

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1301

Short Title: Improve School Discipline. (Public)

Sponsors: Representatives Blust; Current and Starnes.

Referred to: Education, if favorable, Judiciary I.

April 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS RELATED TO SCHOOL DISCIPLINE.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 115C-390 reads as rewritten:

5 "§ 115C-390. School personnel may use reasonable force.

6 ~~Except as restricted or prohibited by rules adopted by the local boards of education,~~
7 ~~principals, Principals,~~ teachers, substitute teachers, voluntary teachers, ~~and teacher assistants~~
8 ~~assistants,~~ and student teachers in the public schools of this State may use reasonable force in
9 the exercise of lawful authority to restrain or correct pupils and maintain ~~order.~~ order and proper
10 discipline.

11 No principal, teacher, substitute teacher, voluntary teacher, teacher assistant, or student
12 teacher shall be held civilly liable unless the trier of fact specifically finds that excessive force
13 under the circumstances was used by the principal, teacher, substitute teacher, voluntary
14 teacher, teacher assistant, or student teacher.

15 Any plaintiff wishing to file an action against a principal, teacher, substitute teacher,
16 voluntary teacher, teacher assistant, or student teacher must first appeal to the local board of
17 education in which the alleged use of excessive force took place. No action against a principal,
18 teacher, substitute teacher, voluntary teacher, teacher assistant, or student teacher may be filed
19 until the board of education has made a finding whether excessive force was used.

20 If the plaintiff files an action against a principal, teacher, substitute teacher, voluntary
21 teacher, teacher assistant, or student teacher after the school board has found that no excessive
22 force was used by the principal, teacher, substitute teacher, voluntary teacher, teacher assistant,
23 or student teacher, that finding by the school board shall create a rebuttable presumption in the
24 action that reasonable force was employed by the principal, teacher, substitute teacher,
25 voluntary teacher, teacher assistant, or student teacher."

26 SECTION 2. G.S. 115C-391.1(c) reads as rewritten:

27 "(c) Physical Restraint:

- 28 (1) Physical restraint of students by school personnel shall be considered a
29 reasonable use of force when used in the following circumstances:
30 a. As reasonably needed to obtain possession of a weapon or other
31 dangerous objects on a person or within the control of a person.
32 b. As reasonably needed to maintain order or prevent or break up a
33 fight.
34 c. As reasonably needed for self-defense.
35 d. As reasonably needed to ensure the safety of any student, school
36 employee, volunteer, or other person present, to teach a skill, to calm
37 or comfort a student, or to prevent self-injurious behavior.



- 1 e. As reasonably needed to escort a student safely from one area to
2 another.
- 3 f. If used as provided for in a student's IEP or Section 504 plan or
4 behavior intervention plan.
- 5 g. As reasonably needed to prevent imminent destruction to school or
6 another person's property.
- 7 (2) ~~Except as set forth in subdivision (1) of this subsection, physical restraint of~~
8 ~~students shall not be considered a reasonable use of force, and its use is~~
9 ~~prohibited."~~

10 **SECTION 3.** Chapter 115C of the General Statutes is amended by adding a new
11 section to read:

12 **"§ 115C-42.1. Teacher Protection Act.**

13 (a) Legislative Findings. – The General Assembly finds that ensuring the quality of
14 primary and secondary public education is a compelling State interest. The educational
15 environment of students is often not conducive to learning. Violence is sometimes a threat,
16 while other times educators may lack the authority to maintain safety and discipline in the
17 public schools. The filing of meritless lawsuits against school districts, teachers and
18 administrators, and other school employees interferes with attempts to ensure the quality of
19 public education, particularly where such lawsuits arise out of the good-faith efforts of
20 educators to maintain classroom discipline or address threats to student safety. Meritless
21 litigation also diverts financial and personnel resources to litigation defense activities and
22 reduces the availability of such resources for educational opportunities for students. The
23 General Assembly finds that legislation to deter meritless lawsuits and sanction deliberately
24 false reports against educators is a rational and appropriate method to address this compelling
25 public interest.

26 (b) Definitions. – As used in this section:

- 27 (1) 'Educational entity' means the State Board of Education or a local board of
28 education.
- 29 (2) 'Employee' means any individual elected or appointed to an educational
30 entity and any individual who is an employee of such an entity. This term
31 does not include independent contractors.

32 (c) Liability. –

- 33 (1) An educational entity or its employees shall not be subject to liability for any
34 of the following:
- 35 a. Taking any action regarding the control, grading, suspension,
36 expulsion, or discipline of students while such students are on the
37 property of the educational entity or its employees.
- 38 b. The immunity provided by this subdivision shall not apply if the
39 action of the educational entity or its employee violated an express
40 law, rule, regulation, or clearly articulated policy of the State or
41 educational entity. The burden of proof of such violation shall rest
42 with the plaintiff and must be established by clear and convincing
43 evidence to the court as part of a summary proceeding.
- 44 (2) An educational entity and its employees shall not be subject to liability for
45 making a report consistent with federal law to the appropriate law
46 enforcement authorities or school officials if the individual making the
47 report has reasonable grounds to suspect that a student is:
- 48 a. Under the influence of alcoholic beverages or a controlled substance
49 not lawfully prescribed to that individual;
- 50 b. In possession of a firearm, alcoholic beverages, or a controlled
51 substance not lawfully prescribed to that individual;

1 c. Involvement in the illegal sale or distribution of firearms, alcoholic
2 beverages, or a controlled substance.

3 (d) False Reports. –

4 (1) Except as otherwise provided in this subsection, any person 18 years of age
5 or older who acts with specific intent in making a false accusation of
6 criminal activity against an employee of an educational entity to law
7 enforcement authorities, school district officials or personnel, or both, shall
8 be fined up to two thousand dollars (\$2,000).

9 (2) Except as otherwise provided in this subsection, any public school student
10 between the ages of 7 and 17 who acts with specific intent in making a false
11 accusation of criminal activity against an employee of an educational entity
12 to law enforcement authorities, school district officials or personnel, or both,
13 may, at the discretion of the court, be subject to any of the following:

14 a. Expulsion;

15 b. Suspension for a period of time to be determined by the court;

16 c. Community service of a type and for a period of time to be
17 determined by the court;

18 d. Any other sanction as the court in its discretion may deem
19 appropriate.

20 (3) The provisions of this subsection do not apply to statements regarding
21 individuals elected or appointed to a school board.

22 (4) This subsection is in addition to and does not limit the civil or criminal
23 liability of those persons who make false statements alleging criminal
24 activity by others.

25 (e) Insurance. – Unless otherwise provided by statute, the existence of any policy of
26 insurance indemnifying an educational entity against liability for damages is not a waiver of
27 any defense otherwise available to the educational entity or its employees in the defense of the
28 claim.

29 (f) Applicability. – This section shall be supplemental to the State Tort Claims Act."

30 **SECTION 4.** Section 1 of this act becomes effective December 1, 2009, and
31 applies to actions filed on or after that date. The remainder of this act is effective when it
32 becomes law.