

Legislative sophistry

*By Richard Wilkinson
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Once again, some of our elected representatives are suggesting that proposed legislation will “protect teachers from frivolous lawsuits,” and once again, those claims are wholly unsupported by the specific language in the proposed legislation. In fact, the supposed “protections” actually increase the possibility of liability for an education employee.

In response to this legislation and similar proposals, the following email was sent on March 2, 2005, to Randy Beutler, Legislative Liaison for Governor Brad Henry, which sets forth the OEA’s position regarding this issue:

Randy,

Bruce Hunt asked that I contact you regarding inclusion of language in a bill that has been labeled, among other things, the “Teacher Protection Act.” This language has, in some form or another, been introduced in bills starting with the 2003 legislative session and we have serious concerns with some of the language contained in the various bills that we have reviewed since 2003.

Initially, you should be aware that the initial version of the Teacher Protection Act was “boilerplate” legislation recommended by the American Legislative Exchange Council (ALEC) and was introduced in a bill without editing in 2003. Several versions of this bill have since evolved and some of the initial provisions contained in the recommended ALEC legislation remain in the current bills introduced this session.

I am aware of two current bills that have a version of the ALEC language. HB 2033 references the “Educator Protection Act” and HB 2047 references the ‘Education Quality and Protection Act.’ Both of these bills have substantially the same language and our concern about the alleged “protections” applies to both of these bills.

Our primary concern is that we believe these bills create liabilities for educators that do not exist under current law. The Oklahoma Governmental Tort Claims Act (OGTCA) currently governs the personal liability of educators and these bills have the effect of diminishing those protections – and increasing the possibility of liability for an educator. Specifically, this legislation creates personal liability for “gross negligence” where none currently exists and creates the potential for liability when administering discipline if the action violated an “express law, rule, regulation or clearly articulated policy of the state or educational entity or constituted gross negligence” – conditions for immunity from liability that do not currently exist in the OGTCA as long as the employee is acting within the scope of their employment.

We have other concerns about both of these bills that are too numerous to mention in an email. I have attached copies of two memoranda that were prepared by our office for submission to legislators and which deal with both versions of this issue that have been introduced, both last year and this year.

I am scheduled to meet with Senator Laster next Monday [meeting occurred Monday, March 7, 2005] to express our concerns and opposition to both of these bills. If there is truly a problem that exists and which is not addressed by the OGTC, I can suggest a very simple solution by amending Section 155 of the OGTC (Exemptions from Liability) which would address these perceived problems without diminishing the immunities that currently exist in the OGTC and in the Oklahoma School Code (Title 70 of the Oklahoma Statutes). I will discuss those alternatives with Senator Laster when I meet with him and would be happy to discuss them further with you.

In summary, our position is that the current versions of the “Teacher Protection Act” that have been introduced in legislation this year do not offer the protections claimed by the bills, diminish the current protections offered by the OGTC, create ambiguities that will need to be litigated, are very poorly drafted, and are simply bad bills. I encourage you to review the above and the attached memoranda and should you have additional questions or wish to discuss this further, please do not hesitate to contact me ... at your convenience.

Thanks,
Richard Wilkinson
OEA General Counsel

One can only assume that supporters of the proposed legislation have read just a bill title and not the specific provisions of the proposed legislation. Otherwise, you would have to assume that they lack a complete understanding of the immunities and protections from liability for education employees that exist under current law.

The ideological zeal for supposed “tort reform” is the genesis for the misnomer “Teacher Protection” legislation that has been introduced the last two legislative sessions. Despite criticism from other groups – even those that purport to represent the interests of education employees – we will continue our efforts to ensure that existing statutory protections are not diminished by these misleading proposals.