

FIRST REGULAR SESSION

# HOUSE BILL NO. 469

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES WALLACE (Sponsor), WILSON (130), MUSCHANY, BAKER (123), SMITH (150), DIXON, NANCE, SCHAD, WHORTON, MUNZLINGER, ROORDA, DETHROW, SATER, KUESSNER, BIVINS, WILSON (119), COOPER (158), NOLTE, SANDER, FISHER, SCHNEIDER, WALTON, DAY, QUINN (7), DEEKEN, WOOD, AULL, LOEHNER, EMERY, MOORE, ERVIN, FRANZ, THOMSON, KELLY, TILLEY, MUSCHANY, KINGERY, PEARCE, THRELKELD, WETER, VIEBROCK AND MAY (Co-sponsors).

Read 1st time January 18, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0861L.011

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### AN ACT

To repeal sections 160.261, 167.621, 167.624, and 190.092, and to enact in lieu thereof four new sections relating to liability for school employees and volunteers, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 160.261, 167.621, 167.624, and 190.092, RSMo, are repealed and  
2 four new sections enacted in lieu thereof, to be known as sections 160.261, 167.621, 167.624,  
3 and 190.092, to read as follows:

160.261. 1. The local board of education of each school district shall clearly establish  
2 a written policy of discipline, including the district's determination on the use of corporal  
3 punishment and the procedures in which punishment will be applied. A written copy of the  
4 district's discipline policy and corporal punishment procedures, if applicable, shall be provided  
5 to the pupil and parent or legal guardian of every pupil enrolled in the district at the beginning  
6 of each school year and also made available in the office of the superintendent of such district,  
7 during normal business hours, for public inspection. All employees of the district shall annually  
8 receive instruction related to the specific contents of the policy of discipline and any  
9 interpretations necessary to implement the provisions of the policy in the course of their duties,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

10 including but not limited to approved methods of dealing with acts of school violence,  
11 disciplining students with disabilities and instruction in the necessity and requirements for  
12 confidentiality.

13         2. The policy shall require school administrators to report acts of school violence to  
14 teachers and other school district employees with a need to know. For the purposes of this  
15 chapter or chapter 167, RSMo, "need to know" is defined as school personnel who are directly  
16 responsible for the student's education or who otherwise interact with the student on a  
17 professional basis while acting within the scope of their assigned duties. As used in this section,  
18 the phrase "act of school violence" or "violent behavior" means the exertion of physical force by  
19 a student with the intent to do serious physical injury as defined in subdivision (6) of section  
20 565.002, RSMo, to another person while on school property, including a school bus in service  
21 on behalf of the district, or while involved in school activities. The policy shall at a minimum  
22 require school administrators to report, as soon as reasonably practical, to the appropriate law  
23 enforcement agency any of the following felonies, or any act which if committed by an adult  
24 would be one of the following felonies:

- 25         (1) First degree murder under section 565.020, RSMo;
- 26         (2) Second degree murder under section 565.021, RSMo;
- 27         (3) Kidnapping under section 565.110, RSMo;
- 28         (4) First degree assault under section 565.050, RSMo;
- 29         (5) Forcible rape under section 566.030, RSMo;
- 30         (6) Forcible sodomy under section 566.060, RSMo;
- 31         (7) Burglary in the first degree under section 569.160, RSMo;
- 32         (8) Burglary in the second degree under section 569.170, RSMo;
- 33         (9) Robbery in the first degree under section 569.020, RSMo;
- 34         (10) Distribution of drugs under section 195.211, RSMo;
- 35         (11) Distribution of drugs to a minor under section 195.212, RSMo;
- 36         (12) Arson in the first degree under section 569.040, RSMo;
- 37         (13) Voluntary manslaughter under section 565.023, RSMo;
- 38         (14) Involuntary manslaughter under section 565.024, RSMo;
- 39         (15) Second degree assault under section 565.060, RSMo;
- 40         (16) Sexual assault under section 566.040, RSMo;
- 41         (17) Felonious restraint under section 565.120, RSMo;
- 42         (18) Property damage in the first degree under section 569.100, RSMo;
- 43         (19) The possession of a weapon under chapter 571, RSMo;
- 44         (20) Child molestation in the first degree pursuant to section 566.067, RSMo;
- 45         (21) Deviate sexual assault pursuant to section 566.070, RSMo;

46 (22) Sexual misconduct involving a child pursuant to section 566.083, RSMo; or

47 (23) Sexual abuse pursuant to section 566.100, RSMo;

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49 committed on school property, including but not limited to actions on any school bus in service  
50 on behalf of the district or while involved in school activities. The policy shall require that any  
51 portion of a student's individualized education program that is related to demonstrated or  
52 potentially violent behavior shall be provided to any teacher and other school district employees  
53 who are directly responsible for the student's education or who otherwise interact with the  
54 student on an educational basis while acting within the scope of their assigned duties. The policy  
55 shall also contain the consequences of failure to obey standards of conduct set by the local board  
56 of education, and the importance of the standards to the maintenance of an atmosphere where  
57 orderly learning is possible and encouraged.

58 3. The policy shall provide that any student who is on suspension for any of the offenses  
59 listed in subsection 2 of this section or any act of violence or drug-related activity defined by  
60 school district policy as a serious violation of school discipline pursuant to subsection 9 of this  
61 section shall have as a condition of his or her suspension the requirement that such student is not  
62 allowed, while on such suspension, to be within one thousand feet of any public school in the  
63 school district where such student attended school unless:

64 (1) Such student is under the direct supervision of the student's parent, legal guardian,  
65 or custodian;

66 (2) Such student is under the direct supervision of another adult designated by the  
67 student's parent, legal guardian, or custodian, in advance, in writing, to the principal of the school  
68 which suspended the student;

69 (3) Such student is in an alternative school that is located within one thousand feet of a  
70 public school in the school district where such student attended school; or

71 (4) Such student resides within one thousand feet of any public school in the school  
72 district where such student attended school in which case such student may be on the property  
73 of his or her residence without direct adult supervision.

74 4. Any student who violates the condition of suspension required pursuant to subsection  
75 3 of this section may be subject to expulsion or further suspension pursuant to the provisions of  
76 sections 167.161, 167.164, and 167.171, RSMo. In making this determination consideration  
77 shall be given to whether the student poses a threat to the safety of any child or school employee  
78 and whether such student's unsupervised presence within one thousand feet of the school is  
79 disruptive to the educational process or undermines the effectiveness of the school's disciplinary  
80 policy. Removal of any pupil who is a student with a disability is subject to state and federal  
81 procedural rights.

82           5. The policy shall provide for a suspension for a period of not less than one year, or  
83 expulsion, for a student who is determined to have brought a weapon to school, including but  
84 not limited to the school playground or the school parking lot, brought a weapon on a school bus  
85 or brought a weapon to a school activity whether on or off of the school property in violation of  
86 district policy, except that:

87           (1) The superintendent or, in a school district with no high school, the principal of the  
88 school which such child attends may modify such suspension on a case-by-case basis; and

89           (2) This section shall not prevent the school district from providing educational services  
90 in an alternative setting to a student suspended under the provisions of this section.

91           6. For the purpose of this section, the term "weapon" shall mean a firearm as defined  
92 under 18 U.S.C. 921 and the following items, as defined in section 571.010, RSMo: a blackjack,  
93 a concealable firearm, an explosive weapon, a firearm, a firearm silencer, a gas gun, a knife,  
94 knuckles, a machine gun, a projectile weapon, a rifle, a shotgun, a spring gun or a switchblade  
95 knife; except that this section shall not be construed to prohibit a school board from adopting a  
96 policy to allow a Civil War reenactor to carry a Civil War era weapon on school property for  
97 educational purposes so long as the firearm is unloaded. The local board of education shall  
98 define weapon in the discipline policy. Such definition shall include the weapons defined in this  
99 subsection but may also include other weapons.

100           7. All school district personnel responsible for the care and supervision of students are  
101 authorized to hold every pupil strictly accountable for any disorderly conduct in school or on any  
102 property of the school, on any school bus going to or returning from school, during  
103 school-sponsored activities, or during intermission or recess periods.

104           8. Teachers and other authorized district personnel in public schools responsible for the  
105 care, supervision, and discipline of schoolchildren, including volunteers selected with reasonable  
106 care by the school district, shall not be civilly liable when acting in conformity with the  
107 established [policy of discipline] **policies** developed by each board [under this section],  
108 **including but not limited to policies of student discipline** or when reporting to his or her  
109 supervisor or other person as mandated by state law acts of school violence or threatened acts  
110 of school violence, within the course and scope of the duties of the teacher, authorized district  
111 personnel or volunteer, when such individual is acting in conformity with the established policies  
112 developed by the board. Nothing in this section shall be construed to create a new cause of  
113 action against such school district, or to relieve the school district from liability for the negligent  
114 acts of such persons.

115           9. Each school board shall define in its discipline policy acts of violence and any other  
116 acts that constitute a serious violation of that policy. Acts of violence as defined by school  
117 boards shall include but not be limited to exertion of physical force by a student with the intent

118 to do serious bodily harm to another person while on school property, including a school bus in  
119 service on behalf of the district, or while involved in school activities. School districts shall for  
120 each student enrolled in the school district compile and maintain records of any serious violation  
121 of the district's discipline policy. Such records shall be made available to teachers and other  
122 school district employees with a need to know while acting within the scope of their assigned  
123 duties, and shall be provided as required in section 167.020, RSMo, to any school district in  
124 which the student subsequently attempts to enroll.

125         10. Spanking, when administered by certificated personnel of a school district in a  
126 reasonable manner in accordance with the local board of education's written policy of discipline,  
127 is not abuse within the meaning of chapter 210, RSMo. The provisions of sections 210.110 to  
128 210.165, RSMo, notwithstanding, the division of family services shall not have jurisdiction over  
129 or investigate any report of alleged child abuse arising out of or related to any spanking  
130 administered in a reasonable manner by any certificated school personnel pursuant to a written  
131 policy of discipline established by the board of education of the school district. Upon receipt of  
132 any reports of child abuse by the division of family services pursuant to sections 210.110 to  
133 210.165, RSMo, which allegedly involves personnel of a school district, the division of family  
134 services shall notify the superintendent of schools of the district or, if the person named in the  
135 alleged incident is the superintendent of schools, the president of the school board of the school  
136 district where the alleged incident occurred. If, after an initial investigation, the superintendent  
137 of schools or the president of the school board finds that the report involves an alleged incident  
138 of child abuse other than the administration of a spanking by certificated school personnel  
139 pursuant to a written policy of discipline or a report made for the sole purpose of harassing a  
140 public school employee, the superintendent of schools or the president of the school board shall  
141 immediately refer the matter back to the division of family services and take no further action.  
142 In all matters referred back to the division of family services, the division of family services shall  
143 treat the report in the same manner as other reports of alleged child abuse received by the  
144 division. If the report pertains to an alleged incident which arose out of or is related to a  
145 spanking administered by certificated personnel of a school district pursuant to a written policy  
146 of discipline or a report made for the sole purpose of harassing a public school employee, a  
147 notification of the reported child abuse shall be sent by the superintendent of schools or the  
148 president of the school board to the juvenile officer of the county in which the alleged incident  
149 occurred. The report shall be jointly investigated by the juvenile officer or a law enforcement  
150 officer designated by the juvenile officer and the superintendent of schools or, if the subject of  
151 the report is the superintendent of schools, by the juvenile officer or a law enforcement officer  
152 designated by the juvenile officer and the president of the school board or such president's  
153 designee. The investigation shall begin no later than forty-eight hours after notification from the

154 division of family services is received, and shall consist of, but need not be limited to,  
155 interviewing and recording statements of the child and the child's parents or guardian within two  
156 working days after the start of the investigation, of the school district personnel allegedly  
157 involved in the report, and of any witnesses to the alleged incident. The juvenile officer or a law  
158 enforcement officer designated by the juvenile officer and the investigating school district  
159 personnel shall issue separate reports of their findings and recommendations after the conclusion  
160 of the investigation to the school board of the school district within seven days after receiving  
161 notice from the division of family services. The reports shall contain a statement of conclusion  
162 as to whether the report of alleged child abuse is substantiated or is unsubstantiated. The school  
163 board shall consider the separate reports and shall issue its findings and conclusions and the  
164 action to be taken, if any, within seven days after receiving the last of the two reports. The  
165 findings and conclusions shall be made in substantially the following form:

166 (1) The report of the alleged child abuse is unsubstantiated. The juvenile officer or a law  
167 enforcement officer designated by the juvenile officer and the investigating school board  
168 personnel agree that the evidence shows that no abuse occurred;

169 (2) The report of the alleged child abuse is substantiated. The juvenile officer or a law  
170 enforcement officer designated by the juvenile officer and the investigating school district  
171 personnel agree that the evidence is sufficient to support a finding that the alleged incident of  
172 child abuse did occur;

173 (3) The issue involved in the alleged incident of child abuse is unresolved. The juvenile  
174 officer or a law enforcement officer designated by the juvenile officer and the investigating  
175 school personnel are unable to agree on their findings and conclusions on the alleged incident.

176 11. The findings and conclusions of the school board shall be sent to the division of  
177 family services. If the findings and conclusions of the school board are that the report of the  
178 alleged child abuse is unsubstantiated, the investigation shall be terminated, the case closed, and  
179 no record shall be entered in the division of family services' central registry. If the findings and  
180 conclusions of the school board are that the report of the alleged child abuse is substantiated, the  
181 division of family services shall report the incident to the prosecuting attorney of the appropriate  
182 county along with the findings and conclusions of the school district and shall include the  
183 information in the division's central registry. If the findings and conclusions of the school board  
184 are that the issue involved in the alleged incident of child abuse is unresolved, the division of  
185 family services shall report the incident to the prosecuting attorney of the appropriate county  
186 along with the findings and conclusions of the school board, however, the incident and the names  
187 of the parties allegedly involved shall not be entered into the central registry of the division of  
188 family services unless and until the alleged child abuse is substantiated by a court of competent  
189 jurisdiction.

190           12. Any superintendent of schools, president of a school board or such person's designee  
191 or juvenile officer who knowingly falsifies any report of any matter pursuant to this section or  
192 who knowingly withholds any information relative to any investigation or report pursuant to this  
193 section is guilty of a class A misdemeanor.

194           13. In order to ensure the safety of all students, should a student be expelled for bringing  
195 a weapon to school, violent behavior, or for an act of school violence, that student shall not, for  
196 the purposes of the accreditation process of the Missouri school improvement plan, be  
197 considered a dropout or be included in the calculation of that district's educational persistence  
198 ratio.

          167.621. 1. Persons providing health services under sections 167.600 to 167.621 shall  
2 obtain authorization from a parent or guardian of the child before providing services as provided  
3 by section 431.061, RSMo.

4           2. No employee of any school district may be required to administer medication or  
5 medical services for which the employee is not qualified according to standard medical practices.  
6 No **unqualified** employee who refuses to [violate this provision] **administer medication or**  
7 **medical services** shall be subject to any disciplinary action for such refusal. Nothing herein  
8 shall be construed to prevent any employee from providing routine first aid, provided that any  
9 employee shall be held harmless **and immune** from any liability if such employee is following  
10 a proper procedure adopted by the local school board.

11           **3. A school district may require an employee to obtain the necessary training to**  
12 **become qualified to administer medication or medical services according to standard**  
13 **medical practice. Any qualified employee shall be held harmless and immune from any**  
14 **civil liability for administering medication or medical services in good faith and according**  
15 **to standard medical practices.**

          167.624. Each school board in the state, if the school district does not presently have a  
2 program as described below, may develop and implement a program to train the students **and**  
3 **employees** of the district in the administration of cardiopulmonary resuscitation and other  
4 lifesaving methods, as they determine best, and may consult the department of public safety, the  
5 state fire marshal's office, the local fire protection authorities, and others as the board sees fit.  
6 The board may make completion of the program a requirement for graduation **or a condition of**  
7 **employment. Any trained employee shall be held harmless and immune from any civil**  
8 **liability for administering cardiopulmonary resuscitation and other lifesaving methods in**  
9 **good faith.**

          190.092. 1. A person or entity who acquires an automated external defibrillator shall  
2 ensure that:

3 (1) Expected defibrillator users receive training by the American Red Cross or American  
4 Heart Association in cardiopulmonary resuscitation and the use of automated external  
5 defibrillators, or an equivalent nationally recognized course in defibrillator use and  
6 cardiopulmonary resuscitation;

7 (2) The defibrillator is maintained and tested according to the manufacturer's operational  
8 guidelines;

9 (3) Any person who renders emergency care or treatment on a person in cardiac arrest  
10 by using an automated external defibrillator activates the emergency medical services system as  
11 soon as possible; and

12 (4) Any person or entity that owns an automated external defibrillator that is for use  
13 outside of a health care facility shall have a physician review and approve the clinical protocol  
14 for the use of the defibrillator, review and advise regarding the training and skill maintenance  
15 of the intended users of the defibrillator and assure proper review of all situations when the  
16 defibrillator is used to render emergency care.

17 2. Any person or entity who acquires an automated external defibrillator shall notify the  
18 emergency communications district or the ambulance dispatch center of the primary provider of  
19 emergency medical services where the automated external defibrillator is to be located.

20 3. Any person who has had appropriate training, including a course in cardiopulmonary  
21 resuscitation, has demonstrated a proficiency in the use of an automated external defibrillator,  
22 and who gratuitously and in good faith renders emergency care when medically appropriate by  
23 use of or provision of an automated external defibrillator, without objection of the injured victim  
24 or victims thereof, shall [not be held liable for any civil damages] **be held harmless and**  
25 **immune from civil liability** as a result of such care or treatment, where the person acts as an  
26 ordinarily reasonable, prudent person would have acted under the same or similar circumstances.  
27 The person or entity who provides appropriate training to the person using an automated external  
28 defibrillator, the person or entity responsible for the site where the automated external  
29 defibrillator is located, and the licensed physician who reviews and approves the clinical protocol  
30 shall likewise not be held liable for civil damages resulting from the use of an automated external  
31 defibrillator, provided that all other requirements of this section have been met. [Nothing in this  
32 section shall affect any claims brought pursuant to chapter 537 or 538, RSMo.]

33 4. The provisions of this section shall apply in all counties within the state and any city  
34 not within a county.

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