 actual or constructive notice or the removal or destruction of such  
6 signs, signals or warning devices by third parties, action of  
7 weather elements or as a result of traffic collision except on  
8 failure of the state or political subdivision to correct the same  
9 within a reasonable time after actual or constructive notice.  
10 Nothing herein shall give rise to liability arising from the failure  
11 of the state or any political subdivision to initially place any of  
12 the above signs, signals or warning devices. The signs, signals and  
13 warning devices referred to herein are those used in connection with  
14 hazards normally connected with the use of roadways or public ways  
15 and do not apply to the duty to warn of special defects such as  
16 excavations or roadway obstructions;

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

18        17. Misrepresentation, if unintentional;

19        18. An act or omission of an independent contractor or  
20 consultant or his or her employees, agents, subcontractors or  
21 suppliers or of a person other than an employee of the state or  
22 political subdivision at the time the act or omission occurred;

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

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

7        21. Participation in any activity approved by a local board of  
8 education and held within a building or on the grounds of the school  
9 district served by that local board of education before or after  
10 normal school hours or on weekends;

11       22. Any court-ordered or Department of Corrections approved  
12 work release program; provided, however, this provision shall not  
13 apply to claims from individuals not in the custody of the  
14 Department of Corrections based on accidents involving motor  
15 vehicles owned or operated by the Department of Corrections;

16       23. The activities of the National Guard, the militia or other  
17 military organization administered by the Military Department of the  
18 state when on duty pursuant to the lawful orders of competent  
19 authority:

- 20            a. in an effort to quell a riot,  
21            b. in response to a natural disaster or military attack,  
22                    or  
23            c. if participating in a military mentor program ordered  
24                    by the court;

1        24. Provision, equipping, operation or maintenance of any  
2 prison, jail or correctional facility, or injuries resulting from  
3 the parole or escape of a prisoner or injuries by a prisoner to any  
4 other prisoner; provided, however, this provision shall not apply to  
5 claims from individuals not in the custody of the Department of  
6 Corrections based on accidents involving motor vehicles owned or  
7 operated by the Department of Corrections;

8        25. Provision, equipping, operation or maintenance of any  
9 juvenile detention facility, or injuries resulting from the escape  
10 of a juvenile detainee, or injuries by a juvenile detainee to any  
11 other juvenile detainee;

12        26. Any claim or action based on the theory of manufacturer's  
13 products liability or breach of warranty, either expressed or  
14 implied;

15        27. Any claim or action based on the theory of indemnification  
16 or subrogation;

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

19        29. Acts or omissions done in conformance with then current  
20 recognized standards;

21        30. Maintenance of the state highway system or any portion  
22 thereof unless the claimant presents evidence which establishes  
23 either that the state failed to warn of the unsafe condition or that  
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1 the loss would not have occurred but for a negligent affirmative act  
2 of the state;

3 31. Any confirmation of the existence or nonexistence of any  
4 effective financing statement on file in the office of the Secretary  
5 of State made in good faith by an employee of the office of the  
6 Secretary of State as required by the provisions of Section 1-9-  
7 320.6 of Title 12A of the Oklahoma Statutes;

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

9 33. Remedial action and any subsequent related maintenance of  
10 property pursuant to and in compliance with an authorized  
11 environmental remediation program, order, or requirement of a  
12 federal or state environmental agency;

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

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

20 SECTION 13. This act shall become effective November 1, 2009.  
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1 Passed the House of Representatives the 5th day of March, 2009.

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4 Presiding Officer of the House of  
Representatives

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6 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2009.

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9 Presiding Officer of the Senate