

ENGROSSED

House Bill No. 1598

As Amended

ENGROSSED HOUSE BILL NO. 1598 - By: Sullivan, Billy, Kern, Peterson, Hoskin, Tibbs, Sears, Blackwell, Osborn, Cox, McDaniel (Jeannie), Trebilcock and Smithson of the House and Sykes and Ford of the Senate.

[schools - School Protection Act - codification - effective date]

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

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

An attorney, representative, or other designee of the school district who has represented or represents a school district or the administration of a school district at a hearing held for the purpose of affording due process rights and requirements for an administrator as provided for in Section 6-101.13 of Title 70 of the Oklahoma Statutes, a teacher as provided for in Section 6-101.26 of Title 70 of the Oklahoma Statutes, or a support employee as provided for in Section 6-101.46 of Title 70 of the Oklahoma Statutes or who has been involved or participated in any prehearing actions of the school district with respect to a recommendation for the termination

1 of employment or nonreemployment of an administrator, teacher, or
2 support employee shall not:

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

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

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

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

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

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

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

4 As used in the School Protection Act:

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

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

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

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

21 B. Except as otherwise provided in this section, any student
22 between seven (7) years of age and seventeen (17) years of age who
23 acts with specific intent in making a false accusation of criminal

1 activity against an education employee to law enforcement
2 authorities or school district officials, or both, shall, upon
3 conviction, at the discretion of the court, be subject to any of the
4 following:

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

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

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

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

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

17 A. In any civil action or proceeding against a school or an
18 education employee, the court may award costs and reasonable
19 attorney fees to the prevailing party. In any civil action or
20 proceeding by or between any education employee and a school or
21 other education employee, the provisions of this section shall not
22 apply.

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

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 6-145 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 8. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 6-146 of Title 70, unless there
13 is created a duplication in numbering, reads as follows:

14 No student enrolled in a school shall assault, attempt to cause
15 physical bodily injury, or act in a manner that could reasonably
16 cause bodily injury to an education employee or a person who is
17 volunteering for the school. Any student in grades six through
18 twelve who violates the provisions of this section shall be subject
19 to out-of-school suspension as provided for in Section 24-101.3 of
20 Title 70 of the Oklahoma Statutes. This section shall be in
21 addition to and does not limit the criminal liability of a person
22 who causes or commits an assault, battery, or assault and battery

1 upon a school employee as provided for in Section 650.7 of Title 21
2 of the Oklahoma Statutes.

3 SECTION 9. 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 An education employee who is injured as a result of an assault
7 or battery upon the person of the employee while the employee is in
8 the performance of any duties as an education employee shall be
9 entitled to a leave of absence from employment with the school
10 without a loss of leave benefits.

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

20 Section 24-101.3 A. Any student who is guilty of an act
21 described in paragraph 1 of subsection C of this section may be
22 suspended out-of-school in accordance with the provisions of this
23 section. Each school district board of education shall adopt a

1 policy with procedures which provides for out-of-school suspension
2 of students. The policy shall address the term of the out-of-school
3 suspension, provide an appeals process as described in subsection B
4 of this section, and provide that before a student is suspended out-
5 of-school, the school or district administration shall consider and
6 apply, if appropriate, alternative in-school placement options that
7 are not to be considered suspension, such as placement in an
8 alternative school setting, reassignment to another classroom, or
9 in-school detention. The policy shall address education for
10 students subject to the provisions of subsection D of this section
11 and whether participation in extracurricular activities shall be
12 permitted.

13 B. 1. Students suspended out-of-school for ten (10) or fewer
14 days shall have the right to appeal the decision of the
15 administration as provided in the policy required in subsection A of
16 this section. The policy shall specify whether appeals for short-
17 term suspensions as provided in this subsection shall be to a local
18 committee composed of district administrators or teachers or both,
19 or to the district board of education. Upon full investigation of
20 the matter, the committee or board shall determine the guilt or
21 innocence of the student and the reasonableness of the term of the
22 out-of-school suspension. If the policy requires appeals for short-
23 term suspensions to a committee, the policy adopted by the board

1 may, but is not required to, provide for appeal of the committee's
2 decision to the board.

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

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

- 22 a. violation of a school regulation,
- 23 b. immorality,

- 1 c. adjudication as a delinquent for an offense that is
2 not a violent offense. For the purposes of this
3 section, "violent offense" shall include those
4 offenses listed as the exceptions to the term
5 "nonviolent offense" as specified in Section 571 of
6 Title 57 of the Oklahoma Statutes. "Violent offense"
7 shall include the offense of assault with a dangerous
8 weapon but shall not include the offense of assault,
9 d. possession of an intoxicating beverage, low-point
10 beer, as defined by Section 163.2 of Title 37 of the
11 Oklahoma Statutes, or missing or stolen property if
12 the property is reasonably suspected to have been
13 taken from a student, a school employee, or the school
14 during school activities, and
15 e. possession of a dangerous weapon or a controlled
16 dangerous substance, as defined in the Uniform
17 Controlled Dangerous Substances Act. Possession of a
18 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
21 public school property or while in any school bus or other vehicle
22 used by a public school for transportation of students or teachers
23 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
2 pursuant to the provisions of this section. The term of the
3 suspension may be modified by the district superintendent on a case-
4 by-case basis. For purposes of this paragraph the term "firearm"
5 shall mean and include all weapons as defined by 18 U.S.C., Section
6 921.

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

16 D. At its discretion a school district may provide an education
17 plan for students suspended out-of-school for five (5) or fewer days
18 pursuant to the provisions of this subsection. The following
19 provisions shall apply to students who are suspended out-of-school
20 for more than five (5) days and who are guilty of acts listed in
21 subparagraphs a, b, c and d of paragraph 1 of subsection C of this
22 section. Upon the out-of-school suspension, the parent or guardian
23 of a student suspended out-of-school pursuant to the provisions of

1 this subsection shall be responsible for the provision of a
2 supervised, structured environment in which the parent or guardian
3 shall place the student and bear responsibility for monitoring the
4 student's educational progress until the student is readmitted into
5 school. The school administration shall provide the student with an
6 education plan designed for the eventual reintegration of the
7 student into school which provides only for the core units in which
8 the student is enrolled. A copy of the education plan shall also be
9 provided to the student's parent or guardian. For the purposes of
10 this section, the core units shall consist of the minimum English,
11 mathematics, science, social studies and art units required by the
12 State Board of Education for grade completion in grades kindergarten
13 through eight and for high school graduation in grades nine through
14 twelve. The plan shall set out the procedure for education and
15 shall address academic credit for work satisfactorily completed.

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

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

1 the student will not be allowed in the general vicinity of or
2 contact with a victim of the student, provided such victim notifies
3 the school of the victim's desire to refrain from contact with the
4 offending student.

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

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

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

19 SECTION 12. AMENDATORY 51 O.S. 2001, Section 155, as
20 last amended by Section 1, Chapter 381, O.S.L. 2004 (51 O.S. Supp.
21 2008, Section 155), is amended to read as follows:

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

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

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

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

12 17. Misrepresentation, if unintentional;

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

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

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

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

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

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

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

19 24. Provision, equipping, operation or maintenance of any
20 prison, jail or correctional facility, or injuries resulting from
21 the parole or escape of a prisoner or injuries by a prisoner to any
22 other prisoner; provided, however, this provision shall not apply to
23 claims from individuals not in the custody of the Department of

1 Corrections based on accidents involving motor vehicles owned or
2 operated by the Department of Corrections;

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

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

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

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

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

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

21 31. Any confirmation of the existence or nonexistence of any
22 effective financing statement on file in the office of the Secretary
23 of State made in good faith by an employee of the office of the

1 Secretary of State as required by the provisions of Section 1-9-
2 320.6 of Title 12A of the Oklahoma Statutes;

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

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

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

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-31-09 - DO
17 PASS, As Amended and Coauthored.