



State of Tennessee

PUBLIC CHAPTER NO. 958

HOUSE BILL NO. 2376

By Representatives Hicks, Keisling, Hawk, Timothy Hill, Lollar, Faison, Dawn White, Holsclaw, Sanderson, Ramsey, Wirgau, Moon, Forgety, Johnson, Sherrell, Crawford

Substituted for: Senate Bill No. 2381

By Senator Lundberg

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 6, Part 30; Title 49, Chapter 6, Part 34 and Title 49, Chapter 6, Part 40, relative to education.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-6-3006, is amended by deleting the section and substituting instead:

(a) The sole responsibility and authority for the enforcement of the compulsory attendance laws, compiled in this part, are placed in the local board of education and its designated employees and officers.

(b) To facilitate the enforcement of the compulsory attendance laws, the director of schools shall designate at least one (1) qualified employee who shall be identified as the LEA attendance supervisor. The duties of an attendance supervisor include, but are not limited to, assisting the local board, under the direction of the director of schools, with the enforcement of the compulsory attendance laws of the state and to discharge other duties that are necessary to effectuate enforcement of laws and local policies related to absenteeism and truancy. The attendance supervisor may also be directed to devise and recommend to the director of schools, for board approval, a progressive truancy intervention plan consistent with § 49-6-3009.

(c) The state board of education is authorized to promulgate rules regarding training, licensure, and employment qualifications of attendance supervisors.

SECTION 2. Tennessee Code Annotated, Section 49-6-3007, is amended by deleting the section and substituting instead:

(a) By the beginning of each school year, the director of schools shall furnish, or cause to be furnished through the attendance supervisor, to the principal of each school a list of students who will attend the school together with the names of the students' parents or guardians. The lists must be taken from the census enumeration on file in the office of the director of schools or from any other available and reliable source.

(b) After the opening of school, each principal of a public school must report to the director of schools the names of all students on the list furnished to the principal who have not appeared for enrollment.

(c) A principal or head of school of a public, nonpublic, or church-related school must report to the director of schools of the LEA in which the school is located the names, ages, and residences of all students in attendance at the school within thirty (30) days after the beginning of the school year. The principal or head of school of a public, nonpublic, or church-related school must make other reports of attendance in the school, including transfers of students, as may be required by the local board of education, the state board of education, or the department of education. Notwithstanding subsection (f), this subsection (c) applies to any student less than six (6) years of age who is enrolled in kindergarten in any school to which this subsection (c) is applicable.

(d) All public, nonpublic, and church-related schools shall keep daily reports of attendance, verified by the teacher making the record, that shall be open to inspection at

all reasonable times by the director of schools of the LEA in which the school is located, or the director's duly authorized representative. Notwithstanding subsection (f), this subsection (d) applies to any child less than six (6) years of age who is enrolled in kindergarten in any school to which this subsection (d) is applicable.

(e)

(1) By the beginning of each school year, the principal or head of school of a public, nonpublic, or church-related school shall give written notice to the parent, guardian, or person having control of a student subject to compulsory attendance that the parent, guardian, or other person having control of the student must monitor the student's school attendance and require the student to attend school. The written notice must inform the parent, guardian, or other person having control of a student that a student who accumulates five (5) days of unexcused absences during the school year is subject to the LEA's progressive truancy interventions and that continued unexcused absences may result in a referral to juvenile court. The five (5) days of unexcused absences need not be five (5) consecutive days of unexcused absences.

(2) The principal of a public school must report promptly to the director of schools, or to the attendance supervisor, the names of all students who have withdrawn from school or who have accumulated three (3) days of unexcused absences. Upon a student's accumulation of three (3) days of unexcused absences, the director of schools or the attendance supervisor may serve, or cause to be served, upon the parent, guardian, or other person having control of a child subject to compulsory attendance who is unlawfully absent from school, written notice that the child's attendance at school is required by law.

(3) Additionally, the principal of a public school must report promptly to the director of schools, or to the attendance supervisor, the names of all students who have withdrawn from school or who have accumulated five (5) days of unexcused absences. Each successive accumulation of five (5) days of unexcused absences by a student must also be reported.

(4)

(A) When a student accumulates five (5) days of unexcused absences, the director of schools or attendance supervisor shall serve, or cause to be served, upon the parent, guardian, or other person having control of a child subject to compulsory attendance who is unlawfully absent from school written notice that the child's attendance at school is required by law. The director of schools or attendance supervisor shall send a new notice after each successive accumulation of five (5) unexcused absences.

(B) After the child has accumulated five (5) unexcused absences, and after given adequate time, as determined by director of schools or attendance supervisor, the child's parent, guardian, or other person having control of the child has failed to turn in documentation to excuse those absences, the director of schools or attendance supervisor shall implement the first tier of the progressive truancy intervention requirements as described in § 49-6-3009.

(C) Nothing in this section shall prohibit a local board of education from adopting a truancy intervention plan that includes intervention actions to be taken before those required by this subsection.

(f) Except as otherwise provided by § 49-6-3001 or § 49-6-3005, this section is applicable to a child less than six (6) years of age and the child's parent, guardian, or other person having control of a child, when such person has enrolled the child in a public school; provided, that a child may be withdrawn within six (6) weeks of initial enrollment without penalty.

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(g) For the purposes of this part, for recording and coding student absences from school because of disciplinary actions, the following definitions apply:

(1) "Expulsion" means removal from attendance for more than ten (10) consecutive days or more than fifteen (15) days in a month of school attendance. Multiple suspensions that occur consecutively constitute expulsion. The LEA is not eligible to receive funding for an expelled student;

(2) "Remand" means assignment to an alternative school. The student so assigned shall be included in average daily attendance and average daily membership and shall continue to be counted as present for funding purposes. The department of education shall establish a set of codes to be used for reporting reasons that students are remanded to an alternative school; and

(3) "Suspension" means dismissal for any reason from attendance at school not exceeding ten (10) consecutive days. Multiple suspensions shall not run consecutively, nor shall multiple suspensions be applied to avoid expulsion from school. The LEA remains eligible to receive funding for a suspended student.

(h)

(1)

(A) An LEA may enter into an agreement with the local law enforcement agency serving the LEA's area and the appropriate local government in that area to assist in the enforcement of compulsory attendance upon complying with the following conditions:

(i) Creation by the local board of education of an advisory council to assist the board in formulating the agreement. The board must include representatives of teachers, parents, administrators, and other community representatives;

(ii) Receipt of input from neighborhood groups and other interested parties; and

(iii) At least one (1) public hearing on the proposed agreement prior to its adoption by the board.

(B) The agreement must provide for:

(i) Training teachers, principals, social workers, and other school personnel concerning truancy issues;

(ii) Training of involved law enforcement personnel in the truancy law, including categories of students to which the law does not apply, such as nonpublic school students or home school students; and

(iii) Safeguards to protect students from discriminatory or selective enforcement and to protect the civil rights of students and parents.

(C) If an LEA enters into an agreement, then every public school principal or teacher employed by the LEA must report promptly to the director of schools, or the director's designated representative, the names of all students who accumulated five (5) days of unexcused absences and continue to report each subsequent unexcused absence. The five (5) days of unexcused absences need not be five (5) consecutive days of unexcused absences.

(2) If a student accumulates five (5) days of unexcused absences, the director of schools shall serve, or cause to be served, upon the parent, guardian,

or other person having control of the student written notice that the student's attendance at school is required. The notice must inform the parent, guardian, or other person having control of the student of this subsection (h).

(3) Under the agreement, and for purposes of this section and § 37-1-102(b)(26)(A), a student who accumulates three (3) days of unexcused absences may be deemed habitually truant.

(4) The director of schools or the director's representative may issue a list of truant students to the local law enforcement agency for the purpose of allowing the law enforcement agency to take the student into temporary custody when the student is found away from the school premises, without adequate excuse, during school hours, in a public place, in any public or private conveyance, or in any place of business open to the public, unless accompanied by a parent, guardian, or other person having control of the student. The agreement shall specify that the law enforcement officer's sole function is to deliver the student to:

(A) The parent, guardian, or other person having control of the student;

(B) The principal of the school in which the student is enrolled;

(C) A truancy center established by the LEA; or

(D) The juvenile court, if the juvenile court and the local law enforcement agency have entered into a local interagency agreement.

(5) The powers conferred under such agreements may be exercised without warrant and without subsequent legal proceedings.

(6) This subsection (h) does not apply to students enrolled in nonpublic schools, home schools under § 49-6-3050, or church-related schools under § 49-50-801.

(7) Upon issuance of a standing order by the juvenile court, LEA officials shall be allowed to release student record information to local law enforcement agencies and to juvenile justice system officials to assist the officials in effectively serving the student whose record is released. Officials and authorities receiving the information shall not disclose the information to any other party without prior written consent of the parent. Release of a student record must comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g), § 10-7-504, and other relevant state and federal privacy laws.

SECTION 3. Tennessee Code Annotated, Section 49-6-3009, is amended by deleting the section and substituting instead:

(a) Any parent, guardian, or other person who has control of a child, and who violates this part commits educational neglect, which is a Class C misdemeanor.

(b) Each day's unlawful absence constitutes a separate offense.

(c) A director of schools or attendance supervisor shall devise and recommend, and the local board of education shall adopt, a progressive truancy intervention plan for students who violate compulsory attendance requirements prior to the filing of a truancy petition or a criminal prosecution for educational neglect. These interventions must be designed to address student conduct related to truancy in the school setting and minimize the need for referrals to juvenile court.

(d) Progressive truancy intervention plans adopted by local boards of education pursuant to subsection (c) must be applied prior to referral to juvenile court as described in § 49-6-3007(e)(1). Progressive truancy intervention plans must meet the following requirements:

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(1) Tier one of the progressive truancy intervention plan must include, at a minimum:

(A) A conference with the student and the parent, guardian, or other person having control of the student;

(B) A resulting attendance contract to be signed by the student, the parent, guardian, or other person having control of the student, and an attendance supervisor or designee. The contract must include:

(i) A specific description of the school's attendance expectations for the student;

(ii) The period for which the contract is in effect, and

(iii) Penalties for additional absences and alleged school offenses, including additional disciplinary action and potential referral to juvenile court; and

(C) Regularly scheduled follow-up meetings, which may be with the student and the parent, guardian, or other person having control of the student to discuss the student's progress;

(2) Tier two must be implemented upon a student's accumulation of additional unexcused absences in violation of the attendance contract required under tier one. Tier two must include an individualized assessment by a school employee of the reasons a student has been absent from school, and if necessary, referral of the child to counseling, community-based services, or other in-school or out-of-school services aimed at addressing the student's attendance problems; and

(3) Tier three must be implemented if the truancy interventions under tier two are unsuccessful. Tier three may consist of one (1) or more of the following:

(A) School-based community services;

(B) Participation in a school-based restorative justice program;

(C) Referral to a school-based teen court; or

(D) Saturday or after school courses designed to improve attendance and behavior.

(e) In-school suspension or out-of-school suspension must not be used as part of the progressive truancy intervention plans adopted by schools for unexcused absence from class or school.

(f) Notwithstanding subsections (d) and (g), if the progressive truancy intervention plan is unsuccessful with a student and the school can document that the student's parent or guardian is unwilling to cooperate in the truancy intervention plan, the director of schools or designee may report the student's absences to the appropriate judge pursuant to subsection (g).

(g) If an LEA has applied a progressive truancy intervention plan that complies with subsection (d) and interventions under the plan have failed to meaningfully address the student's school attendance, the director of schools, after written notice to the parent, guardian, or other person having control of the student, shall report the student who is unlawfully absent from school to the appropriate judge having juvenile jurisdiction in that county. Each case must be dealt with in such manner as the judge may determine to be in the best interest of the student, consistent with §§ 37-1-132, 37-1-168, and 37-1-169. In the event a student in kindergarten through grade twelve (K-12) is adjudicated to be unruly because the student has accumulated five (5) days or more of unexcused absences during any school year, the judge may assess a fine of up to fifty dollars

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(\$50.00) or five (5) hours of community service, in the discretion of the judge, against the parent or legal guardian of the student.

(h) Each referral to juvenile court for conduct described in subsection (g) and § 49-6-3007(h)(4)(D) must be accompanied by a statement from the student's school certifying that:

(1) The school applied the progressive truancy intervention plan adopted under subsection (d) for the student; and

(2) The progressive truancy interventions failed to meaningfully address the student's school attendance.

(i) A court shall dismiss a complaint or referral made by an LEA under this section that is not made in compliance with subsection (h).

(j) Notwithstanding any other law, each LEA having previously adopted an effective progressive truancy intervention program that substantially conforms to this section may present the intervention program to the commissioner of education for approval in lieu of strict compliance with this section. If the commissioner does not approve the intervention plan, the LEA shall modify the plan according to the commissioner's recommendations and resubmit the revised plan for approval by the commissioner.

(k) Each head of school of a nonpublic or church-related school shall recommend, and the governing board of the school shall adopt, a policy addressing compulsory attendance and truancy that describes the interventions that the school will employ for violations of the compulsory attendance laws. The policy shall provide that the director of schools or the attendance supervisor in the LEA where the student's home of record is located will be notified in the event that a student at a nonpublic or church-related school is expelled or withdraws from school.

(l) Parents, guardians, or other persons having control of a student who is required to attend remedial instruction under § 49-6-3021 commit educational neglect, as defined in subsection (a), if the student is truant from the instruction.

SECTION 4. Tennessee Code Annotated, Section 49-6-3401, is amended by deleting subsections (g) and (h) and substituting instead:

(g)

(1) It is the legislative intent that if a rule or policy is designated as a zero tolerance policy, then violations of that rule or policy must not be tolerated and violators shall receive certain, swift, and proportionate punishment.

(2) Notwithstanding other provisions of this section or any other law, a student shall be considered in violation of a zero tolerance offense and shall be expelled for a period of not less than one (1) calendar year, except that the director of schools may modify this expulsion on a case-by-case basis for the following:

(A) A student brings to school or is in unauthorized possession on school property of a firearm, as defined in 18 U.S.C. § 921;

(B) A student commits aggravated assault as defined in § 39-13-102 or commits an assault that results in bodily injury as defined in § 39-13-101(a)(1) upon any teacher, principal, administrator, any other employee of an LEA, or a school resource officer; or

(C) A student is in unlawful possession of any drug, including any controlled substance, as defined in §§ 39-17-402 - 39-17-415, controlled substance analogue, as defined by § 39-17-454, or legend drug, as defined by § 53-10-101, on school grounds or at a school-sponsored event.

(3) Nothing in this section prohibits the assignment of students who are subject to expulsion from school to an alternative school.

(4) Disciplinary policies and procedures for all other student offenses, including terms of suspensions and expulsions, must be determined by local board of education policy.

(5) For purposes of this subsection (g);

(A) "Expelled" means removal from the student's regular school program at the location where the violation occurred or removal from school attendance altogether, as determined by the school official; and

(B) "Zero tolerance offense" means an offense committed by a student requiring the student to be expelled from school for at least one (1) calendar year that can only be modified on a case-by-case basis by the director of schools or the head of a charter school.

(h) The commissioner of education shall report on an annual basis to the education committee of the senate and the education administration and planning committee of the house of representatives regarding disciplinary actions in Tennessee schools. The reports must include the reason for the disciplinary action, the number of students suspended or expelled, the number of students who committed zero tolerance offenses pursuant to subsection (g), the number of students who have been placed in an alternative educational setting, and the number of students suspended, expelled, or otherwise dismissed from an alternative school. Data must be sorted by school as well as by various demographic factors, including grade, race, and sex.

SECTION 5. Tennessee Code Annotated, Section 49-6-4002, is amended by deleting the section and substituting instead:

(a) Each local board of education and charter school governing body shall adopt a discipline policy to apply to the students in each school operated by the LEA or charter school governing body.

(b) The director of schools or head of the charter school is responsible for overall implementation and supervision, and each school principal is responsible for administration and implementation of a code of conduct within the principal's school.

(c) In developing a discipline policy, the local board of education or charter school governing body shall seek recommendations from parents, employees of the LEA or charter school, law enforcement personnel, and youth-related agencies in the community.

(d) Each discipline policy or code of conduct must contain the type of behavior expected from each student, the consequences of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged. Each policy must address:

(1) Language used by students;

(2) Respect for all school employees;

(3) Fighting, threats, bullying, cyberbullying, and hazing by students;

(4) Possession of weapons on school property or at school functions;

(5) Transmission by electronic device of any communication containing a credible threat to cause bodily injury or death to another student or school employee;

(6) Damage to the property or person of others;

(7) Misuse or destruction of school property;

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(8) Sale, distribution, use, or being under the influence of drugs, alcohol, or drug paraphernalia;

(9) Student conduct on school property, conduct in classes, and conduct on school buses; and

(10) Other subjects that a local board of education or a charter school governing body chooses to include.

(e) Each local discipline policy must indicate that the following offenses are zero tolerance offenses:

(1) Unauthorized possession on school property of a firearm, as defined in 18 U.S.C. § 921;

(2) Aggravated assault as defined in § 39-13-102 upon any teacher, principal, administrator, any other employee of an LEA, or a school resource officer;

(3) Assault that results in bodily injury as defined in § 39-17-101(a)(1) upon any teacher, principal, administrator, any other employee of an LEA, or a school resource officer; and

(4) Unlawful possession of any drug, including any controlled substance, as defined in §§ 39-17-402 - 39-17-415, controlled substance analogue, as defined by § 39-17-454, or legend drug, as defined by § 53-10-101 on school grounds or at a school-sponsored event.

(f) Each local board of education and charter school governing body may adopt a discipline policy that promotes positive behavior and includes evidence-based practices to respond effectively to misbehavior and minimize a student's time away from school.

(g) Each discipline policy or code of conduct must state that a teacher, principal, school employee, or school bus driver may use reasonable force in compliance with § 49-6-4107.

SECTION 6. Tennessee Code Annotated, Section 49-6-4003, is amended by deleting the section.

SECTION 7. Tennessee Code Annotated, Section 49-6-4004, is amended by deleting the section and substituting instead:

The principal of each school shall apply the code of conduct uniformly and fairly to each student at the school without partiality or discrimination.

SECTION 8. Tennessee Code Annotated, Section 49-6-4005, is amended by deleting the section and substituting instead:

Each local board of education or charter school governing body may choose to adopt different but consistent discipline policies or codes of conduct to apply to different classes of schools, such as elementary, middle, junior high, and senior high schools, under its jurisdiction. The policies and codes of conduct must be uniform to the extent of maximum consideration for the safety and well-being of students and employees.

SECTION 9. Tennessee Code Annotated, Section 49-6-4007, is amended by deleting the section and substituting instead:

When a discipline policy or code of conduct has been adopted by a local board of education or charter school governing body, a copy must be posted on the LEA or school website. A copy must also be supplied to all school counselors, teachers, administrative staff, students, and parents.

SECTION 10. This act shall take effect July 1, 2018, at 12:01 a.m., the public welfare requiring it.

HOUSE BILL NO. 2376

PASSED: April 24, 2018



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES



RANDY MCNALLY
SPEAKER OF THE SENATE

APPROVED this 15th day of May 2018



BILL HASLAM, GOVERNOR