

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 467

Short Title: Improve School Discipline. (Public)

Sponsors: Representative Blust (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Education, if favorable, Judiciary Subcommittee A.

March 28, 2011

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.



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

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

15 **"§ 115C-42.1. Teacher Protection Act.**

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

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

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

35 (c) Liability. –

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

- 1 a. Under the influence of alcoholic beverages or a controlled substance
2 not lawfully prescribed to that individual.
- 3 b. In possession of a firearm, alcoholic beverages, or a controlled
4 substance not lawfully prescribed to that individual.
- 5 c. Involved in the illegal sale or distribution of firearms, alcoholic
6 beverages, or a controlled substance.
- 7 (d) False Reports. –
- 8 (1) Except as otherwise provided in this subsection, any person 18 years of age
9 or older who acts with specific intent in making a false accusation of
10 criminal activity against an employee of an educational entity to law
11 enforcement authorities, local school administrative unit officials or
12 personnel, or both, shall be fined up to two thousand dollars (\$2,000).
- 13 (2) Except as otherwise provided in this subsection, any public school student
14 between the ages of 7 and 17 who acts with specific intent in making a false
15 accusation of criminal activity against an employee of an educational entity
16 to law enforcement authorities, local school administrative unit officials or
17 personnel, or both, may, at the discretion of the court, be subject to any of
18 the following:
- 19 a. Expulsion.
- 20 b. Suspension for a period of time to be determined by the court.
- 21 c. Community service of a type and for a period of time to be
22 determined by the court.
- 23 d. Any other sanction as the court in its discretion may deem
24 appropriate.
- 25 (3) The provisions of this subsection do not apply to statements regarding
26 individuals elected or appointed to a school board.
- 27 (4) This subsection is in addition to and does not limit the civil or criminal
28 liability of those persons who make false statements alleging criminal
29 activity by others.
- 30 (e) Insurance. – Unless otherwise provided by statute, the existence of any policy of
31 insurance indemnifying an educational entity against liability for damages is not a waiver of
32 any defense otherwise available to the educational entity or its employees in the defense of the
33 claim.
- 34 (f) Applicability. – This section shall be supplemental to the State Tort Claims Act."
- 35 **SECTION 4.** Section 1 of this act becomes effective December 1, 2011, and
36 applies to actions filed on or after that date. The remainder of this act is effective when it
37 becomes law.