



Input on SB 12

Regarding frivolous suits

February 27, 2025

The **Association of Texas Professional Educators (ATPE)** offers the following input on Senate Bill (SB) 12 with regard to proposed changes affecting frivolous suits under Section 11.161, Texas Education Code (TEC).

Section 11.161 under current law allows a court to award costs and reasonable attorney's fees when a suit is frivolous, unreasonable, or without foundation and the suit is dismissed or the judgment is for the defendant. Section 3 of SB 12 amends section 11.161 of TEC to expand this award of attorney's fees to frivolous "administrative proceedings." Further, it expands the authority to determine whether the administrative proceeding is frivolous (and thus to award attorney's fees) from the court to a "person authorized to make decisions regarding the proceeding."

As drafted, "administrative proceedings," which is not defined, likely includes employment-related proceedings such as employee grievances and nonrenewal hearings. These administrative proceedings are typically decided by district administrators (depending on the level of the grievance, campus principals, central office staff, or the school board). For example, an employee who challenges an evaluation or reprimand may often be required to grieve to the same administrator who issued the action that is the subject of the grievance. As filed, SB 12 would allow the same administrator to take an action against an employee, hear the grievance about that action, and unilaterally determine the employee's grievance is frivolous, saddling the employee with attorney's fees.

It is one thing to allow an impartial court to determine frivolity as a legal standard and therefore award attorney's fees. It is quite another to allow an invested party to the proceeding, and likely one with no legal training, to make a unilateral decision as to whether that same proceeding is frivolous. To further allow them to award attorney's fees is inconsistent with judicial fairness and equity.

We believe this is not the legislative intent of Section 3 and therefore suggest amending this section to avoid such an unintended consequence. We recommend adding Subsection (c) as follows:

Sec. 11.161. FRIVOLOUS SUIT OR PROCEEDING. (a) In a civil suit or administrative proceeding brought under state law or rules [;] against an independent school district or an officer of an independent school district acting under color of office, the court or another person authorized to make decisions regarding the proceeding may award costs and reasonable attorney's fees if:

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(1) the court or other authorized person finds that the suit or proceeding is frivolous, unreasonable, and without foundation; and

(2) the suit or proceeding is dismissed or judgment is for the defendant.

(b) This section does not apply to a civil suit or administrative proceeding brought under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.). A civil suit or administrative proceeding described by this subsection is governed by the attorney's fees provisions under 20 U.S.C. Section 1415.

(c) This section does not apply to an administrative proceeding concerning a contract for employment, an employee grievance, or any other district employment matter.

ATPE appreciates the opportunity to share this input as we work together to improve public education for all 5.5 million-plus Texas students. For additional information, contact ATPE Governmental Relations at (800) 777-2873 or government@atpe.org.

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