

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 472

By: Easley

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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. 2006, Section 10-
10 105), which relates to neglect or refusal to compel
11 child to attend school; establishing certain
12 notification requirements for students educated by
13 other means; amending 70 O.S. 2001, Section 10-109,
14 which relates to temporary detention and custody of
15 children subject to compulsory attendance law;
16 removing exception for children being home schooled;
17 providing an effective date; and declaring an
18 emergency.

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

20 SECTION 1. AMENDATORY 70 O.S. 2001, Section 10-105, as
21 last amended by Section 1, Chapter 210, O.S.L. 2006 (70 O.S. Supp.
22 2006, Section 10-105), is amended to read as follows:

23 Section 10-105. A. 1. It shall be unlawful for a parent,
24 guardian, or other person having custody of a child who is over the
age of five (5) years, and under the age of eighteen (18) years, to
neglect or refuse to cause or compel such child to attend and comply
with the rules of some public, private or other school, unless other
means of education are provided for the full term the schools of the

1 district are in session or the child is excused as provided in this
2 section.

3 2. The parent or guardian of a child utilizing other means of
4 education shall provide written notification to the public school
5 district of residence of:

6 a. intent to utilize other means of education prior to
7 the first day of each school year, or within ten (10)
8 days of the beginning of the provision of such other
9 means of education to the student, and

10 b. a report of the student's academic progress at the end
11 of each semester of the school year.

12 3. One-half (1/2) day of kindergarten shall be required of all
13 children five (5) years of age or older unless the child is excused
14 from kindergarten attendance as provided in this section. A child
15 who is five (5) years of age shall be excused from kindergarten
16 attendance until the next school year after the child is six (6)
17 years of age if a parent, guardian, or other person having custody
18 of the child notifies the superintendent of the district where the
19 child is a resident by certified mail prior to enrollment in
20 kindergarten, or at any time during the first school year that the
21 child is required to attend kindergarten pursuant to this section,
22 of election to withhold the child from kindergarten until the next
23 school year after the child is six (6) years of age. A kindergarten
24 program shall be directed toward developmentally appropriate

1 objectives for such children. The program shall require that any
2 teacher employed on and after January 1, 1993, to teach a
3 kindergarten program within the public school system shall be
4 certified in early childhood education. All teachers hired to teach
5 a kindergarten program within the public school system prior to
6 January 1, 1993, shall be required to obtain certification in early
7 childhood education on or before the 1996-97 school year in order to
8 continue to teach a kindergarten program.

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

15 Provided, that this section shall not apply:

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

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

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~~ the
13 child 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. 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. 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. 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. 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. The court may order as a condition of a deferred sentence or
22 as a condition of sentence upon conviction of the parent, guardian,
23 or other person having custody of the child any conditions as the
24 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. AMENDATORY 70 O.S. 2001, Section 10-109, is
15 amended to read as follows:

16 Section 10-109. A. An attendance officer, any school
17 administrator, or designee of the school administrator who is
18 employed by the school, or any peace officer may, ~~except for~~
19 ~~children being home schooled pursuant to Section 10-105 of the~~
20 ~~Oklahoma Statutes,~~ temporarily detain and assume temporary custody
21 of any child subject to compulsory full-time education, during hours
22 in which school is actually in session, who is found away from the
23 home of such child and who is absent from school without lawful
24 excuse within the school district that such attendance officer,

1 peace officer or school official serves, if ~~said~~ the school district
2 has previously approved the temporary detention and custody pursuant
3 to this section.

4 B. Any person temporarily detaining and assuming temporary
5 custody of a child pursuant to this section shall immediately
6 deliver the child either to the parent, guardian, or other person
7 having control or custody of the child, or to the school from which
8 the child is absent without valid excuse, or to a nonsecure youth
9 service or community center servicing the school district, or to a
10 community intervention center, as defined by Section 7301-1.3 of
11 Title 10 of the Oklahoma Statutes.

12 C. The temporary custody or detention provided by this section
13 shall be utilized as a means of reforming and returning the truant
14 students to school and shall not be used as a pretext for
15 investigating criminal matters. The temporary custody or detention
16 herein provided is a severely limited type of detention and is not
17 justified unless there are specific facts causing an attendance
18 officer or other authorized person to reasonably suspect that a
19 truancy violation is occurring and that the person the officer
20 intends to detain is a truant.

21 SECTION 3. This act shall become effective July 1, 2009.

22 SECTION 4. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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