

THE HOUSE OF REPRESENTATIVES
Monday, February 23, 2009

Committee Substitute for
House Bill No. 1598

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1598 - By: SULLIVAN of the House.

An Act relating to schools; prohibiting certain persons from certain involvement in due process hearings; creating the School Protection Act; providing short title; stating purpose; defining terms; making it unlawful to make a false criminal report against an education employee; providing punishment; limiting application for statements against certain persons; providing for award of costs and certain fees; providing that existence of liability insurance is not a waiver of any defense; prohibiting students from assaulting or acting in a manner that causes harm to an education employee or certain other persons; providing for suspension of students found guilty of such actions; requiring a leave of 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.

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 6-101.7 of Title 70, unless there is created a duplication in
- 3 numbering, reads as follows:

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

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

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

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

19 Sections 3 through 10 of this act shall be known and may be cited as the “School
20 Protection Act”.

1 SECTION 3. 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 4. 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; and
- 12 2. "School" means a public school district, governmental entity that employs
13 teachers as defined in Section 1-116 of Title 70 of the Oklahoma Statutes, or private
14 kindergarten, elementary, or secondary school.

15 SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma
16 Statutes as Section 6-143 of Title 70, unless there is created a duplication in numbering,
17 reads as follows:

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

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

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

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

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

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

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

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

16 A. In any civil action or proceeding against a school or an education employee in
17 which the school or education employee prevails, the court shall award costs and
18 reasonable attorney fees to the prevailing party. The court in its discretion may
19 determine whether the fees and costs are to be borne by the attorney of the nonprevailing
20 party, the nonprevailing party, or both. In any civil action or proceeding by or between
21 any education employee and a school or other education employee, the provisions of this
22 section shall not apply.

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

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

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

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

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

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

21 An education employee who is injured as a result of an assault or battery upon the
22 person of the employee while the employee is in the performance of any duties as an

1 education employee shall be entitled to a leave of absence from employment with the
2 school without a loss of leave benefits.

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

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

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

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

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

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

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

- 3 a. violation of a school regulation,
- 4 b. immorality,
- 5 c. adjudication as a delinquent for an offense that is not a violent offense.

6 For the purposes of this section, "violent offense" shall include those
7 offenses listed as the exceptions to the term "nonviolent offense" as
8 specified in Section 571 of Title 57 of the Oklahoma Statutes. "Violent
9 offense" shall include the offense of assault with a dangerous weapon
10 but shall not include the offense of assault,

- 11 d. possession of an intoxicating beverage, low-point beer, as defined by
12 Section 163.2 of Title 37 of the Oklahoma Statutes, or missing or stolen
13 property if the property is reasonably suspected to have been taken
14 from a student, a school employee, or the school during school
15 activities, and

- 16 e. possession of a dangerous weapon or a controlled dangerous substance,
17 as defined in the Uniform Controlled Dangerous Substances Act.
18 Possession of a firearm shall result in out-of-school suspension as
19 provided in paragraph 2 of this subsection.

20 2. Any student found in possession of a firearm while on any public school property
21 or while in any school bus or other vehicle used by a public school for transportation of
22 students or teachers shall be suspended out-of-school for a period of not less than one (1)

1 year, to be determined by the district board of education pursuant to the provisions of
2 this section. The term of the suspension may be modified by the district superintendent
3 on a case-by-case basis. For purposes of this paragraph the term "firearm" shall mean
4 and include all weapons as defined by 18 U.S.C., Section 921.

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

12 D. At its discretion a school district may provide an education plan for students
13 suspended out-of-school for five (5) or fewer days pursuant to the provisions of this
14 subsection. The following provisions shall apply to students who are suspended out-of-
15 school for more than five (5) days and who are guilty of acts listed in subparagraphs a, b,
16 c and d of paragraph 1 of subsection C of this section. Upon the out-of-school suspension,
17 the parent or guardian of a student suspended out-of-school pursuant to the provisions of
18 this subsection shall be responsible for the provision of a supervised, structured
19 environment in which the parent or guardian shall place the student and bear
20 responsibility for monitoring the student's educational progress until the student is
21 readmitted into school. The school administration shall provide the student with an
22 education plan designed for the eventual reintegration of the student into school which

1 provides only for the core units in which the student is enrolled. A copy of the education
2 plan shall also be provided to the student's parent or guardian. For the purposes of this
3 section, the core units shall consist of the minimum English, mathematics, science, social
4 studies and art units required by the State Board of Education for grade completion in
5 grades kindergarten through eight and for high school graduation in grades nine through
6 twelve. The plan shall set out the procedure for education and shall address academic
7 credit for work satisfactorily completed.

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

14 F. No public school of this state shall be required to provide education services in
15 the regular school setting to any student who has been adjudicated as a delinquent for an
16 offense defined in Section 571 of Title 57 of the Oklahoma Statutes as an exception to a
17 nonviolent offense or convicted as an adult of an offense defined in Section 571 of Title 57
18 of the Oklahoma Statutes as an exception to a nonviolent offense ~~or~~, who has been
19 removed from a public or private school in the State of Oklahoma or another state by
20 administrative or judicial process for a violent act or an act showing deliberate or
21 reckless disregard for the health or safety of faculty or other students, or who has been
22 suspended as provided for in paragraph 3 of subsection C of this section until the school

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

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

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

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

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

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

6 1. Legislative functions;

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

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

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

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

16 6. Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the
17 method of providing, police, law 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 any public way or
20 other public place due to weather conditions, unless the condition is affirmatively caused
21 by the negligent act of the state or a political subdivision;

- 1 9. Entry upon any property where that entry is expressly or implied authorized by
2 law;
- 3 10. Natural conditions of property of the state or political subdivision;
- 4 11. Assessment or collection of taxes or special assessments, license or registration
5 fees, or other fees or charges imposed by law;
- 6 12. Licensing powers or functions including, but not limited to, the issuance, denial,
7 suspension or revocation of or failure or refusal to issue, deny, suspend or revoke any
8 permit, license, certificate, approval, order or similar authority;
- 9 13. Inspection powers or functions, including failure to make an inspection, review
10 or approval, or making an inadequate or negligent inspection, review or approval of any
11 property, real or personal, to determine whether the property complies with or violates
12 any law or contains a hazard to health or safety, or fails to conform to a recognized
13 standard;
- 14 14. Any loss to any person covered by any workers' compensation act or any
15 employer's liability act;
- 16 15. Absence, condition, location or malfunction of any traffic or road sign, signal or
17 warning device unless the absence, condition, location or malfunction is not corrected by
18 the state or political subdivision responsible within a reasonable time after actual or
19 constructive notice or the removal or destruction of such signs, signals or warning
20 devices by third parties, action of weather elements or as a result of traffic collision
21 except on failure of the state or political subdivision to correct the same within a
22 reasonable time after actual or constructive notice. Nothing herein shall give rise to

1 liability arising from the failure of the state or any political subdivision to initially place
2 any of the above signs, signals or warning devices. The signs, signals and warning
3 devices referred to herein are those used in connection with hazards normally connected
4 with the use of roadways or public ways and do not apply to the duty to warn of special
5 defects such as excavations or roadway obstructions;

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

7 17. Misrepresentation, if unintentional;

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

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

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

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

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

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

- 4 a. in an effort to quell a riot,
- 5 b. in response to a natural disaster or military attack, or
- 6 c. if participating in a military mentor program ordered by the court;

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

13 25. Provision, equipping, operation or maintenance of any juvenile detention
14 facility, or injuries resulting from the escape of a juvenile detainee, or injuries by a
15 juvenile detainee to any other juvenile detainee;

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

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

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

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

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

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

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

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

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

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

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

19 COMMITTEE REPORT BY: COMMITTEE ON COMMON EDUCATION, dated 02-19-09
20 - DO PASS, As Amended.