

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 3099

By: Cannaday

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5
6 AS INTRODUCED

7 An Act relating to schools; amending 70 O.S. 2001,
8 Section 10-105, as last amended by Section 1, Chapter
9 210, O.S.L. 2006 (70 O.S. Supp. 2009, Section 10-
10 105), which relates to school attendance
11 requirements; modifying certain phrase; making
12 failure to provide an appropriate education by other
13 means a violation; defining phrase; providing an
14 effective date; and declaring an emergency.

15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 70 O.S. 2001, Section 10-105, as
17 last amended by Section 1, Chapter 210, O.S.L. 2006 (70 O.S. Supp.
18 2009, Section 10-105), is amended to read as follows:

19 Section 10-105. A. It shall be unlawful for a parent,
20 guardian, or other person having custody of a child who is over the
21 age of five (5) years, and under the age of eighteen (18) years, to
22 neglect or refuse to cause or compel such child to attend and comply
23 with the rules of some public, private or other school, unless other
24 appropriate means of education are provided for the full term the
schools of the district are in session or the child is excused as

1 provided in this section. One-half (1/2) day of kindergarten shall
2 be required of all children five (5) years of age or older unless
3 the child is excused from kindergarten attendance as provided in
4 this section. A child who is five (5) years of age shall be excused
5 from kindergarten attendance until the next school year after the
6 child is six (6) years of age if a parent, guardian, or other person
7 having custody of the child notifies the superintendent of the
8 district where the child is a resident by certified mail prior to
9 enrollment in kindergarten, or at any time during the first school
10 year that the child is required to attend kindergarten pursuant to
11 this section, of election to withhold the child from kindergarten
12 until the next school year after the child is six (6) years of age.
13 A kindergarten program shall be directed toward developmentally
14 appropriate objectives for such children. The program shall require
15 that any teacher employed on and after January 1, 1993, to teach a
16 kindergarten program within the public school system shall be
17 certified in early childhood education. All teachers hired to teach
18 a kindergarten program within the public school system prior to
19 January 1, 1993, shall be required to obtain certification in early
20 childhood education on or before the 1996-97 school year in order to
21 continue to teach a kindergarten program.

22 B. A parent, guardian or custodian who has failed to provide an
23 appropriate education by other means to a child who is over the age
24 of five (5) years and under the age of eighteen (18) years shall be

1 in violation of this section. For purposes of this section, an
2 "appropriate education by other means" shall mean providing
3 educationally appropriate and age or grade appropriate instruction
4 to the child that is necessary to ensure that the child attains at
5 least a minimum level of competencies in a variety of core subject
6 areas, and the instruction is provided for not less than the time
7 public schools in the state are required to provide instruction.

8 C. It shall be unlawful for any child who is over the age of
9 twelve (12) years and under the age of eighteen (18) years, and who
10 has not finished four (4) years of high school work, to neglect or
11 refuse to attend and comply with the rules of some public, private
12 or other school, or receive an education by other appropriate means
13 for the full term the schools of the district are in session.

14 Provided, that this section shall not apply:

15 1. If any such child is prevented from attending school by
16 reason of mental or physical disability, to be determined by the
17 board of education of the district upon a certificate of the school
18 physician or public health physician, or, if no such physician is
19 available, a duly licensed and practicing physician;

20 2. If any such child is excused from attendance at school, due
21 to an emergency, by the principal teacher of the school in which
22 such child is enrolled, at the request of the parent, guardian,
23 custodian or other person having control of such child;

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1 3. If any such child who has attained his or her sixteenth
2 birthday is excused from attending school by written, joint
3 agreement between:

4 a. the school administrator of the school district where
5 the child attends school, and

6 b. the parent, guardian or custodian of the child.

7 Provided, further, that no child shall be excused from
8 attending school by such joint agreement between a
9 school administrator and the parent, guardian or
10 custodian of the child unless and until it has been
11 determined that such action is for the best interest
12 of the child and/or the community, and that said child
13 shall thereafter be under the supervision of the
14 parent, guardian or custodian until the child has
15 reached the age of eighteen (18) years; or

16 4. If any such child is excused from attending school for the
17 purpose of observing religious holy days if before the absence, the
18 parent, guardian, or person having custody or control of the student
19 submits a written request for the excused absence. The school
20 district shall excuse a student pursuant to this subsection for the
21 days on which the religious holy days are observed and for the days
22 on which the student must travel to and from the site where the
23 student will observe the holy days.

1 ~~C.~~ D. It shall be the duty of the attendance officer to enforce
2 the provisions of this section. In the prosecution of a parent,
3 guardian, or other person having custody of a child for violation of
4 any provision of this section, it shall be an affirmative defense
5 that the parent, guardian, or other person having custody of the
6 child has made substantial and reasonable efforts to comply with the
7 compulsory attendance requirements of this section but is unable to
8 cause the child to attend school. If the court determines the
9 affirmative defense is valid, it shall dismiss the complaint against
10 the parent, guardian, or other person having custody of the child
11 and shall notify the school attendance officer who shall refer the
12 child to the district attorney for the county in which the child
13 resides for the filing of a Child in Need of Supervision petition
14 against the child pursuant to the Oklahoma Juvenile Code.

15 ~~D.~~ E. Any parent, guardian, custodian, child or other person
16 violating any of the provisions of this section, upon conviction,
17 shall be guilty of a misdemeanor, and shall be punished as follows:

18 1. For the first offense, a fine of not less than Twenty-five
19 Dollars (\$25.00) nor more than Fifty Dollars (\$50.00), or
20 imprisonment for not more than five (5) days, or both such fine and
21 imprisonment;

22 2. For the second offense, a fine of not less than Fifty
23 Dollars (\$50.00) nor more than One Hundred Dollars (\$100.00), or
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1 imprisonment for not more than ten (10) days, or both such fine and
2 imprisonment; and

3 3. For the third or subsequent offense, a fine of not less than
4 One Hundred Dollars (\$100.00) nor more than Two Hundred Fifty
5 Dollars (\$250.00), or imprisonment for not more than fifteen (15)
6 days, or both such fine and imprisonment.

7 Each day the child remains out of school after the oral and
8 documented or written warning has been given to the parent,
9 guardian, custodian, child or other person or the child has been
10 ordered to school by the juvenile court shall constitute a separate
11 offense.

12 ~~E.~~ F. At the trial of any person charged with violating the
13 provisions of this section, the attendance records of the child or
14 ward may be presented in court by any authorized employee of the
15 school district.

16 ~~F.~~ G. The court may order the parent, guardian, or other person
17 having custody of the child to perform community service in lieu of
18 the fine set forth in this section. The court may require that all
19 or part of the community service be performed for a public school
20 district.

21 ~~G.~~ H. The court may order as a condition of a deferred sentence
22 or as a condition of sentence upon conviction of the parent,
23 guardian, or other person having custody of the child any conditions
24 as the court considers necessary to obtain compliance with school

1 attendance requirements. The conditions may include, but are not
2 limited to, the following:

- 3 1. Verifying attendance of the child with the school;
- 4 2. Attending meetings with school officials;
- 5 3. Taking the child to school;
- 6 4. Taking the child to the bus stop;
- 7 5. Attending school with the child;
- 8 6. Undergoing an evaluation for drug, alcohol, or other
9 substance abuse and following the recommendations of the evaluator;

10 and

11 7. Taking the child for drug, alcohol, or other substance abuse
12 evaluation and following the recommendations of the evaluator,
13 unless excused by the court.

14 SECTION 2. This act shall become effective July 1, 2010.

15 SECTION 3. It being immediately necessary for the preservation
16 of the public peace, health and safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

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