

PUBLIC CHAPTER NO. 2
FIRST EXTRAORDINARY SESSION
SENATE BILL NO. 7005

By Kyle, Woodson, Gresham, McNally, Berke, Kelsey, Tate

Substituted for: House Bill No. 7010

By Michael Turner, Lois DeBerry, Harry Brooks, Naifeh, Fitzhugh, Maddox,
Williams, Dunn

AN ACT to amend Tennessee Code Annotated, Title 49, Chapters 1, 2, 3 and 5, relative to education.

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

SECTION 1. This act shall be known and may be cited as the "Tennessee First to the Top Act of 2010".

SECTION 2. Tennessee Code Annotated, Section 49-1-602(f)(1)(C)(ii), is amended by deleting the existing language and by substituting instead the following language:

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.

SECTION 3. Tennessee Code Annotated, Section 49-1-602(f)(1)(C), is further amended by adding the following language as newly designated subdivision (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.

SECTION 4. Tennessee Code Annotated, Section 49-1-602(g), is amended by deleting the following language:

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:

and by substituting instead the following language:

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":

SECTION 5. Tennessee Code Annotated, 49-1-602(g)(2)(E), is amended by deleting the existing language and by substituting instead the following language:

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.

SECTION 6. Tennessee Code Annotated, Section 49-1-602(l)(1)(A), is amended by deleting the existing language and by substituting instead the following language:

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.

SECTION 7. Tennessee Code Annotated, Section 49-1-606(a), is amended by deleting the second sentence of the subsection in its entirety.

SECTION 8. Tennessee Code Annotated, Section 49-1-606(b), is amended by adding the following sentence at the end of the subsection:

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.

SECTION 9. Tennessee Code Annotated, Title 49, Chapter 1, Part 6, is amended by adding the following language as a new § 49-1-614:

(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.

SECTION 10. Tennessee Code Annotated, Section 49-1-302(d)(1) and (2), are amended by deleting those subdivisions in their entirety and by substituting instead the following:

(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.

SECTION 11. Tennessee Code Annotated, Section 49-2-303(a)(1), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

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.

SECTION 12. Tennessee Code Annotated, Section 49-3-306(a)(1), is amended by adding the following language at the end of the subdivision:

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.

SECTION 13. Tennessee Code Annotated, Section 49-5-512, is amended by deleting the existing language in its entirety and by substituting instead the following language:

(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



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 16th day of January 2010



PHIL BREDESEN, GOVERNOR