

Tennessee First to the Top Act of 2010

The following is a summary of the changes made to Tennessee Code Annotated made by the General Assembly in an “Extraordinary Session”. This document does not purport to be an official record of said changes, it merely attempts to indicate where and how in the law changes were made. Old language is indicated by strike-through and replacement/new language is in bold type.

49-1-602. Placement in improvement status for schools and LEAs. —

(a) By September 1 of each year, the commissioner of education shall recommend for approval to the state board a listing of all schools and LEAs to be placed in improvement status for failure to make adequate progress in meeting the rules, regulations and performance standards of the state board. If an LEA is deemed by the commissioner as not carrying out its responsibilities to a school or schools in improvement status for technical or other assistance that may ensure that a school meet or exceed the performance standards, or the standards set forth in § 49-1-210, the LEA may be included in the recommendation to the state board to be placed in improvement status. Schools and LEAs in improvement status shall abide by guidelines established by the commissioner for the purpose of improving student performance.

(b) Such status shall not impair the credits earned by students in that LEA or school.

(c) During the first year a school is placed in improvement status (School Improvement 1), the commissioner of education shall:

(1) Publicly identify all schools that are placed in improvement status; and

(2) Study all schools placed in improvement status.

(d) If a school does not meet the performance standards of the state board by the end of the first year of improvement status, the school may be placed in the second year of improvement status (School Improvement 2). During the second year of improvement status:

(1) The commissioner of education shall have the authority to:

(A) Approve the allocation of state discretionary grants to the school; and/or

(B) Provide technical assistance to the school through an outside expert; and

(2) The director of each LEA serving schools in the second year of improvement status shall have responsibility for the following actions:

(A) Prompt notification of parents of students of such identification; and

(B) Revision of school improvement plans.

(e) If a school does not meet the performance standards of the state board by the end of the second year of improvement status, the school may be placed in the third year of improvement status (Corrective Action). During the third year of improvement status:

(1) The commissioner of education shall:

(A) Have the authority to approve the LEA's allocation of financial resources to a school in corrective action;

(B) Have the authority to appoint a local community review committee to approve and monitor the school improvement plan; and

(C) Implement at least one (1) or more of the following corrective actions:

(i) Replace or reassign staff;

(ii) Mandate a new, research-based curriculum;

- (iii) Significantly decrease management authority at the school;
- (iv) Appoint instructional consultants; and
- (v) Reorganize the internal management structure; and

(2) The director of each LEA serving schools in the third year of improvement status shall have responsibility for the following actions:

- (A) Prompt notification to parents of students of such identification;
 - (B) Implementation of performance contracts for the principal;
 - (C) Provision for remediation services for students;
 - (D) Notification to parents of students belonging to the student subgroup or subgroups not meeting the standards for adequate yearly progress of their option to transfer their children to another public school within the system; and
 - (E) Revision of school improvement plans to incorporate study findings.
- (f) If a school does not meet the performance standards of the state board by the end of the third year in improvement status, the school may be placed in the fourth year of improvement status (Restructuring 1). During the fourth year of improvement status:

(1) The commissioner of education shall have the authority to:

- (A) Approve an LEA's allocation of financial resources to the school;
- (B) Approve an LEA's allocation of personnel resources to the school; and
- (C) Present options for the school to plan for alternative governance, which may include:
 - (i) Contracting with an institution of higher education for operation of the school;
 - (ii) ~~Removing the school from the jurisdiction of the LEA and placing the school under the jurisdiction of the department of education;~~

Removing the school from the jurisdiction of the LEA and placing the school under the jurisdiction of the “achievement school district” established by the Commissioner of Education pursuant to § 49-1-614.

(iii) Restructuring the school as a public charter school should the general assembly enact separate legislation outside the parameters of this section that authorizes the establishment of public charter schools; or

(iv) Replacing all or most of the school's staff, including the principal, who are relevant to the school's failure to meet adequate yearly progress; and

(v) Notwithstanding any provision of the law to the contrary, the commissioner shall have the authority to choose for the school the plan of alternative governance to be developed and implemented.

(2) The director of each LEA serving schools in the fourth year of improvement status shall have responsibility for the following actions:

- (A) Prompt notification to parents of students of such identification;
- (B) Implementation of performance contracts for the principal;
- (C) Provision for remediation services for students;
- (D) Notification to parents of students belonging to the student subgroup or subgroups not meeting the standards for adequate yearly progress of their option to transfer their children to another public school within the system; and
- (E) Preparation of a plan for alternative governance from the options provided by the commissioner of education.

~~(g) If the school does not meet the performance standards of the state board by the end of the fourth year of improvement status, the school may be placed in the fifth year of improvement status (Restructuring 2 — Alternative Governance). During the fifth year of improvement status:~~

If the school does not meet the performance standards of the state board by the end of the fourth year of improvement status, the school may be placed in the fifth year of improvement status (Restructuring 2 – Alternative Governance). During the fifth year of improvement status or at any time a Title I school meets the U.S. Department of Education’s definition of “persistently lowest achieving schools”:

- (1) The commissioner of education shall have the authority to:
 - (A) Approve an LEA's allocation of financial resources to schools; and
 - (B) Approve an LEA's allocation of personnel resources to the schools; and
- (2) The director of each LEA serving schools in the fifth year of improvement status shall have responsibility for the following actions:
 - (A) Prompt notification to parents of students of such identification;
 - (B) Implementation of performance contracts for the principal;
 - (C) Provision for remediation services for students;
 - (D) Notification to parents of students belonging to the student subgroup or subgroups not meeting the standards for adequate yearly progress of their option to transfer their children to another public school within the system; and
 - ~~(E) Implementation of the plan for alternative governance from the options provided by the commissioner of education; provided, however, that, in the case where the plan for alternative governance is implemented, the LEA will continue to be accountable for the match required by the BEP funding formula for students served.~~

Implementation of the plan for governance, selected from options provided by the commissioner or the specific plan chosen by the commissioner; provided, however, that in the case where the plan for alternative governance is implemented, the LEA shall continue to be accountable for the match required by the funding formula for students served. In addition, the LEA shall continue to provide such support services as identified by the commissioner or designee.

(h) During the first year an LEA is placed in improvement status (LEA Improvement 1), the commissioner of education shall:

- (1) Publicly identify all LEAs placed in improvement status; and
 - (2) Study all LEAs placed in improvement status.
- (i) If the LEA does not meet the performance standards of the state board by the end of the first year in improvement status, the LEA may be placed in the second year of improvement status (LEA Improvement 2). During the second year of improvement status:**
- (1) The commissioner of education shall have the authority to:
 - (A) Approve the allocation of state discretionary grants to schools within the LEA; and
 - (B) Provide technical assistance to the LEA through an outside expert; and
 - (2) The director of each LEA in the second year of improvement status shall have responsibility for the following actions:
 - (A) Prompt notification to parents of students of such identification; and
 - (B) Revision of the LEA improvement plan.

(j) If the LEA does not meet the performance standards of the state board by the end of the second year in improvement status, it may be placed in the third year of improvement status (LEA Corrective Action). During the third year of improvement status:

(1) The commissioner of education shall have the authority to take the following actions:

(A) Approve an LEA's allocation of financial resources to schools within the LEA; and

(B) Appoint a local community review committee to approve and monitor the LEA improvement plan;

(2) The commissioner of education shall implement one (1) or more of the following corrective actions:

(A) Replace the LEA personnel who are relevant to the failure to make adequate yearly progress;

(B) Mandate a new, research-based curriculum;

(C) Appoint outside management or instructional consultants; or

(D) Reorganize the internal management structure; and

(3) The director of the LEA in the third year of improvement status shall have the responsibility for the following actions:

(A) Prompt notification to parents of students of such identification;

(B) Provision for remediation services for students; and

(C) Revision of the LEA improvement plan to incorporate study findings.

(k) If the LEA does not meet the performance standards of the state board by the end of the third year of improvement status, it may be placed in the fourth year of improvement status (LEA Restructuring 1). During the fourth year of improvement status:

(1) The commissioner of education shall have the authority to take the following actions:

(A) Approve an LEA's allocation of financial resources to schools within the LEA; and

(B) Approve an LEA's allocation of personnel resources to schools within the LEA;

(2) The commissioner of education shall continue to implement one (1) or more of the following corrective actions:

(A) Replace the LEA personnel who are relevant to the failure to make adequate yearly progress;

(B) Mandate a new, research-based curriculum;

(C) Appoint outside management or instructional consultants; or

(D) Reorganize the internal management structure; and

(3) The director of each LEA serving schools in the fourth year of improvement status shall have responsibility for the following actions:

(A) Prompt notification to parents of students of such identification;

(B) Provision for remediation services for students; and

(C) Revision of the LEA improvement plan.

(l) If the LEA does not meet the performance standards of the state board by the end of the fourth year in improvement status, it may be placed in the fifth year of improvement status (LEA Restructuring 2 — Alternative Governance). During the fifth year of improvement status:

(1) The commissioner of education shall have the authority to:

~~(A) Assume any or all powers of governance for the LEA; provided, however, that, in the case where the commissioner assumes governance, the LEA will continue to be accountable for the match required by the BEP funding formula for students served;~~

Assume any or all powers of governance for the LEA, including, but not limited to, assigning the LEA, or individual schools within the LEA, to the achievement school district. However, in the case of the commissioner assuming governance, the LEA shall continue to be accountable for the match required by the BEP funding formula for students served.

(B) Recommend to the state board that the director of the LEA be replaced; and

(C) Recommend to the state board that some or all of the local board of education members be replaced;

(2) If the commissioner decides not to take any of the three (3) actions in subdivision (l)(1), then the commissioner shall report to the state board of education and the education committees of the senate and the house of representatives the reasons that the actions were not taken; and

(3) If the state board concurs with the recommendation, the commissioner shall order the removal of some or all of the board members or director of schools, or both, and shall declare a vacancy in the office or offices. Vacancies on the board shall be filled by the local legislative body until the next general election for which candidates have time, under law, to qualify and the candidate so elected qualifies to hold the office as provided by law or for the remainder of the term if no such election occurs during the remainder of the term. If the entire board of a special school district is removed, the commissioner shall appoint three (3) responsible citizens of the district to serve on the board, and they shall be authorized to appoint persons to fill the remaining vacancies. Any person selected to fill a vacancy shall serve the remainder of the term. Vacancies in the office of director of schools are filled in accordance with the provisions of law. Any director of schools or board member removed under this section is ineligible for appointment or election to the office for the remainder of the person's term and for one (1) full term thereafter.

(m) (1) An appeal of the decision to remove a director or board member shall be to chancery court of Davidson County.

(2) The chancellor's review shall be confined to whether or not the decision was made in accordance with the procedures authorized by this section.

(n) (1) Notwithstanding any law to the contrary, the two (2) school systems having the greatest number of schools placed on notice or probation status pursuant to this section may establish an inner city educational enhancement pilot project in accordance with the requirements of this subsection (n); provided, however, that no such pilot project shall be established by the LEA without advance approval by the appropriate local legislative body.

(2) The inner city educational enhancement pilot project shall consist of after-school programs at all or a significant portion of the LEA's schools placed on notice or probation status. The pilot project may also include before-school, Saturday or summer programs at such schools. Pilot project programs and services shall include, but need not be limited to, the following:

(A) Reading skills development and enhancement;

(B) Math and science skills development and enhancement;

(C) Computer literacy and skills development;

(D) Tutoring and homework supervision and assistance;

(E) Individualized assessment and remedial instruction;

(F) Academic mentoring; and

(G) Life experiences enrichment opportunities.

(3) Programs and services shall be principally provided by qualified volunteers who are retired teachers, university professors, law enforcement officers, armed forces veterans, members of the Urban League or public employees. At the discretion of the appropriate local legislative body, incentive grants may be offered to the volunteers. The amount of the incentive grants shall vary according to the number of hours actually donated; provided, however, that in any given year, no volunteer shall receive incentive grants totaling more than an amount that equals one half (½) of the local real property tax previously paid by the volunteer on the person's principal place of residence for the most recently concluded tax year. Notwithstanding any law to the contrary, receipt of an incentive grant shall not affect, reduce, suspend or in any other way impair the volunteer's status or benefits level within any retirement program operated by or on behalf of the state or any unit of local government within the state.

(o) The office of education accountability established in § 4-3-308 shall periodically study the overall school accountability system and report to the general assembly as to its operations and effectiveness, including any suggestions for improvement. The report may include a review of applicable standards, technical assistance, actions taken by LEAs and relevant outcomes.

49-1-606. Annual estimates of teacher effects on student progress in grades three through eight (3-8). —

(a) Annually, data from the Tennessee comprehensive assessment program (TCAP) tests, or their future replacements, will be used to provide an estimate of the statistical distribution of teacher effects on the educational progress of students within school districts for grades three through eight (3-8). ~~A specific teacher's effect on the educational progress of students may not be used as a part of formal personnel evaluation until data from three (3) complete academic years are obtained.~~ Teacher effect data shall not be retained for use in evaluations for more than the most recent five (5) years. A student must have been present for one hundred fifty (150) days of classroom instruction per year or seventy-five (75) days of classroom instruction per semester before that student's record is attributable to a specific teacher. Records from any student who is eligible for special education services under federal law will not be used as part of the value added assessment.

(b) The estimates of specific teacher effects on the educational progress of students will not be a public record, and will be made available only to the specific teacher, the teacher's appropriate administrators as designated by the local board of education and school board members. The state department of education shall provide raw test score data to LEAs as soon as practicable after receipt of the data, but in no case later than June 30. **The estimates of specific teacher effects may also be made available to the state board approved teacher preparation programs of individual teachers. The estimates made available to the preparation programs shall not be personally identifiable with a particular teacher.**

49-1-614. (Newly Added)

(a) **For the purposes of this title, the "achievement school district" is an organizational unit of the Department of Education, established by the commissioner for the purpose of**

providing oversight for the operation of the total program for individual schools or LEAs, pursuant to § 49-1-602.

(b) The commissioner shall have the authority to contract with one or more individuals, governmental entities or nonprofit entities to manage the day-to-day operations of any or all schools or LEAs placed in the achievement school district, including, but not limited to, providing direct services to students.

(c) The individual, governmental entity or nonprofit entity contracted with to manage schools or LEAs that have been placed in the achievement school district may apply to the commissioner for a waiver of any state board rule that inhibits or hinders the ability of the school or LEA to achieve the required adequate yearly progress benchmarks.

Notwithstanding the provisions of this subsection (c), the commissioner shall not waive rules related to the following:

- (1) Federal and state civil rights;
- (2) Federal, state, and local health and safety;
- (3) Federal and state public records;
- (4) Immunizations;
- (5) Possession of weapons on school grounds;
- (6) Background checks and fingerprinting of personnel;
- (7) Federal and state special education services;
- (8) Student due process;
- (9) Parental rights;
- (10) Federal and state student assessment and accountability;
- (11) Open meetings; and
- (12) At least the same equivalent time of instruction as required in regular public schools.

(d) (1) The individual, governmental entity or nonprofit entity contracted with to manage schools that have been placed in the achievement school district shall have the authority to determine whether any teacher who was previously assigned to such school shall have the option of continuing to teach at that school as an employee of the managing entity. Any teacher not given that option shall remain an employee of the LEA, subject to the provisions of § 49-5-511. Moreover, any teacher who accepts that option shall have the right to return to the employ of the LEA should the managing entity later determine not to continue to employ such teacher, subject to the provisions of § 49-5-511.

(2) With the exception of the provisions protecting teachers' rights to accumulated sick leave, retirement benefits, pension and tenure status within an LEA, the provisions of Tennessee Code Annotated, § 49-5-203, and the Education Professional Negotiations Act, compiled in Title 49, Chapter 5, Part 6, shall not apply to teachers who accept the option of continuing to teach at a school placed in the achievement school district.

(e) After a school or LEA that has been placed in the achievement school district achieves the required adequate yearly progress benchmarks for two consecutive years, the commissioner shall develop a transition plan for the purpose of planning the school's or LEA's return to the jurisdiction of the local board of education. Implementation of this plan shall begin after the school or LEA achieves the required adequate yearly progress benchmarks for three consecutive years. The plan must be fully implemented and the transition must be completed after a school or LEA achieves adequate yearly progress benchmarks for five consecutive years.

(f) Notwithstanding the provisions of any law to the contrary, the commissioner shall have the authority to remove any school or LEA from the jurisdiction of the achievement school district at any time.

(g) (1) Absent other funding, the achievement school district shall use state and local funding identified above to operate a school placed in alternative governance and to implement new initiatives and programs as appropriate. Such state and local funding may be used to implement new initiatives and programs to the extent that any increase in recurring expenditures are funded additionally so as not to create a financial burden on the LEA when the school or LEA is removed from the achievement school district.

(2) To the extent that such state funds are not used to support a school or LEA in the achievement school district, they shall be allocated to a state reserve fund to be distributed to an LEA only upon approval of the commissioner.

(3) To the extent that such local funds are not used to support a school or LEA in the achievement school district, the LEA shall allocate such funds to a special BEP reserve account until the school or LEA is placed back under the jurisdiction of the LEA. It is the legislative intent that such funds be used only for non-recurring purposes.

(h) Any individuals, governmental entities, or nonprofit entities contracting with the commissioner to manage the operation of any school under this section shall provide timely information to the LEA and director of schools regarding its operation of such schools, including, but not limited to, matters relating to employment of personnel at the school as provided for in subsection (d). The LEA may continue to support the educational improvement of the school under the direction and guidance of the commissioner and in accordance with any contracts entered into in accordance with this section. In addition, any individuals, governmental entities, or nonprofit entities contracting with the commissioner may voluntarily work with the LEA in providing to the schools professional development or technical assistance, instructional and administrative support, and facilitating any other support that may be beneficial to academic progress of the school.

(i) Any contracts to manage schools or LEAs that have been placed in the achievement school district shall require expenditure reports for funds received and expended pursuant to such contracts. Such reports shall be provided to the Department of Education and comptroller of the treasury for review.

(j) No state funds, other than funds held within the special reserve account pursuant to subsection (g)(2), shall be expended on schools or LEAs placed in the achievement school district unless specifically appropriated in a General Appropriations Act.

49-1-302. Powers and duties of the board — Confidentiality of records — Standards, policies, recommendations and actions subject to appropriations — Guidelines and criteria for evaluation of certificated employees — Duty-free lunch and planning periods — Confidentiality and integrity of statewide tests — Ungraded and unstructured classes — Limits on local costs of special education — Recruitment, employment and retention of African-American teachers — Uniform clothing — Railroad crossing safety — Standards of care for before and after school programs — Creation of child care advisory council. —

(a) It is the duty of the board, and it has the power to:

(1) (A) Study programs of instruction in public schools, kindergarten through grade twelve (K-12);

(B) Analyze the needs of such public schools;

(C) Study the use of public funds for such public schools; and

(D) Include the conclusions of the studies and analyses in its annual recommendations to the governor and general assembly for the funding of public education;

(2) Set policies for:

(A) The completion of elementary, middle, junior high and senior high schools as structured in each school district;

(B) Evaluating individual student progress and achievement;

(C) Evaluating individual teachers; and

(D) Measuring the educational achievement of individual schools;

(3) Develop and maintain current a master plan for the development of public education, kindergarten through grade twelve (K-12), and provide recommendations to the executive branch, the general assembly and the local boards of education and directors of schools regarding the use of public funds for education;

(4) (A) Develop and adopt policies, formulas and guidelines for the fair and equitable distribution and use of public funds among public schools and for the funding of all requirements of state laws, rules, regulations and other required expenses, and to regulate expenditures of state appropriations for public education, kindergarten through grade twelve (K-12). The policies, formulas and guidelines may be changed as necessary, but not more often than once per appropriation period, and shall not be considered rules subject to promulgation under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The policies, formulas and guidelines adopted by the board shall consider and include provisions for current operation and maintenance, textbooks, school food services, pupil transportation, vocational and technical education, number of programs of pupils served, measurable pupil improvement, reduction of pupil dropouts, teacher training, experience and certification, pupil-teacher ratio, substitute teacher reimbursement, requirements prescribed by state laws, rules, regulations or other required costs, and inflation, and may include other elements deemed by the board to be necessary. Any changes in the basic education program components of the formula as approved by the board for the 1992-1993 fiscal year must first be approved by the commissioners of education and finance and administration;

(B) The board shall establish a review committee for the Tennessee basic education program (BEP). The committee shall include the executive director of the state board of education, the commissioner of education, the commissioner of finance and administration, the comptroller of the treasury, the director of the Tennessee advisory commission on intergovernmental relations, the chairs of the standing committees on education of the senate and house of representatives, and the director of the office of legislative budget analysis, or their designees. The board shall appoint at least one (1) member from each of the following groups: teachers, school boards, directors of schools, county governments, municipal governments that operate LEAs, finance directors of urban school systems, finance directors of suburban school systems and finance directors of rural school systems. The BEP review committee shall meet at least four (4) times a year and shall regularly review the BEP components, as well as identify needed revisions, additions or deletions to the formula. The committee shall annually review the BEP instructional positions component, taking into consideration factors including, but not limited to, total instructional salary disparity among LEAs, differences in benefits and other compensation among LEAs, inflation, and instructional salaries in states in the southeast and other regions. The committee shall prepare an annual report on the BEP and shall provide the report on or before November 1 of each year, to the governor, the state board of education and the select oversight committee on education. This report shall include recommendations on needed revisions, additions and deletions to the formula, as well as an analysis of instructional salary disparity among LEAs, including an analysis of disparity in benefits and other compensation among LEAs;

(5) (A) Adopt policies governing:

(i) The qualifications, requirements and standards of and provide the licenses and certificates for all public school teachers, principals, assistant principals, supervisors and directors of schools;

(ii) The revocation of licenses and certificates;

(iii) Evaluation of teachers, principals, assistant principals, supervisors and directors of schools; and

(iv) Retraining and professional development;

(B) The board may adopt a policy establishing levels of compensation that are correlated to levels and standards of teacher competency approved by the board;

(6) Set policies for graduation requirements in kindergarten through grade twelve (K-12);

(7) Set policies for the review, approval or disapproval and classification of all public schools, kindergarten through grade twelve (K-12), or any combination of these grades;

(8) Set policies governing all curricula and courses of study in the public schools;

(9) Prescribe the use of textbooks and other instructional materials, based on recommendations of the state textbook commission, for the various subjects taught or used in conjunction with the public schools;

(10) Meet jointly with the higher education commission and the commissioner of education at least annually for the purpose of reviewing the expenditures and programs of public education. Not later than February 1 of each year, the state board of education and the higher education commission shall jointly provide a report to the governor and to the general assembly, all public schools and institutions of higher learning and their respective governing boards. The report shall include, but not be limited to:

(A) The extent of duplication in elementary, secondary and postsecondary education;

(B) The extent of compatibility in high school graduation requirements and admission requirements of postsecondary institutions;

(C) The extent to which respective master plans of the board and the higher education commission are being fulfilled; and

(D) The extent to which state needs in public education are being met as determined by such board and commission;

(11) Approve, disapprove or amend rules and regulations prepared by the commissioner to implement policies, standards or guidelines of the board in order to effectuate this section;

(12) Determine the ways and means of improving teacher, student and school performances, and to set policies to accomplish such improvements;

(13) Provide, in association with the commissioner, an annual report, no later than February 1, on teacher, student and school performance to the governor and to the general assembly;

(14) Prescribe rules and regulations to establish a program whereby a local school may withhold all grade cards, diplomas, certificates of progress or transcripts of a student who has incurred a debt to the school or a student who has taken property that belongs to a local school or any agency of the school until the student makes restitution to the school for the debt. The rules and regulations shall not permit the imposition of sanctions against a student who is without fault;

(15) (A) Develop a professional credentialing program for school principals that includes professional training and testing components. LEAs shall have the option of participating in the program; provided, that all school principals employed for the first time by LEAs for the 1994-1995 school year shall have attended the program and shall have received the full credential offered through the program;

(B) Persons having an endorsement in administration/supervision, supervisor of instruction or principal on August 31, 1994, shall maintain that credential and shall not be required to complete the professional credentialing program as provided in this subdivision (a)(15);

(C) Any person who performs the duties of a supervisor of instruction, regardless of the title of the person's position, must have the credential required for a supervisor of instruction;

(D) Persons having an endorsement as a supervisor of instruction on August 31, 1994, shall maintain the credential and shall not be required to complete the professional credentialing program as provided in this subdivision (a)(15);

(16) Develop and recommend to local boards of education training or notification procedures for use of two-way communications systems in those LEAs that choose to place those systems in new and renovated schools;

(17) (A) Promulgate, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, rules requiring each LEA that has a jurisdiction that lies entirely or partially within one hundred (100) miles of the New Madrid fault line to implement earthquake preparedness drills in each of the schools administered by that LEA. In developing the rules, the board shall consult and collaborate with the Tennessee emergency management agency and the state fire marshal. The rules shall include a model plan for earthquake preparedness drills in schools, and the model plan shall be suitable for adoption or modification by affected LEAs;

(B) The drills shall be conducted at least twice every school year. A record of all earthquake preparedness drills, including the time and date, shall be kept in the respective schools and shall be made available for review upon request by the board;

(18) The general assembly finds that, given the fact that the state provides substantial financial academic assistance to students of the state based on cumulative grade point averages and the fact that LEAs currently use a variety of grading scales, it is in the best interest of the students of the public schools that a uniform grading system be developed and adopted by the state board of education to be implemented in all public schools of the state. The state board of education is authorized to promulgate rules and regulations for the administration of this subdivision (a)(18). The comptroller's office of education accountability is directed to evaluate the uniform grading system four (4) years after its implementation and to report its findings to the education oversight committee of the general assembly. The evaluation shall include an analysis of the relationship of grade point averages to ACT and SAT scores of high school students;

(19) Develop guidelines for the establishment by LEAs of differentiated pay plans, including plans that offer bonuses, including performance bonuses, that are supplemental to the salary schedules required under § 49-3-306. The plans shall address additional pay for teaching subjects or teaching in schools for which LEAs have difficulty hiring and retaining highly qualified teachers; and

(20) Develop guidelines for the use of LEAs to foster foreign language fluency as part of holistic education for all students in kindergarten through grade twelve (K-12).

(b) All records, reports, studies, statistics and other information and materials of the department relative to the public school system shall be available upon request to the board and its executive director and other staff personnel, except such records as may be confidential by law.

(c) Standards, policies, recommendations and actions of the board shall be subject in all cases to availability of funds as appropriated by law.

~~(d) (1) The board shall develop, and provide to LEAs, guidelines and criteria for the evaluation of all certificated persons employed by the LEA; provided, that the mandatory criteria include, but not be limited to:~~

~~_____ (A) Classroom or position observation followed by written assessment;~~

~~_____ (B) Review of prior evaluations;~~

~~_____ (C) Personal conferences to include discussion of strengths, weaknesses and remediation; and~~

~~_____ (D) Other appropriate criteria, including the Sanders model, related to the responsibilities of the employee.~~

~~(2) From the guidelines and criteria in subdivision (d)(1), the LEAs must develop an evaluation plan, which shall be submitted to the commissioner for approval to ensure consistency with the board's guidelines and criteria. The board shall file with the general assembly a copy of its guidelines and criteria. It is the intent of the general assembly that the guidelines and criteria developed under this subsection (d) shall be of a broad enough nature as to permit legitimate experimentation and variation among the LEAs. Nothing in this section shall be construed to prohibit the discussion of local plans with local teachers.~~

(d) (1) There is hereby created the "teacher evaluation advisory committee". The committee shall consist of fifteen (15) members. The Commissioner of Education, the executive director of the State Board of Education and the chairpersons of the Education

Committees of the Senate and the House of Representatives shall be members. One (1) member shall be a K-12 public school teacher appointed by the Speaker of the House of Representatives and one (1) member shall be a K-12 public school teacher appointed by the Speaker of the Senate. The remaining nine (9) members shall be appointed by the governor and shall consist of three (3) public school teachers, two (2) public school principals, one (1) director of a school district, and three (3) members representing other stake-holders interests; provided, that at least one (1) member of the committee shall be a parent of a currently enrolled public school student. The membership of the committee shall appropriately reflect the racial and geographic diversity of this state. The Commissioner of Education shall serve as the chairperson of the committee. All appointments to the teacher evaluation advisory committee shall be made within thirty (30) days of the effective date of this act.

(2) The committee shall develop and recommend to the board, guidelines and criteria for the annual evaluation of all teachers and principals employed by LEAs, including a local-level evaluation grievance procedure. This grievance procedure shall provide a means for evaluated teachers and principals to challenge only the accuracy of the data used in the evaluation and the adherence to the evaluation policies adopted pursuant to this subdivision. Following the development of these guidelines and criteria, the board shall adopt guidelines and criteria. The evaluations shall be a factor in employment decisions, including, but not necessarily limited to, promotion, retention, termination, compensation and the attainment of tenure status.

(A) Fifty percent (50%) of the evaluation criteria developed pursuant to this subdivision (2) shall be comprised of student achievement data.

(i) Thirty-five percent (35%) of the evaluation criteria shall be student achievement data based on student growth data as represented by the TVAAS, developed pursuant to Tennessee Code Annotated, Title 49, Chapter 1, Part 6, or some other comparable measure of student growth, if no such TVAAS data is available.

(ii) Fifteen percent (15%) shall be based on other measures of student achievement selected from a list of such measures developed by the teacher evaluation advisory committee and adopted by the board. For each evaluation, the teacher or principal being evaluated shall mutually agree with the person or persons responsible for conducting the evaluation on which such measures are employed. If the teacher or principal being evaluated does not agree with the measures used, the person or persons responsible for conducting the evaluation shall choose the evaluation measures.

(iii) Notwithstanding subdivisions (i) and (ii) above, if a particular teacher's or principal's student growth data, as described in subdivision (i) above, reflects attainment of a specific achievement level, to be recommended by the teacher evaluation advisory committee and adopted by the board, then such student growth data

may, at the choice of the individual being evaluated, comprise fifty percent (50%) of their evaluation.

(B) Other mandatory criteria for the evaluations shall include, but not necessarily be limited to, the following:

- (i) Review of prior evaluations; and**
- (ii) Personal conferences to include discussion of strengths, weaknesses and remediation; and**
- (iii) Relative to teachers only, classroom or position observation followed by written assessment; and**
- (iv) Relative to principals only, additional criteria pursuant to § 49-2-303(a)(1).**

(3) The policies adopted pursuant to subdivision (2) shall be effective no later than July 1, 2011, in order to be implemented prior to the 2011-2012 academic year. Prior to the implementation of these policies, the existing guidelines and criteria for the evaluation of certificated persons employed by LEAs shall continue to be utilized.

(4) The evaluation procedure created by this subsection shall not apply to teachers who are employed under contracts of duration of one hundred twenty (120) days per school year or less or who are not employed full-time.

(5) The committee shall be subject to the governmental entity review law, compiled in Title 4, Chapter 29, and shall terminate on July 1, 2011, unless continued or extended by the general assembly.

(The following subdivision is included in the original statute however the public chapter does not reference it as to deleting or renumbering. Because of the uncertainty, it has been retained and renumbered in this document_

(6) If an LEA determines that it is necessary to assign an individual to teach in an area for which the individual is not endorsed, any evaluation conducted for the course outside the area of endorsement shall relate only to the improvement of teaching skills and strategies and not a determination of competency. The board shall include as a part of its evaluation guidelines a specific reference to this use of its evaluation procedures.

(e) (1) The board shall develop and adopt rules and regulations to achieve a duty-free lunch period for all teachers, kindergarten through grade twelve (K-12), of at least the length of the student lunch period, during which time the teacher has no other assigned responsibilities.

(2) The board shall develop and adopt rules and regulations providing teachers in kindergarten through grade twelve (K-12) with duty-free planning periods during the established instructional day. The rules shall provide for annual reporting to the state department of LEA compliance by board policy or negotiations with a recognized professional employees' organization. At least two and one half (2 ½) hours of planning time shall be provided each week during which teachers have no other assigned duties or responsibilities, other than planning for instruction. The two and one half (2 ½) hours may be divided on a daily or other basis. Duty-free planning time shall not occur during any period that teachers are entitled to duty-free lunch. Any LEA that is providing a duty-free planning period by extending the school day by thirty (30) minutes as of the beginning of the 2000-2001 school year may continue that practice and satisfy the requirements of this section.

(f) All statewide tests developed or provided by the department to measure individual student progress and achievement, all banks of questions, all field testing documents used as background for the development of the tests, and all answers shall be kept confidential when and for so long as is necessary to protect the integrity of the tests.

(g) The commissioner shall recommend, and the board shall adopt, rules permitting local boards of education to operate ungraded or unstructured classes in the primary grades, kindergarten through grade three (K-3). Operation of such classes under board rules shall not impair the LEA's participation in the basic education program.

(h) The state board of education is directed to establish a limit on local costs of special education and provide for state assumption of costs in excess of this limit.

(i) The commissioner shall recommend, and the board shall adopt, rules urging each local board of education to establish reasonable, incremental goals for recruitment, employment and retention of African-American teachers in numbers that at least reflect the percentage of African-Americans within the community served by the LEA. The rules shall also urge each local board of education to develop and implement a reasonable plan of action for attaining such goals, and shall further urge that a copy of the plan be timely filed with the commissioner for evaluation and approval. The rules shall also urge periodic filing of progress reports to indicate the level of success in attaining the goals.

(j) The board shall develop guidelines and criteria for local adoption and enforcement of uniform clothing for public school students. These guidelines and criteria shall require that uniform clothing be simple, appropriate, readily available and inexpensive. The board shall disseminate these guidelines and criteria to LEAs. These guidelines and criteria can be used as a tool for LEAs that may adopt uniform clothing policies. Adoption of uniform clothing policies shall be at the discretion of the local board of education.

(k) The board may also develop guidelines and criteria for the inclusion of instruction on railroad crossing safety in appropriate grades and curricula.

(l) (1) The board, through the state department of education, shall enforce standards for:

(A) Care of children in any before or after school child care programs operated pursuant to § 49-2-203(b)(11);

(B) Child care provided by church affiliated schools as defined by § 49-50-801;

(C) Public school administered early childhood education programs;

(D) Child care provided in federally regulated programs including Title I preschools, all school administered head start and even start programs;

(E) State approved Montessori school programs; and

(F) Programs operated by private schools as defined by § 49-6-3001(c)(3).

(2) (A) The board shall promulgate regulations pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, part 2, to establish standards for those programs described in subdivision *(l)*(1).

(B) The regulations shall provide equivalent protection for the health, safety and welfare of children, and shall use the same criteria for development of such protection as are used by the department of human services and that are set forth in § 71-3-502(a)(3). Although the standards and regulations need not be identical in all respects, the standards and regulations shall parallel, in a substantial manner, the child care standards and regulations promulgated by the department of human services for child care agencies that the department of human services licenses.

(3) Certificates of approval shall be issued pursuant to those regulations by the commissioner of education, pursuant to part 11 of this chapter, to those child care programs that meet the standards as adopted by the board.

(4) (A) There is established a child care advisory council, which shall advise the state board of education regarding the establishment of child care standards and regulations for child care programs subject to the board's jurisdiction and to act as a hearing tribunal for appeals from actions of the state department of education regarding the certificate of approval issued to child care programs.

(B) (i) The council shall consist of a director of a local school system, a representative of a private, church related school organization as defined in § 49-50-801, a representative from an institution of higher education with expertise in early childhood development, a parent of a child in a child care program, a coordinator of child care programs, a representative of the department of education, a representative from the child care services staff of the department of human services as designated by the state board of education, and four (4) other members as may be designated by the board of education. The council shall fairly represent the racial and ethnic composition of the state. Members shall serve until replaced by the board. The representative of the department of education shall serve as chair of the council until the council elects a chair. The chair shall sign the orders of the council regarding certificate actions taken by the council.

(ii) The council shall elect a vice chair who shall serve in the absence of the chair. If the chair resigns, is unable to perform the duties of the chair, is removed or the chair's term on the council expires, the chair of the state board of education shall appoint a new chair until the board can elect a chair. The vice chair shall have authority to sign all orders of the council in the absence of the chair and for actions of the panels under subdivision (l)(4)(E)(iii).

(C) The members of the council shall serve without reimbursement except for their travel expenses as may be established by state travel regulations.

(D) The council shall act as an advisory council to the state board of education regarding the development of child care standards for child care programs subject to the board's jurisdiction and shall review the standards on a formal basis at least every four (4) years, but may be requested more frequently by the board to conduct such further reviews as may be necessary or to otherwise provide periodic advice to the board regarding child care programs subject to the board's jurisdiction.

(E) (i) The council shall act as a hearing tribunal for all actions of the department of education regarding the denial or revocation of a certificate of approval for the operation of a child care program under the jurisdiction of the state board of education; provided, that the council shall not hear issues regarding the summary suspension of a certificate of approval, which shall be heard by a department hearing officer.

(ii) For purposes of acting as a hearing tribunal, a quorum for the hearing shall consist of a majority of the members of the council.

(iii) In order to complete the work of the council, the chair may appoint one (1) or more panels of the council with a quorum of five (5) members, at least one (1) of whom shall be randomly selected at-large members selected by the chair. The chair of the council shall appoint the chair of the panel. The panel shall have complete authority to hear any case under the council's jurisdiction and shall have complete authority to enter any necessary orders concerning certificate actions conducted before the council. Any orders of the panel shall be signed by the chair of the panel or by the council chair or vice chair.

(F) Rules for its operation as a hearing tribunal shall be adopted by the state board of education in accordance with the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, part 2.

(G) An existing member of the professional staff of the department of education shall serve as recording secretary of the council and shall assist in the arrangement of meetings of the council and the setting and processing of appeal hearings regarding certificates of approval for child care programs.

49-2-303. School principals. —

~~(a) (1) Each director of schools shall employ principals for the public schools. The employment contract with each principal shall be in writing, shall not exceed the contract term of the current director of schools, and may be renewed. The contract shall specify duties other than those prescribed by statute and shall contain performance standards, including, but not limited to, school performance on value added assessment and other benchmarks for student proficiency, graduation rates, ACT scores where applicable and student attendance. The contract shall provide for consequences when the standards are not met. The performance contract may provide for bonuses beyond base salary, if performance standards are met or exceeded. Reasons for the nonrenewal of a contract may include, but are not limited to, inadequate performance as determined by the evaluations. A principal who has tenure as a teacher shall retain all rights of such status, expressly including those specified in § 49-5-510.~~

Each director of schools shall employ principals for the public schools. The employment contract with each principal shall be in writing, shall not exceed the contract term of the current director of schools, and may be renewed. The contract shall specify duties other than those prescribed by statute and shall contain performance standards including the requirement that the principal's annual evaluation be based on student achievement data, with a significant portion, as defined by the guidelines and criteria adopted by the board in accordance with § 49-1-302(d)(2), being student growth data as reflected in teacher effect data and TVAAS data, as such data is developed pursuant to Tennessee Code Annotated, Title 49, Chapter 1, Part 6. Other standards that may be considered in the evaluation shall include, but not be limited to, other benchmarks for student proficiency, graduation rates, ACT scores where applicable and student attendance. The contract shall provide for consequences when the standards are not met. The performance contract may provide for bonuses beyond base salary, if performance standards are met or exceeded. Reasons for the nonrenewal of a contract may include, but are not limited to, inadequate performance as determined by the evaluations. A principal who has tenure as a teacher shall retain all rights of such status, expressly including those specified in § 49-5-510.

(2) The recommendation and employment shall be without discrimination on account of age, race, sex or creed.

(3) The individual designated as principal shall hold a valid license as approved by the state board of education for the type of school to which assigned.

(b) It is the duty of the principal to:

(1) Supervise the operation and management of the personnel and facilities of the school or schools of which the principal is principal as the local board of education determines;

(2) Assume administrative responsibility and instructional leadership under the supervision of the director of schools and in accordance with the written policies of the local board of education for the planning, management, operation and evaluation of the education program of the schools to which assigned;

(3) Submit recommendations to the director of schools regarding the appointment and dismissal of all personnel assigned to the school or schools under the principal's care, and make decisions regarding the specific duties of all personnel assigned to the school or schools under the principal's care; provided, that the duties of teachers shall be within their area of licensure and consistent with the policies, rules or contracts of the board of education;

(4) Administer and implement the school behavior and discipline code and require guest passes for all persons other than enrolled students and employees of the school;

(5) Perform such other duties as may be assigned by the director of schools pursuant to the written policies of the local board of education;

(6) Observe all other rules and regulations relative to the operation of public schools as established by law and as contained in the rules, regulations and minimum standards of the state board of education;

(7) (A) Assign educational assistants to noninstructional supervision of students, which may include, but is not limited to:

(i) Lunchroom duty;

(ii) Bus duty;

(iii) Recess or playground duty;

(iv) Before or after school duty; or

(v) Other related duties.

(B) The board of education shall specifically authorize such use of educational assistants in written school board policy and shall indemnify educational assistants in the performance of their duties; and

(8) Prepare, annually, a budget request for the school under the principal's care and submit the budget request to the director of schools. The budget request shall set forth a plan for the cost of operation of the school for the school year beginning July 1, following, or on such date as otherwise provided by charter or act of the legislature, public or private. Upon approval of the LEA's budget, the director of schools shall assign to each principal the responsibility for and authority over the cost of operation of the principal's school.

(c) Principals are encouraged to improve school security by limiting school access during school hours to monitored entrances.

49-3-306. Computation — Pay supplement — Licensed personnel salaries.

(a) (1) The commissioner, as approved by the state board of education, shall annually formulate a table of training and experience factors and a state salary schedule to be effective for each school year, which shall be applicable to all licensed personnel in every LEA, and which shall include an established base salary per school year consisting of a term of two hundred (200) days for beginning licensed personnel with a bachelor's degree and zero (0) years of experience. Licensed personnel having more training and experience shall receive more than the established base per school year. Certified personnel having less training and experience shall receive less than the established base per school year. The salary schedule shall not be applicable to substitute personnel. **In the alternative, an LEA may submit to the commissioner its own**

proposed salary schedule, subject to collective bargaining where applicable. Implementation of such a salary schedule shall be subject to approval by the commissioner and the state board. In no case shall a salary schedule adopted pursuant to this subdivision (1) result in the reduction of the salary of a teacher employed by the LEA at the time of the adoption of the salary schedule. Any additional expenditure incurred as a result of any such salary schedule shall be subject to appropriation by the governing body empowered to appropriate the funds.

(2) In addition to the state salary schedule developed by the commissioner for fiscal year 2004-2005 pursuant to subdivision (a)(1), the commissioner shall develop a local salary schedule for each LEA for fiscal year 2004-2005. Notwithstanding the provisions of this section or any other law to the contrary, the local salary schedule shall provide that the LEA adopt a local salary supplement for fiscal year 2004-2005 that is lower than the supplement paid in fiscal year 2003-2004, so long as any such reduction by a LEA in the local salary supplement is not larger in amount than any increase in the state minimum salary for that LEA for fiscal year 2004-2005 resulting from appropriations made pursuant to this subdivision (a)(2). Any reduction by a LEA of the local salary supplement for fiscal year 2004-2005 shall be subject to existing collective bargaining agreements to which such LEA is a party. In the event the agreement bars a reduction in local salary supplements and the LEA is unable to reach an agreement permitting the reduction, the commissioner shall reduce the state minimum salary for that LEA in an appropriate amount for fiscal year 2004-2005. Nothing in this subdivision (a)(2) shall be construed to diminish or in any way serve to reduce any general state salary schedule increase that may be provided outside the parameters of Acts 2004, ch. 670. Nothing in this subdivision (a)(2) shall be construed to prohibit or modify the mandatory nature of negotiations of salary for fiscal year 2004-2005 where such supplements or improvements in salary are implemented subsequent to the commissioner's recalibration or possible reduction of some local salary supplements as they existed on the 2003-2004 local salary schedules.

(b) (1) Salaries shall be payable in at least ten (10) monthly installments during any school year.

(2) State education funds received by any LEA for the state salary schedule shall be payable in equal installments starting with the first regular pay period.

(3) The salary for part-time personnel shall be proportionately less than that provided for full-time personnel.

(4) (A) Nothing in this section shall prevent any LEA from supplementing salaries from its own local funds when the funds are in addition to the local contribution of the LEA.

(B) When any LEA allowed any licensed personnel at the beginning of or during the preceding school term, an amount in addition to the salary that was required for such personnel under the state salary schedule in effect at the beginning of or during the preceding school term and which additional amount is paid entirely out of local funds, then the LEA shall continue to pay the additional amount out of local funds.

(C) Subdivision (b)(4)(B) shall not prohibit a reduction in local salary supplements pursuant to subdivision (a)(2).

(c) A board may, with the approval of the commissioner, make such readjustment in the salary of licensed personnel as may be necessary to place the salary in fair relation to the salaries of other licensed personnel in the same LEA with comparable tenure, responsibility, training and experience; except that the affected licensed personnel shall be entitled to a hearing before the board. In computing the salaries required to be maintained by this subsection (c), only the part of

the salaries paid under the authority of any LEA need be maintained. No LEA shall be required to supply any decrease in funds formerly available to supplement salaries from other than local sources.

(d) Notwithstanding any other provision of law to the contrary, any board may increase the salaries of its employees at any time during the school year, upon the basis of a new or amended contract, if in so doing it does not exceed its budget as adopted or amended. For an LEA that meets class size requirements under § 49-1-104, nothing in this subsection (d) shall be construed to prohibit BEP funds generated in salary components for nonlicensed personnel to be used to increase salaries for currently employed nonlicensed personnel except where the funds are generated for new or additional positions.

(e) Each LEA shall establish a local salary schedule for all licensed personnel in the LEA, and the schedule shall include, as a minimum, the same salary level or levels based upon college preparation as established by the state board in the state salary schedule. For fiscal year 2004-2005, the schedule shall include, as a minimum, the schedule recommended by the commissioner for salary equalization purposes under subdivision (a)(2).

(f) The LEA's training and experience factor shall be calculated by the SEA as follows: by using the table of training and experience factors adopted by the state board, the SEA will classify all licensed personnel employed by the LEA on December 1, or the first full teaching day thereafter, according to training and experience as provided in the rules and regulations and compute the average training and experience factor for such personnel.

(g) (1) Establishment of programs and cost differentials shall be as follows:

(A) Regular academic:

(B) Vocational education:

(C) Special education:

(2) Identified and served handicapped students shall be included in the program attendance surveys in the appropriate regular academic and vocational education programs as provided in the rules and regulations. The special education cost differential is supplemental to the regular academic and vocational education programs and is based on the preceding year's identified and served handicapped students.

(3) This table of programs and cost differentials shall apply to educational programs as of the opening of schools for the 1977-1978 school year. At its quarterly meeting in February 1978, and annually thereafter, the state board, as approved by the commissioner, shall establish both the education programs and the cost differentials of the programs applicable to the following school year, which may vary from the table in this subsection (g).

(h) Notwithstanding any other provision of this section to the contrary, an LEA shall develop, adopt and implement a differentiated pay plan under guidelines established by the state board of education and in compliance with § 49-5-611 to aid in staffing hard to staff subject areas and schools and in hiring and retaining highly qualified teachers. The plan shall be reviewed and evaluated annually to consider any change in circumstances regarding the hiring and retention of highly qualified teachers in the LEA's schools and subjects taught or any necessary revision or restructuring of the plan. No plan or revised plan shall be implemented prior to approval of the plan by the department of education. Each LEA shall implement a differentiated pay plan prior to the beginning of the 2008-2009 school year.

49-5-512. Dismissal or suspension — Hearing — Tenured teachers in certain counties and directors of schools. —

~~(a) A teacher, having received notice of charges pursuant to § 49-5-511, may, within thirty (30) days after receipt of notice, demand a hearing before the board, as follows:~~

~~——— (1) The teacher shall give written notice to the director of schools of the teacher's request for a hearing;~~

~~——— (2) The director of schools shall, within five (5) days after receipt of the request, indicate the place of the hearing and set a convenient date, which date shall not be later than thirty (30) days following receipt of notice demanding a hearing;~~

~~——— (3) The teacher may appear at the hearing and plead the teacher's cause in person or by counsel;~~

~~——— (4) The teacher may present witnesses, and shall have full opportunity to present the teacher's contentions and to support them with evidence and argument. The teacher shall be allowed a full, complete and impartial hearing before the board, including the right to have evidence deemed relevant by the teacher included in the record of the hearing, even if objected to by the person conducting the hearing;~~

~~——— (5) The chair of the board conducting the hearing is empowered to issue subpoenas for witnesses to compel their attendance at hearings authorized under this section. All parties to the proceeding shall have the right to have subpoenas issued by the chair of the board to compel the attendance of all witnesses deemed by such parties to be necessary for a full and complete hearing. All witnesses shall be entitled to the witness fees and mileage provided by law for legal witnesses, which fees and mileage shall be paid as a part of the costs of the proceeding. The costs of the proceeding shall be paid by the losing party;~~

~~——— (6) The chair of the board shall administer oaths to witnesses, who shall testify under oath;~~

~~——— (7) A record of the hearing, either by transcript, recording, or as is otherwise agreed by the parties, shall be prepared if the action of the board is appealed, and all actions of the board shall be reduced to writing and included in the record, together with all evidence otherwise submitted;~~

~~——— (8) On request of either party to the trial, witnesses may be barred from the hearing except as they are called to testify. The hearing may be private at the request of the teacher or in the discretion of the board; and~~

~~——— (9) The board shall within ten (10) days decide what disposition to make of the case and shall immediately thereafter give the teacher written notice of its findings and decision.~~

~~(b) The director of schools or other school officials shall not be held liable, personally or officially, when performing their duties in prosecuting charges against any teacher or teachers under this part.~~

~~(c) (1) (A) In any county with a metropolitan form of government and a population of more than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, a tenured teacher receiving notification of charges pursuant to § 49-5-511, may, within thirty (30) days after receipt of the notice, demand a hearing on the charges.~~

~~——— (B) In any municipality with a population of six hundred thousand (600,000) or more, according to the 2000 federal census or any subsequent federal census, a tenured teacher receiving notification of dismissal charges pursuant to § 49-5-511, may, within thirty (30) days after receipt of the notice, demand a hearing on the dismissal charges.~~

~~_____ (2) (A) The tenured teacher shall be entitled to a full and complete hearing before an impartial hearing officer selected by the board.~~

~~_____ (B) The teacher shall have the right to be represented by counsel, the opportunity to call and subpoena witnesses, the opportunity to examine all witnesses and the right to require that all testimony be given under oath.~~

~~_____ (C) For the purposes of subdivision (c)(2)(A), "impartial" means that the selected hearing officer shall have no history of employment with the board, no service in any capacity with the board or the metropolitan government, no relationship with any board member and no relationship with the teacher or representatives of the teacher.~~

~~_____ (3) At the conclusion of the hearing, the hearing officer shall reduce to written form all factual findings and decisions related to the charges. The hearing officer's decision shall be delivered to the affected employee and the board within ten (10) days following the close of the hearing.~~

~~_____ (4) If the affected teacher desires to appeal from a decision rendered in whole or in part in favor of the school system, the teacher shall first exhaust the administrative remedy of appealing the decision to the board of education within ten (10) working days of the hearing officer's delivery of the written findings of fact, conclusions and decision to the affected employee.~~

~~_____ (5) Upon written notice of appeal, the director of schools shall prepare a copy of the proceedings, transcript, documentary and other evidence presented, and transmit the copy to the board within twenty (20) working days of receipt of notice of appeal.~~

~~_____ (6) The board shall hear the appeal on the record and no new evidence shall be introduced. The affected employee may appear in person or by counsel and argue why the decision should be modified or reversed. The board may sustain the decision, send the record back if additional evidence is necessary, revise the penalty or reverse the decision. Before any findings and decision are sustained or punishment inflicted, a majority of the membership of the board shall concur in sustaining the charges and decision. The board shall render its decision on the appeal within ten (10) working days after the conclusion of the hearing.~~

~~_____ (7) Any party dissatisfied with the decision rendered by the board shall have the right to appeal to the chancery court in the county where the school system is located within twenty (20) working days after receipt of the dated notice of the decision of the board of education. It shall be the duty of the board to cause the entire record and other evidence in the case to be transmitted to the court. The review of the court shall be de novo on the record of the hearing held by the hearing officer and reviewed by the board.~~

~~_____ (8) The director of schools shall also have the right to appeal any adverse ruling by the hearing officer to the board under the same conditions as are set out in this subsection (e).~~

(a) A tenured teacher, who receives notification of charges pursuant to § 49-5-511, may, within thirty (30) days after receipt of the notice, demand a full and complete hearing on the charges before an impartial hearing officer selected by the board, as follows:

(1) The teacher shall give written notice to the director of schools of the teacher's request for a hearing;

(2) The director of schools shall, within five (5) days after receipt of the request, name an impartial hearing officer who shall be responsible for notifying the parties of the hearing officer's assignment. The hearing officer shall direct the parties or the attorneys for the parties, or both, to appear before the hearing officer for

simplification of issues and the scheduling of the hearing, which in no event shall be set later than thirty (30) days following receipt of notice demanding a hearing. In the discretion of the hearing officer, all or part of any prehearing conference may be conducted by telephone if each participant has an opportunity to participate, be heard, and to address proof and evidentiary concerns. The hearing officer is empowered to issue appropriate orders and to regulate the conduct of the proceedings;

(3) For the purposes of this part, "impartial" means that the selected hearing officer shall have no history of employment with the board or director of schools, no relationship with any board member and no relationship with the teacher or representatives of the teacher;

(4) All parties shall have the right to be represented by counsel, the opportunity to call and subpoena witnesses, the opportunity to examine all witnesses, the right to require that all testimony be given under oath and the right to have evidence deemed relevant by the submitting party included in the record of the hearing, even if objected to by the opposing party;

(5) All witnesses shall be entitled to the witness fees and mileage provided by law, which fees and mileage shall be paid by the party issuing a subpoena or calling the witnesses to testify;

(6) The impartial hearing officer shall administer oaths to witnesses, who testify under oath;

(7) A record of the hearing, either by transcript, recording, or as is otherwise agreed by the parties shall be prepared if the decision of the hearing officer is appealed, and all decisions of the hearing officer shall be reduced to writing and included in the record, together with all evidence otherwise submitted;

(8) On request of either party to the hearing, witnesses may be barred from the hearing except as they are called to testify. The hearing may be private at the request of the teacher or in the discretion of the hearing officer; and

(9) At appropriate stages of the hearing, the hearing officer may give the parties the full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial or final orders. The hearing officer shall within ten (10) days of closing the hearing, decide what disposition to make of the case and shall immediately thereafter give the board and the teacher written findings of fact, conclusions of law and a concise and explicit statement of the outcome of the decision.

(b) The director of schools or other school officials shall not be held liable, personally or officially, when performing their duties in prosecuting charges against any teacher or teachers under this part.

(c) (1) If the affected teacher desires to appeal from a decision rendered in whole or in part in favor of the school system, the teacher shall first exhaust the administrative remedy of appealing the decision to the board of education within ten (10) working days of the hearing officer's delivery of the written findings of fact, conclusions and decision to the affected employee.

(2) Upon written notice of appeal, the director of schools shall prepare a copy of the proceedings, transcript, documentary and other evidence presented, and transmit the copy to the board within twenty (20) working days of receipt of notice of appeal.

(3) The board shall hear the appeal on the record and no new evidence shall be introduced. The affected employee may appear in person or by counsel and argue why the decision should be modified or reversed. The board may sustain the decision, send the record back if additional evidence is necessary, revise the penalty or reverse the decision. Before any findings and decision are sustained or punishment inflicted, a majority of the membership of the board shall concur in sustaining the charges and decision. The board shall render its decision on the appeal within ten (10) working days after the conclusion of the hearing.

(4) Any party dissatisfied with the decision rendered by the board shall have the right to appeal to the chancery court in the county where the school system is located within twenty (20) working days after receipt of the dated notice of the decision of the board. It shall be the duty of the board to cause the entire record and other evidence in the case to be transmitted to the court. The review of the court shall be de novo on the record of the hearing held by the hearing officer and reviewed by the board.

(5) The director of schools shall also have the right to appeal any adverse ruling by the hearing officer to the board under the same conditions as set out in this subsection (c).

SECTION 14. The Teacher Professional Development Fund is established, into which only federal monies shall be deposited, for the purposes of improved teaching, pedagogical skills, and classroom instruction.

SECTION 15. The Department of Education shall annually report to the general assembly the amount of Race to the Top funds awarded to each local education agency and achievement school district.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: January 15, 2010