

State and Local Government Relations in Elementary and Secondary Education

By Laurie L. Mesibov and Ingrid M. Johansen

Education, one of government's most important responsibilities, is both the foundation for a viable democratic society and a service the state is obligated to foster and protect. The North Carolina Constitution provides that "[r]eligion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged" (Article IX, Section 1). The constitution also states: "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right" (Article I, Section 15). To carry out these constitutional mandates, the state of North Carolina maintains a system of elementary and secondary schools, a system of fifty-eight community colleges, and the University of North Carolina, which is comprised of sixteen institutions of higher education.

In 1839, the first year that North Carolina's public schools began to function as a statewide system, the General Assembly made \$40 available to each school district that raised \$20 locally.¹ That was the legislature's first stab at dividing the fiscal burden of public education between the state and local governments. The struggle to find a proper division while ensuring fairness in the financial burden, equity in educational opportunities, and quality in education has continued for the ensuing 167 years and stands as one of the state's liveliest political topics in 2006.

Today's intricate division of responsibilities and control among state and county governments and local school administrative units is largely a result of cumulative efforts to resolve that struggle. This article traces those efforts and describes current issues of financial responsibility, equity, and education reform, especially the relationship between

local boards of education and boards of county commissioners. Postsecondary education is not discussed in this article.²

Table 1 provides a statistical profile of the state's public school system as of the 2004–2005 school year. Information about particular school systems is available from local boards of education and school officials. Many school administrative units and individual schools maintain Internet sites, and the Department of Public Instruction has a home page that can be accessed at <http://www.dpi.state.nc.us>.

The Educational System from 1776 to the 1930s

1776 THROUGH THE CIVIL WAR

Article XLI of the North Carolina Constitution of 1776 required the General Assembly to establish schools staffed by teachers paid from public funds. The legislature took its first step toward carrying out that mandate in 1825 by creating the Literary Fund as a source of revenue for public schools.³

The public schools began to function as a statewide system in 1839. That year the General Assembly created the first formal local government bodies to administer public education by ordering justices of the peace in each county to appoint a body known as the board of county superintendents. The General Assembly further required the superintendents to divide their counties into school districts and to appoint school committees to manage the schools in each district.⁴ By the mid-1840s every county in the state had established a public school system.⁵

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1. 1839 N.C. Pub. Laws ch. 8.

2. Statutes relating to the community colleges and the University of North Carolina are codified in, respectively, N.C. GEN. STAT. Ch.115D and 116 (hereinafter G.S.).

3. 1825 N.C. Pub. Laws ch. 1.

4. Edgar E. Knight, *Public School Education in North Carolina* (Boston: Houghton-Mifflin Co., 1916), 140–47.

5. *Id.*, 148–49.

In 1852 the General Assembly created the appointive post of state superintendent of public instruction⁶ and required for the first time that teachers be certified by local committees of examination.⁷ Local officials also had full control over the curriculum and textbook selection.⁸

But North Carolina's new public school system, which grew and improved under the leadership of Superintendent Calvin H. Wiley, became a casualty of the Civil War. When the war ended, Wiley was removed as state superintendent and the Literary Fund collapsed when the North Carolina and Confederate securities supporting the fund's endowment were rendered worthless.⁹

1868 to 1900

With adoption of the constitution of 1868, the state began the task of reviving the public school system. The new constitution directed the General Assembly to maintain, through taxation or otherwise, a general and uniform system of free public schools for a minimum four-month term each year. The state is still bound by that provision, although the length of the minimum school year has increased to nine months.

The constitution of 1868 also changed the form of governance for the school system. To replace the old Literary Board, the constitution created the State Board of Education, which was composed of designated state officials empowered to manage state school funds and issue rules to govern the public schools. The office of state superintendent of public instruction became elective. Boards of county superintendents were abolished, and local supervision of schools was transferred to the boards of county commissioners. Commissioners were required to divide their counties into districts and to use county resources to maintain one or more schools in each district for at least four months a year. The constitution authorized the General Assembly to require that every child receive at least sixteen months of compulsory education between the ages of six and eighteen.

The General Assembly embodied the provisions of the constitution of 1868 in a new statute.¹⁰ Chapter 184 set the framework for the school system that prevailed until 1900, establishing a State Board of Education and vesting county commissioners with local control over public schools. It also

created popularly elected school committees for all townships—with duties similar to those of today's local school boards—to maintain tuition-free schools for the minimum term for all children. The boards were responsible for hiring and firing teachers and providing schoolhouses and furnishings for two, racially segregated school systems.

The statute earmarked 75 percent of total state and county poll tax proceeds as school revenue, in addition to the \$100,000 the General Assembly appropriated to the schools from the state's general fund.¹¹ Chapter 184 required that state-appropriated school funds be apportioned according to local school-age populations. It further required county commissioners to levy local school taxes sufficient to raise revenue to operate schools for a four-month term.

Chapter 184 contained, for the first time, a legislatively prescribed course of study: reading, writing, spelling, arithmetic, geography, and grammar. It also began the practice of state adoption of textbooks. The State Board of Education was to adopt particular texts, and all schools were required to use those books exclusively. The system established in 1868 and 1869 evolved during the rest of the century. In the late 1870s and early 1880s state-supported normal schools, or teacher training institutes, were founded—eight for whites and five for blacks.¹²

In 1872 the General Assembly directed the boards of county commissioners to serve as boards of education.¹³ The 1881 legislature created the post of county superintendent, identical to today's local superintendent; that official was elected by joint action of the county board of education and the county justices of the peace.¹⁴ In creating the new executive position, the legislature brought local operation of public education under consolidated, countywide management. In 1885 the General Assembly created three-member county boards of education as separate agencies, with members chosen biennially by the boards of county commissioners and the county justices of the peace.¹⁵

In 1885 the state supreme court dealt a serious blow to the rehabilitation of public education. In *Barksdale v. Commissioners of Sampson County*,¹⁶ the court declared that local school expenses were not "necessary expenses," and that,

6. *Id.*, 156–57. Calvin H. Wiley, an ardent supporter of public education, was selected as the first state superintendent.

7. M. C. S. Noble, *A History of the Public Schools of North Carolina* (Chapel Hill, N.C.: University of North Carolina Press, 1930), 204–205.

8. *Id.*, 199.

9. *Id.*, 233–49; Hugh T. Lefler and Albert R. Newsome, *North Carolina: The History of a Southern State*, rev. ed. (Chapel Hill, N.C.: University of North Carolina Press, 1963), 380–81.

10. 1868–69 N.C. Pub. Laws ch. 184.

11. This \$100,000 was never actually spent due to insufficient funds in the state treasury following the Civil War. Reference to this appropriation was deleted from the school code in the Public Laws from 1887–1888 and did not reappear until 1899, when the \$100,000 became an annual appropriation.

12. State Board of Education, Department of Public Instruction, "History of Public Education in North Carolina" at NCPublicSchools.org/students/edhistory.html.

13. 1872–73 N.C. Pub. Laws ch. 90.

14. 1881 N.C. Pub. Laws ch. 200.

15. 1885 N.C. Pub. Laws ch. 174.

16. 93 N.C. 472 (1885).

under the then-existing constitution, a vote of the people was required before local taxes could be levied for schools.

1900 THROUGH 1930

The first years of the twentieth century marked a turning point for North Carolina's public schools. They ushered in a period of heightened public support for education, spurred by the efforts of Charles B. Aycock, governor from 1901 through 1905. The state also adopted a new approach to funding education: direct financing from state tax revenues. In 1899, the state renewed its commitment of \$100,000 as an ongoing element of public school finance.¹⁷ In 1901 the legislature appropriated an additional \$100,000 to assist counties unable to finance the minimum four-month term—even if they levied the maximum property tax allowed by the state constitution.¹⁸ In 1903 the legislature reestablished the Literary Fund to serve as a loan fund for school construction.¹⁹

A major breakthrough occurred in 1907, when the state supreme court reversed the *Barksdale* decision in *Collie v. Commissioners*²⁰ and ruled that spending for public schools was a “necessary” expense. This decision made it possible for counties to levy local taxes to raise the revenue needed to support the minimum four-month school term without a vote of the people.

Fiscal Reforms of 1931 and 1933

The fiscal chaos of the Great Depression led directly to creation of the present fiscal framework for public education in North Carolina. By 1931 the problems faced by taxpayers in paying property taxes had thrown the public school finance system into disarray. Many counties were defaulting on debts, and many teachers were not paid.²¹ The General Assembly responded by enacting the School Machinery

Act, which radically changed the structure of public school finance.²² For the first time the state was made responsible for paying all current expenses necessary to finance a minimum six-month school term, leaving the counties responsible for constructing and maintaining school buildings. State responsibility for financing a uniform statewide basic level of education for a minimum term remains the framework of public school finance in North Carolina.

Current Governance of Public Schools

STATE LEVEL

General Assembly

Article IX of the state constitution sets out the basic structure of public school governance. It gives the General Assembly the responsibility for ensuring “a general and uniform system of free public schools”²³ that provides all children a basic education of at least minimum duration, content, and quality. The General Assembly obviously cannot attend to the day-to-day operation of more than two thousand schools, although from time to time it prescribes in a very specific way what should happen in schools.²⁴ Most of the time, the General Assembly carries out its duty to provide a system of free public schools primarily by appropriating money and by delegating major decision-making authority to the State Board of Education, local boards of education, and, beginning in the 1990s, individual schools.

State Board of Education

The North Carolina Constitution provides for the State Board of Education (State Board) in Article IX, Section 4(1). The State Board has thirteen members. The lieutenant governor and the state treasurer are ex officio members, and the remaining eleven are appointed by the governor, subject to confirmation by the General Assembly in joint session. G.S. 115C-10 permits one member to be a public school employee. Appointments are for eight-year terms and are staggered. In addition, G.S. 115C-11 authorizes the governor to appoint two high school students to serve as advisers and nonvoting participants in board deliberations. The State Teacher of the Year, as designated by the Department of Public Instruction, serves ex officio for a two-year term in a nonvoting, advisory capacity to the board. The state constitution makes the superintendent of public instruction the board's secretary and chief administrative officer.

17. 1899 N.C. Pub. Laws ch. 637; Paul V. Betters, ed., *State Centralization in North Carolina* (Washington, D.C.: The Brookings Institution, 1932), 23.

18. 1901 N.C. Pub. Laws ch. 543; Betters, *State Centralization*, 23.

19. 1903 N.C. Pub. Laws ch. 567. Throughout the last third of the nineteenth century and well into the first half of the twentieth century, northern philanthropic organizations like the Peabody, Slater, Jeanes, Rockefeller, and Rosenwald funds, as well as several religious denominations, contributed large sums in support of teacher education, salaries, and school buildings for rural and African American schools. The Division of Negro Education, originally funded and administered by the philanthropies, became part of the North Carolina Department of Public Instruction in the early twentieth century and was funded by the state until its demise in 1961.

20. 145 N.C. 170 (1907).

21. By November, 1933, 61 counties and 146 municipalities had defaulted on debts. See *Report of the Local Government Commission* (Raleigh, N.C.: Local Government Commission, 1934), 8.

22. 1931 N.C. Pub. Laws ch. 728; Betters, *State Centralization*, 48–54.

23. N.C. CONST., Art. IX, Sec. 2(1).

24. See, e.g., G.S. 115C-81(e1) (school health education program) and G.S. 115C-81(g) (civic literacy).

Table 1
Statistical Summary of North Carolina Public Schools

	Number			Percent		
	Public	Charter	Total	Public	Charter	Total
Average daily membership (ADM) (First month, 2004)						
Grades K-8	950,566	22,421	972,987	69.3	0.2	70.9
Grades 9-12	396,115	2,767	421,303	28.9	>0.1	30.7
Total	1,346,681	25,188	1,371,869	98.2	1.8	100.0
Ethnic distribution (Fall 2004)						
American Indian	19,806	375	20,181	1.4	>0.1	1.5
Asian	27,615	369	27,984	2.0	>0.1	2.0
African American	422,993	8,999	431,992	30.8	0.7	31.5
Hispanic	101,380	794	102,174	7.4	>0.1	7.4
White	775,383	14,668	790,051	56.5	1.1	57.6
Total	1,347,177	25,205	1,372,382	98.1	1.8	100

Under the state constitution, the State Board is responsible for supervising and administering the free public school system and all funds provided for it except local school funds. The board determines education policy for the state and has the power to make all rules and regulations necessary to carry out this responsibility, subject to laws enacted by the General Assembly. The board regulates the grade and salary of school employees, adopts a standard course of study, and develops accountability measures for individual schools. The board's statutory powers and duties are listed in G.S. 115C-12 and include apportioning all state school funds, certifying teachers, and adopting and supplying textbooks.

Superintendent of Public Instruction

In most states, the state school superintendent is appointed by the governor or selected by the state school board. In North Carolina, the superintendent of public instruction is a constitutional officer and is popularly elected for a four-year term. Although not a voting member of the State Board, the superintendent is empowered by the constitution to serve as the board's secretary and chief administrative officer, executing board policies and organizing and managing the Department of Public Instruction as the State Board directs. G.S. 115C-19 also defines the superintendent's responsibilities as administering the day-to-day operations of the public school system and carrying out the duties specified in G.S. 115C-21, subject to the "direction, control, and approval" of the State Board. The superintendent also has an important voice in explaining the needs of the school system to various constituencies and recommending changes to improve the public schools.

Efforts to fundamentally change the complicated relationship between the State Board and the superintendent by

making the superintendent an appointed officer have been a standard feature of recent sessions of the General Assembly, but these efforts have not been successful.

Department of Public Instruction

G.S. 143A-44.1 creates the Department of Public Instruction (DPI), headed by the State Board of Education. The superintendent of public instruction organizes and administers the DPI, while all appointments of administrative and supervisory personnel are subject to State Board approval. In spite of reorganization and downsizing in 1995, the DPI continues to provide important leadership and assistance to local boards in areas such as instructional support, media and technology, research and testing, and personnel.

Other state agencies involved in public education

The Department of Health and Human Services is responsible for administering the state's special schools for children who are hearing- and sight-impaired.²⁵

The Board of Governors of the University of North Carolina administers two schools that include instruction at the high school level. The North Carolina School of the Arts, one of the university's constituent institutions, was established in 1963 to provide professional training to students from North Carolina and other states who are exceptionally talented in the performing arts. It offers both high school and college-level training at its campus in Winston-Salem. The North Carolina School of Science and Mathematics, located in Durham, is an affiliated school of the university. It was created in 1980 to foster the education of state high

25. G.S. 143B-216.40 through -216.44 and G.S. 143B-164.14 through -164.17 (hearing impaired); G.S. 116-63 (sight impaired).

Table 1 (continued)
Statistical Summary of North Carolina Public Schools

	Number	Percent
Schools (2004–2005)		
<i>Local administrative units</i>		
County units	100	87
City units	15	13
Total	115	100
<i>Public schools</i>		
Elementary (grades pre K–8)	1,729	75.6
Secondary (grades 9–12)	359	15.7
Combined	101	4.4
Charters	97	4.2
Total	2,286	100.0
<i>High school graduates intentions (2003)</i>		
Four-year institutions	34,018	47.3
Two-year institutions	24,226	33.7
Other schools	1,575	2.2
Military service	2,717	3.8
Employment	6,591	9.2
All others	2,726	3.8
Total	71,853	100.0
<i>Full-time personnel (Fall 2004)</i>		
State funded	132,045	75.6
Federally funded	15,101	8.6
Locally funded	27,463	15.7
Total	174,609	100.0
<i>Highest degree held by professional personnel (2004)</i>		
Less than bachelor's degree	70	0.1
Bachelor's degree	64,368	63.2
Master's degree	33,755	33.1
Sixth-year level	1,687	1.7
Doctorate	812	0.8
Other	1,134	1.1
Total	101,826	100.0
	Dollars	Percent
School expenditures (2003–2004)		
<i>Current expenditures</i>		
State	\$5,982,987,282	65.1
Federal	952,009,259	10.4
Local	2,251,194,670	24.5
Total	9,186,191,211	100.0
<i>Salaries and benefits</i>		
State	\$5,580,067,256	73.6
Federal	626,145,759	8.3
Local	1,375,863,501	18.1
Total	7,582,076,516	100.0
<i>Capital outlay</i>		
Per-pupil expenditure in ADM (current expenses only)	\$7,006	
Total	\$922,605,667	

Item	Number/Cost
Auxilliary services	
<i>Transportation (2003–2004)</i>	
Buses operated	\$13,484
Pupils transported daily (including contract)	719,601
Cost of operation (includes bus replacement and contract transportation)	\$245,594,532
Annual cost per pupil transported	\$341
<i>Textbooks (2003–2004)</i>	
Total textbook cost	\$65,222,248
Cost per pupil in ADM	\$48
<i>Food service (2003–2004)</i>	
Number of schools serving breakfast	2,103
Average number of breakfasts served daily	260,039
Average cost per plate (includes indirect costs)	\$1.40
Number of schools serving lunch	2,149
Average number of lunches served daily	717,491
Average cost per plate (includes indirect costs)	\$2.34
Salaries	
<i>Average annual teachers salaries (all sources, 2003–2004)</i>	
N.C. average	\$43,211
National average	\$46,752
N.C. rank	23

Source: N.C. Department of Public Instruction, 2004-05 Facts & Figures, North Carolina Public Schools (<http://www.ncpublicschools.org>).

school students who are academically talented in science and mathematics and who would benefit from a residential program.²⁶ The school also serves other schools in North Carolina through its research and outreach activities.

LOCAL LEVEL

School administrative units

The local *school administrative unit* is the legal entity that operates directly below the State Board in the public school organizational hierarchy. In most states the school administrative unit is called the *school district*, a term frequently used informally in North Carolina as well. By statute, each North Carolina county is classified as a school administrative unit, and its schools are under the general supervision and control of a county board of education. A *city administrative unit* is a school system established within a county or adjacent parts of two or more contiguous counties that has been approved to operate as a separate school unit by the General Assembly. The schools of a city unit are under the control of a board of education established by the special legislative act that created the unit. In most cases, the city unit is not connected with a municipal governing body; the unit merely draws its name from the municipality with which it is geographically associated. Although city units may also serve as special taxing districts for levying supplemental property taxes for school support, for fiscal purposes city units are the responsibility of county boards of commissioners. Any countywide revenues appropriated for school operating expenses (but not for capital outlay) must be distributed to all units in the county equally, in proportion to average daily membership (ADM).

Merger of school units. In the 2005–2006 school year the state was divided into 115 school units, 100 county units, and 15 city units, each administered by its own school board.²⁷ Enrollment in these units ranged from under 1,000 to over 120,000 students. In each unit, the board of education is responsible for directing, supervising, and planning for the public schools.

Although the General Assembly could mandate the merger of all city units with county units, it has not done so. Instead, the General Assembly has provided three other methods of merging school units located in one county.

1. The school systems themselves may bring about the merger (G.S. 115C-67). The merging units adopt a plan of merger, which becomes effective if the board of county commissioners and the State Board of Edu-

cation approve it. The plan may make the merger contingent on approval of the voters in the affected areas.

2. The board of county commissioners may compel a merger by adopting a merger plan for all school units in the county (G.S. 115C-68.1). In subsequent years, the county must provide the merged school unit local funding based on ADM at a level at least equivalent to the highest level received by any school unit in the county during the five fiscal years preceding the merger. The boards of education do not participate in preparing the plan and need not agree to it. A merger plan developed by a board of county commissioners cannot be made subject to voter approval.
3. A city board may force a merger by dissolving itself (G.S. 115C-68.2). In that case the State Board of Education must adopt a merger plan. Plans developed in this way cannot be subject to voter approval. Boards of education and boards of county commissioners do not participate in preparing such a plan and need not agree to it.

Through these various methods, the number of school units in the state has been steadily declining. In 1960 there were 174 separate school units; in 1987–1988, 140 units; in 2004–2005, 115 units. Reducing the number of administrative units to one per county continues to be a focus of discussion and study in counties with more than one school unit.

Local boards of education

The board is a corporate body with the power to sue and be sued and to exercise “[a]ll powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official.”²⁸ G.S. 115C-47 requires each school board to provide an adequate school system. In doing so, a local board performs five major duties.

1. Hiring and firing of school employees
2. Setting education policy within the guidelines of state education policy
3. Preserving the school unit’s assets and managing the local school budget
4. Informing county commissioners of the school unit’s fiscal needs
5. Serving as a hearing board for local education disputes

School boards in most other states have the authority to levy taxes to help finance the schools they administer; North Carolina boards do not have this authority. The tax-

26. G.S. 116-230.1.

27. The fifteen city units still in existence are Asheboro, Asheville, Chapel Hill-Carrboro, Clinton, Elkin, Hickory, Kannapolis, Lexington, Mooresville, Mount Airy, Newton-Conover, Roanoke Rapids, Thomasville, Weldon, and Whiteville.

28. G.S. 115C-40 and -36.

levying authority for school administrative units is the board of county commissioners.

Membership. G.S. 115C-35 provides that “[t]he county board of education in each county shall consist of five members elected by the voters of the county at large for terms of four years.” Local legislation has created many exceptions to this general requirement. Similarly, although G.S. 115C-37 specifies that county boards of education shall be elected on a nonpartisan basis at the time of the primary election, some board elections are held at the time of the general election and some are elected on a partisan basis. G.S. 115C-37 also provides that terms of office shall be staggered so that only half (or as nearly equal to half as possible) of the terms expire every two years.

The general law does not apply to a city school administrative unit whose local act provides for a different selection procedure. Many different methods of selecting city boards of education are used; a majority of these units elect board members on a nonpartisan basis.²⁹

G.S. 115C-39 sets out the statutory procedure for removal of a school board member. If the State Board of Education has sufficient evidence indicating that a school board member is “not capable of discharging, or is not discharging, the duties of his office as required by law, or is guilty of immoral or disreputable conduct,” the board, after proper notification, investigates the charges; if they are found to be true, the board can declare the office vacant. Recall elections to remove a school board member are permissible only if specifically authorized by an act of the General Assembly.³⁰ Only one such local act, which applies to the Chapel Hill–Carrboro City Board of Education, has been enacted in 2006.

Organization and meetings. The General Statutes give little guidance for organizing school boards. G.S. 115C-41 provides that a board must hold an organizational meeting and elect a chairman no later than sixty days after the swearing-in of members following election or appointment.

The board must meet on the first Monday of each quarter or as soon thereafter as possible. It may hold regular meetings and meet in special sessions on the call of the chair or secretary as often as school business requires. Local acts may depart from general law requirements and must be checked when a question concerning board organization arises.

Boards of education and their committees must comply with the open meetings law, Article 33C of G.S. Chapter 143, which requires public notice of meetings, defines the

purposes for which a board may meet in closed session, and controls the method of voting. As secretary to the board, the superintendent keeps a record of all its proceedings and issues all its notices and orders. Each meeting’s minutes are available for public inspection according to the open meetings law.

The General Statutes do not define a quorum for school board meetings; the law in this area has been made by the courts. In *Edwards v. Board of Education* the state supreme court ruled that a quorum is a majority of the whole membership of the board.³¹

Compensation. Using the procedures in G.S. 153A-92, a school unit’s tax-levying authority (usually the board of county commissioners) may set the compensation and expense allowances for school board members.³² Funds for per diem, subsistence, and mileage for all meetings of county and city boards of education must be provided from the current expense fund budget of the particular county or city.

School superintendents

The superintendent is the chief local school administrator as well as the system’s executive officer. The superintendent serves ex officio as secretary for the board of education; recommends personnel to the board for employment; carries out state and local policies and rules; monitors the condition of school buildings; and prepares the budget. G.S. 115C-276 lists many of the superintendent’s duties, including the duty to carry out the local board’s rules and regulations.

The superintendent is employed under a contract with the board of education,³³ which is free to choose the superintendent as long as the candidate meets certain State Board requirements concerning education, credentials, and experience. A board may elect a superintendent at any time for a term of one to four years, ending on June 30 of the final months of the contract. After the first twelve months, the board may extend or renew the term of the contract at any time but may not extend it beyond four years. If new board members have been elected or appointed but not yet sworn in, the board may not extend or renew the current superintendent’s contract until after new members have been sworn in. Superintendents’ contracts for a period of less than one year are governed by G.S. 115C-275.

Individual schools

Before the 1990s an individual school had no independent authority except that specifically delegated to the school by the local board of education. As part of the state’s efforts to increase school personnel’s accountability for student

29. The reader should consult the individual board of education or county board of election for information about election for a particular school board.

30. 1993 N.C. Sess. Laws (Reg. Sess. 1994) ch. 660.

31. *Edwards*, 235 N.C. 345, 70 S.E.2d 170 (1952).

32. G.S. 115C-38.

33. G.S. 115C-271.

achievement, schools now have more direct authority. Individual school improvement teams must develop a school improvement plan and submit it to the local school board.³⁴ If the board refuses to approve the plan, a school may participate in a dispute resolution process with the board. The plan may include requests for waivers of certain state laws, rules, and policies.³⁵ The school board must distribute 75 percent of staff development funds to individual schools to be used in accordance with their improvement plans.³⁶ More broadly, the statute instructs the local board to provide schools maximum flexibility in the use of funds in support of their goals.³⁷ Each individual school principal, in consultation with the school improvement team, also has the authority to schedule some days in the annual school calendar.³⁸

Boards of county commissioners

The board of county commissioners is an integral part of the legal structure of public education. Although county commissioners are not typically thought of as educational policy makers, they do influence, and at times determine, policy through the budget process. The board of commissioners is the tax-levying authority for the schools, except in the very few situations in which the governing body of a municipality levies a supplemental tax for a city administrative unit. Because commissioners provide the local tax money, they influence school board decisions and at times even substitute their judgment of some educational issues for that of the board. There are, however, limits on the authority of the boards of commissioners; they may not interfere with the control of the schools vested in the board of education.

In addition to its funding responsibilities, the board of commissioners has statutory authority or responsibility to approve certain school board budget amendments; levy and collect supplementary taxes for the school board; approve certain school board contracts; conduct special school elections; approve the amount the school board proposes to spend to purchase a school site; mandate the merger of all school units in the county; issue bonds for school construction; and, by agreement with the board of education, construct schools. Each of these responsibilities is discussed in greater detail later in this chapter.

Other essential services that counties provide to the larger community also significantly affect education. The health of citizens, the economic well-being of a community, the strength of its families, and the safety of its streets have

an effect on students and school staff. Although the notion of schools as safe havens devoted to learning is an appealing idea, schools cannot avoid being influenced by the problems that students and staff bring to school.

Current System of School Finance

STATE AND LOCAL RESPONSIBILITIES

Public schools are a responsibility of both state and local governments. As noted above, the basic structure of school finance has not changed since the 1930s. The state is responsible for current expenses necessary to maintain the minimum nine-month term. Counties are responsible for financing construction and maintenance of school facilities and may supplement state funding for current expenditures. However, the state has frequently appropriated funds for school construction, and school boards continue to rely on counties to provide funds for current expenses.

The state's fiscal responsibility has two dimensions: financing a school term of minimum length, and providing a level of support that provides students statewide an equal opportunity for a "sound basic education." This latter requirement is new and resulted from school finance litigation—commonly known as the *Leandro*³⁹ case—that began in the 1990s and continues today. But from the 1930s into the 1980s, the state had no established standard for determining the level of funding it would provide—that level was set simply by the amount appropriated by the General Assembly and distributed through various allocation formulas. Those appropriations and formulas provided the only definition of the state's educational program.

This situation changed in the 1980s. In 1984 the General Assembly directed the State Board of Education to develop a standard course of study to be offered to every public school student. It also reaffirmed the traditional state–local government split in funding responsibilities by announcing that "it is the policy of the State of North Carolina to provide from State revenue sources the instructional expenses for current operation of the public school system as defined in the standard course of study."⁴⁰

In response, the State Board proposed, and the General Assembly adopted, the Basic Education Program. This course of study describes the *substance* of the educational program that should be available to every child in North Carolina and thus creates a standard for the program that the state finances. Since then, *Leandro* has established a system for assessing the *quality* of the educational offering and for determining whether the state is satisfying its constitutional duty to offer all its students a sound basic education.

34. G.S. 115C-105.27.

35. G.S. 115C-105.26.

36. G.S. 115C-105.30.

37. G.S. 115C-105.25.

38. G.S. 115C-84.2.

39. 346 N.C. 336, 488 S.E.2d 249 (1997).

40. G.S. 115C-408(b).

The essential difference between North Carolina's current system of finance and the system established in 1933 is that the level of state support is now being set according to the substantive requirements of the Basic Education Program and the qualitative requirements of *Leandro*.

Although the General Assembly has not provided full funding for the Basic Education Program, it has provided substantial funding for its key components and in doing so has raised the level of state support. The state allocates money to school units through formulas intended to measure the need for resources adequate to offer the standard course of study, as defined by the Basic Education Program. The effect of the program's allotment formulas is to allocate more money per student in the smallest counties, which tend to be relatively poor, rural counties.⁴¹ Over the last decade, and particularly following *Leandro*, the state has also attempted to direct more funds to low-performing school districts, schools, and students, wherever their location. Although the state funds are intended to provide a uniform statewide program, school units receive different dollar amounts per student because of variations in state spending for salaries, transportation, and certain other costs.

The most important feature of North Carolina's school financing system is that the state takes income, sales, and other tax revenue from all residents and allocates it for teachers and other school resources statewide, without regard to the ability or willingness of local residents to support schools through local taxes. In many other states the state government assists poor units through grants designed to help them attain a basic level of funding, but in North Carolina the state government itself provides the basic level of support. Taxpayers in the highest-income counties contribute more than others toward financing schools across the state. As a result, North Carolina does not have funding disparities between poor and wealthy units that are as large as those in most other states, although they are large enough to have become the subject of litigation.

North Carolina's approach to financing its public schools differs in three respects from that of most other states.

1. The basic financial backing for public schools comes from state rather than local revenues. Thus state income and sales taxes, rather than the locally levied ad valorem property tax, are the primary revenue sources for financing schools.
2. State funding of the basic educational program is essentially a flat grant to a school system based on the number of students enrolled and the general cost of

operation. North Carolina differs from most other states in that it does not distribute money for the general education program on the basis of the local unit's financial ability to operate schools.

3. The local board of education has no authority to levy taxes for the schools in its unit; it must rely upon the board of county commissioners for the tax levy.

The state's contribution to the public schools' current operating expenses comes from several sources. The primary one is the State Public School Fund, which supplies more than 95 percent of the state money. This fund supports various recurring expenses of the regular school program—primarily the salaries and benefits of most teachers and other school employees. These funds are released only on warrants issued by the school finance officer and drawn on the state treasury. Deposits in the state treasury are made to the credit of local school units at least monthly. Some other state funds are released directly to the school unit.

State sales and use tax refunds used to be among the funds released directly to the school unit: local school administrative units were entitled to apply to the secretary of revenue for an annual refund of the state and local sales and use taxes paid on purchases of personal property and services (other than electricity and telecommunications services). Units could spend the refund money at their discretion because it was received outside the budgetary process. In 2005 the legislature repealed the state (and, inadvertently, the local) sales and use tax refund for local school administrative units, directing instead that an equivalent amount of funds go into the State Public School Fund for allocation to local units through the budgetary process.⁴² For 2006–2007 an estimated \$33.3 million in state sales tax refunds will go back to local school units.

Each school administrative unit's share of the state appropriations is determined by the State Board. The board bases its allocation largely on two standards: the number of pupils in average daily membership (ADM) and the salary schedules for the various classes of personnel employed in state-allocated positions by the local school board. State salary schedules for professional staff are based primarily on level of education and years of experience.

In 2005 the General Assembly added a new source of revenue for schools: the Education Lottery Fund, created from the North Carolina State Lottery Fund.⁴³ The lottery commission is charged with transferring the net revenues of this fund, which must be at least 35 percent of total revenues, to the Education Lottery Fund. Five percent of this fund must go into the Education Lottery Reserve Fund.

41. Charles D. Liner, "Distribution of State Funds to Poor and Small School Units: An Analysis," *School Law Bulletin* 23 (Spring 1992): 12–13.

42. 2005 N.C. Sess. Laws ch. 276, sec. 7.51.

43. G.S. 18C-164.

Table 2
Sources of Funds for North Carolina Public Schools: Current and Capital Expenditures, 2003–2004

Source	Current operating budget		Capital outlay		Totals	
	Dollars	Percent	Dollars	Percent	Dollars	Percent
State	5,982,987,282	65.1	54,959,502	6	6,037,946,784	59.7
Federal	952,009,259	10.4	9,546,866	1	961,556,125	9.5
Local	2,251,194,670	24.5	858,099,299	93	3,109,293,969	30.8
Total	9,186,191,211	100.0	922,605,667	100.0	108,796,878	100.0

Source: State Board of Education, *North Carolina Public Schools: Statistical Profile 2005* (<http://www.ncpublicschools.org/fbs/stats/statprofile05.pdf>): 43, 58.

Of the Education Lottery Fund, 50 percent will go to support reduction of class size in the early grades to achieve class-size ratios no higher than 1:18 and to support academic prekindergarten programs for at-risk four-year-olds. Forty percent of the fund will go into the Public School Building Capital Fund.⁴⁴ Sixty-five percent of the lottery funds going into the building fund will be allocated according to ADM, and 35 percent will be allocated to local schools in counties whose effective tax rate as a percentage of the effective state average tax rate is greater than 100 percent. Counties may use these moneys to pay for school construction projects begun on or after January 1, 2003, but may not use them to pay for school technology needs. (The remaining 10 percent of the Education Lottery Fund will go to the State Educational Assistance Authority to fund college and university scholarships.)

The state's basic support of schools is supplemented by local governments and the federal government. In recent years, approximately 65 percent of the total public school costs (current expenses, capital outlay, and debt service costs) has been paid by state appropriations; local governments have contributed approximately 25 percent and the federal government roughly 10 percent. Table 2 shows the sources of funds for the public schools in 2003–2004. Table 3 breaks down the sources of funds for public schools according to purpose. The exact proportions of state, local, and federal aid in the various school units differ.

FUNDING DISPARITIES AND EQUAL EDUCATIONAL OPPORTUNITIES

Although the state provides funds in a way intended to meet operating expenses for the basic program in all schools, under Article IX, Section 2(2) of the state constitution, local governments with financial responsibility for public education have the right to supplement the basic level of state support. Thus, because some counties are more able or more willing than others to use local tax money to supplement what the state provides, there are

funding disparities among school units. Table 4 shows the 2003–2004 average salary expense per pupil and the average pupil–teacher ratios in school units, classified according to county per capita incomes.

This variation in financial support takes place within a finance system that tends to equalize expenditures in several ways. First, the basic program financed by the state is provided equally to all school units without regard to the resources of the respective units. Second, because state support is provided at a relatively high level, the effect is to reduce the relative differences in local spending. Third, by financing a large proportion of school expenditures from statewide taxes, the state redistributes tax revenues from high-income to low-income units. Finally, federal funds are distributed in ways that result in more federal funds going to low-income units. Although North Carolina's funding inequities are less severe than those in many states, legislators, school officials, parents, and taxpayers have long been concerned about their effect.

In 1987 plaintiffs from Robeson County challenged North Carolina's system of school finance, alleging that it creates unequal educational programs and facilities and that these inequities violate the constitutional mandate that "equal opportunities shall be provided for all students."⁴⁵ In *Britt v. North Carolina State Board of Education*, the North Carolina Court of Appeals ruled that the fundamental right guaranteed by the constitution is only the right to equal access to the public schools—that is, every child has a fundamental right to receive an education in the public schools.⁴⁶ This right of access may not differ according to a child's race.

45. N.C. CONST. Art. IX, Sec. 2(1)

46. 86 N.C. App. 282, 357 S.E.2d 432 (1987). See also *Guilford County Bd. of Educ. v. Guilford County Bd. of Elections*, 110 N.C. App. 506, 430 S.E.2d 681 (1993), upholding the funding level set by the General Assembly for the merger of the Guilford County Schools. The court noted that "Nothing in the Constitution requires that funding of public schools in all counties in the State be

44. G.S. 115C-546.2.

Table 3
Sources of Funds for Public Schools by Purpose, 2003–2004

Purpose	State		Federal		Local	
	Dollars	Percent	Dollars	Percent	Dollars	Percent
Instruction ^a	4,602,221,799	77.2	556,244,424	9.3	803,050,690	13.5
Support services ^b	433,343,662	65.4	84,212,368	12.7	145,289,028	21.9
Administration	559,720,383	53.7	23,921,612	2.3	458,262,936	44.0
Food	4,322,410	0.9	282,633,278	55.1	225,546,800	44.0
Transportation	287,682,338	82.3	6,366,314	1.8	55,593,514	15.9
Plant operation	106,634,358	22.9	3,672,025	7.9	354,574,938	76.2
Plant maintenance	5,997,954	2.9	1,065,811	0.5	203,130,059	96.6
Community services ^c	2,210,543	4.8	2,201,923	4.8	41,769,658	90.4
Nonprogram charges ^d	–382,918		10,520,805	11.9	78,543,255	88.6
Total current expenses	6,001,750,529	64.3	970,838,560	10.4	2,365,760,878	25.3
Total current expenses (less food)	5,997,428,119	67.9	688,205,282	7.8	2,145,976,3	24.3
Capital outlay ^e					5,762,247	100.0
Total capital and current expenditure (with food)	6,001,750,529	64.2	970,838,560	10.4	2,371,523,125	25.4

Source: State Board of Education, *North Carolina Public Schools: Statistical Profile 2005* (<http://www.ncpublicschools.org/fbs/stats/statprofile05.pdf>): 52–57.

a. *Instructional programs* deal directly with the teaching of pupils or the interaction between teacher and pupils. They include: regular instruction, special instruction, adult instruction, co-curricular programs, read-to-succeed programs, vocational education, school technology programs, employee benefits, additional pay, and staff development.

b. *Support services* are those services that provide administrative, technical, personal, and logistical support to facilitate and enhance instruction for both pupil and teacher. They include direction of pupil support; attendance and social service work services; guidance services; health services; psychological services; speech, pathology, and audiology services; industry education and gender equity coordination; special populations coordination; other pupil-support services; improvement of instructional services; educational media; curriculum development; planning, research, development, and evaluation services; and technology support services.

c. *Community services* are activities not directly related to the provision of education for pupils in the local school administrative unit.

d. *Nonprogrammed charges* are conduit-type (outgoing) payments to other local school administrative units or other administrative units in the state or in another state.

e. *Capital outlay* covers expenditures for acquisition of property, construction, renovation, and other similar activities.

Even though the court ruled in the Robeson County case that the finance system does not violate the state constitution, in 1991 the General Assembly began providing funds to low-wealth and small school units, independent of the funds provided for the Basic Education Program.⁴⁷ These two programs distribute additional state funds to school units that, because of relatively low property tax bases or low enrollments, have difficulty supporting schools. The money is intended to allow school units to enhance the instructional program and student achievement and must be used to supplement, not supplant, county appropriations. From 1991 through the 2004–2005 fiscal year, the legisla-

ture had appropriated a total of \$915 million in additional funds for low-wealth schools. For the 2005–2007 biennium, it appropriated \$16.5 million for 2005–2006 and \$58.5 million for 2006–2007.

As the result of *Leandro*, the state is likely to continue funding such targeted programs and to create more like them. In 1994 plaintiffs from five poor counties, later joined by school boards from the state's largest school units, claimed that the state's system of financing schools violates the North Carolina Constitution. The state supreme court ruled that the constitution guarantees to every school child access to a "sound basic education."⁴⁸ Elements of that education include the following:

identical or addressed through a single uniform law." *Guilford*, at 517, 430 S.E.2d at 688.

47. 1991 N.C. Sess. Laws ch. 689, secs. 201.1, 201.2).

48. 346 N.C. 336, 488 S.E.2d 249 (1997). For a more complete discussion of the case, see John C. Boger, "*Leandro v. State*—A New

1. Sufficient ability to read, write, and speak the English language, and sufficient knowledge of fundamental mathematics and physical science to function in a complex and rapidly changing society
2. Sufficient fundamental knowledge of geography, history, and basic economic and political systems to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation
3. Sufficient academic and vocational skills to successfully engage in postsecondary education or vocational training
4. Sufficient academic and vocational skills to compete on an equal basis with others in formal education or gainful employment in contemporary society

The supreme court also ruled that the county-to-county funding inequalities created by the state's funding system do not violate Article IX, Section 2(1) of the state constitution, which requires a "general and uniform system" of schools in which "equal opportunities shall be provided for all students."

After this ruling, the case was remanded to the trial court for hearings on the issue of whether the funding system was achieving the goal of providing all students access to a sound basic education. In 2004 the state supreme court affirmed the trial court's conclusion that the funding system does not provide all students—particularly at-risk students—the opportunity for a sound basic education, and that the responsibility for resolving this problem rests firmly on the shoulders of the state, not on local school units.⁴⁹

The supreme court also affirmed the trial court's proposal for remedying this situation: the state is charged with responsibility for assuring: (1) that every classroom is staffed with a competent, certified, well-trained teacher; (2) that every school is led by a well-trained, competent principal with the leadership skills and ability to hire and retain competent, certified, and well-trained teachers; and (3) that every school is provided, in the most cost-effective manner, the resources necessary to support effective instruction within that school so that all children, including at-risk children, have an equal opportunity to obtain a sound basic education.

In so ordering, the trial court noted with approval the flexibility that already exists in North Carolina's funding scheme, with allocations based on average daily membership, low-wealth, small-county, and at-risk students. These

funding measures, along with the flexibility granted by the School Based Management and Accountability Program (discussed more below),⁵⁰ create a system that enables the state to direct money easily to students who need it the most. This said, the court felt the need to emphasize that local school units must use all available resources first to provide all students an equal opportunity to receive a sound basic education.

Leandro has not led to a dramatic restructuring of the state's school finance system. Rather, it has resulted in increased funding for programs more directly targeted at the poorest districts, low-performing schools, at-risk students, and staff development. Much of this targeted funding still occurs under the auspices of the School Based Management and Accountability Program, which began in 1996. The most visible part of this program is its accountability model. Under this model, the State Board sets a minimum student performance growth standard for each school; each school develops an improvement plan to meet this standard and reports annually its progress.⁵¹ Schools that meet their growth standard receive financial awards; schools that do not meet their growth standard receive assistance teams.⁵² The program also explicitly grants local school boards flexibility, within certain limits, in the use of state funds.⁵³

The General Assembly has, however, begun financing some new initiatives. For example, in 2004–2005 the state appropriated \$22 million to the Disadvantaged Student Supplemental Funding program to fund new pay incentives to recruit and retain strong teachers, reduce class sizes, and provide extra tutoring for students, among other things. These funds go to districts chosen according to a formula that uses variables including student proficiency, teacher turnover, teacher experience, and number of students from low-income families. The More at Four program, which is incrementally increasing pre-K opportunities for at-risk children, is receiving more money. The state is putting money toward efforts to reduce class size (for example, through the Education Lottery Fund).

The effect of *Leandro* on educational inequalities remains to be seen. The General Assembly has never fully financed the supplemental fund to low-wealth school districts, and the gap between the state's highest-spending and lowest-spending counties has widened since litigation began in 1994.⁵⁴ On the other hand, education funding, in terms of dollars, has increased significantly during the same time

Era in Educational Reform," *Popular Government* 63 (Spring 1998): 2–12.

49. Hoke County Bd. of Educ. v. State, 385 N.C. 605, 599 S.E.2d 365 (2004).

50. G.S. 115C-105.20 through -105.41.

51. G.S. 115C-105.27.

52. G.S. 115C-105.37 and -105.37A.

53. G.S. 115C-105.25.

54. Each year the North Carolina Public School Forum issues a "Local School Finance Study." Studies from 1997 through 2004 are available at <http://ncforum.org/doclib/publicatiions/lfs.html> (last

Table 4
Average Salary Expense per Pupil and Average Pupil–Teacher Ratios in North Carolina School Units
by per Capita Income of Counties, 2003–2004

2003 Per capita income of county (\$)	No. of school. units	Avg. per capita income (\$)	Avg. Current expendi- ture per ADM (\$)	Avg. salary expense per ADM (\$)	Pupil–teacher ratios		
					Professors/ teachers	Other professionals	Teachers’ assistants
Less than 18,000	2	17,791	7,249	4,774	15:2	12:2	36:8
18,000–18,999	1	18,659	6,651	4,394	16:8	12:7	40:9
19,000–19,999	5	19,558	8,555	5,766	13:1	10:3	39:6
20,000–20,999	7	20,552	8,522	5,776	13:3	10:7	39:9
21,000–21,999	15	21,411	7,790	5,214	13:7	10:6	40:9
22,000–22,999	10	22,476	7,616	4,695	14:0	11:5	42:0
23,000–23,999	14	23,592	6,943	5,077	13:8	11:5	43:0
24,000–24,999	11	24,357	7,414	5,108	13:8	11:4	41:6
25,000–25,999	7	25,485	6,808	4,680	14:4	11:9	42:0
26,000–26,999	7	26,427	6,509	4,486	15:0	12:5	46:4
27,000–27,999	5	27,479	6,555	4,621	15:2	12:7	51:0
28,000–28,999	3	28,207	7,120	4,884	13:9	11:8	41:7
29,000–29,999	4	29,522	7,150	4,696	14:0	11:7	45:9
30,000–30,999	0	00,000	0,000	0,000	0:0	0:0	0:0
31,000–31,999	2	31,458	7,648	5,303	15:5	12:5	61:1
32,000–32,999	4	32,158	7,557	5,230	13:8	11:6	46:7
More than 34,000	3	36,141	7,471	5,250	13:9	11:3	52:2

Source: State Board of Education, *North Carolina Public Schools: Statistical Profile 2005* (<http://www.ncpublicschools.org/fbs/stats/statprofile05.pdf>): 42, 78–311.

span, while the gap between the average teacher salary in North Carolina and the nation as a whole has decreased substantially.

In addition to providing funds through the Basic Education Program and the low-wealth and small-system formulas, the General Assembly appropriates funds for special challenges faced by school systems. For example, in 1994 the General Assembly created the State School Technology Fund, a nonreverting special revenue fund under the control and direction of the State Board of Education.⁵⁵ These funds must be used to help local school boards implement plans designed to improve student performance by using learning and instructional management technologies.⁵⁶

FINANCING CONSTRUCTION

Local governments have been responsible for financing school construction in North Carolina since the state’s public school system was established in 1839. Even the dramatic structural changes of the 1930s, when the state assumed

the duty of financing the current expenses of local school units, did not change this basic responsibility. This division of responsibility was reaffirmed in 1984 by passage of G.S. 115C-408(b), which states that “the facilities requirements for a public education system will be met by county governments.”

Nonetheless, over the years the state has repeatedly, and increasingly, responded to the need for new and improved school facilities by offering direct and indirect assistance for construction costs. As early as 1903, for example, the state made relatively modest loans from the State Literary Fund to counties for school construction.⁵⁷ Several times since 1949 the state has issued bonds to finance construction grants to local school boards. The bond issues totaled \$25 million in 1949 (combined with \$25 million from the postwar reserve fund), \$50 million in 1953, \$100 million in 1963, and \$300 million in 1973. Proceeds of the 1963 and 1973 bond issues were distributed solely on the basis of school enrollment.

visited August 5, 2006). The 2005 study is available for purchase at the same web address.

55. 1993 N.C. Sess. Laws (Reg. Sess. 1994) ch. 769, sec. 8.5.

56. G.S. 115C-102.5 through -102.7.

57. Benjamin B. Sendor, “Financing School Construction: A Primer,” *School Law Bulletin* 16 (Winter 1985): 1-8.

As the funding wells created by the 1963 and 1973 state bond issues ran dry, many local school units found it increasingly difficult to pay for school construction with local funds. In 1979 the Governor's Commission on Public School Finance recommended the issuance of additional bond issues to aid local school construction.⁵⁸

The General Assembly did not adopt that recommendation. Instead, in 1983 it provided alternative relief, authorizing counties to levy an additional one-half-cent sales and use tax, with a specified percentage of the resulting revenue earmarked for school capital outlay (including retirement of existing school indebtedness).⁵⁹ In the first five years after the tax was imposed, the counties were to use 40 percent of the proceeds for school capital outlay or retirement of indebtedness related to capital outlays; in the next twenty-three years, they were to use 30 percent for those purposes.⁶⁰ In 1986 the General Assembly authorized another local retail sales tax at the same half-cent rate.⁶¹ In the first twenty-five years of the tax, counties were required to use 60 percent of the revenues received for public school capital outlay purposes or to service school debt incurred during the five years before the tax became effective.⁶² This earmarking extends until at least 2011. Counties may hold these moneys in a capital reserve fund for future projects and must also use any interest earned on the earmarked revenues for school capital outlays.

Both the 1983 and 1986 laws include a provision allowing a county to petition the North Carolina Local Government Commission for authorization to use part or all of the earmarked revenues for other purposes. The Local Government Commission will approve a petition only if the county demonstrates that it can provide for school capital needs without the earmarked revenue. A local board of education may also petition the Local Government Commission if it believes that the county has not complied with the intent of these sales and use tax laws.

Although local responsibility for financing school capital outlay remains in place, these local sales taxes may reasonably be viewed as a form of state revenue sharing because the state is collecting a traditional state revenue source—the retail sales tax—and giving it to local units for school construction. In addition, the General Assembly changed the distribution of the sales tax proceeds to favor poorer counties; the proceeds of the 1983 and 1986 local sales taxes are

now distributed to counties according to population rather than point of collection.

The School Facilities Finance Act of 1987, financed mainly by an increase in the corporate income tax, provided additional state funds for school construction.⁶³ The act established two new funds, the Public School Capital Building Fund and the Critical School Facility Needs Fund.

The Public School Capital Building Fund provides aid to all county governments. Moneys may be used for school building capital needs and school technology needs (these moneys are transferred to the State School Technology Fund and allocated by that fund to the school unit). Forty percent of the revenues from the Education Lottery Fund go to the Building Fund. Moneys are distributed to all counties according to their school enrollment. Funds for capital projects must be matched by \$1 of local funds for each \$3 of state funds; earmarked local sales tax revenues can be used as local matching funds. No matching funds are required if the money is used for technology.

Using funds from corporate income taxes, the Critical School Facility Needs Fund aided counties and school units with the most pressing needs in relation to their resources. The Critical School Facility Needs commission determined which counties had the greatest critical needs. The fund awarded \$95.5 million in 1988 and \$10 million per year in subsequent years to districts with the most limited ability to address urgently required building needs. Sixty school systems received \$259 million from this fund. After 1994, when the priorities set in 1988 by the commission had been funded, the remaining moneys in the Critical School Facility Needs Fund reverted to the Public School Building Capital Fund (though the statutes have not yet been repealed).⁶⁴

This fund, like the method of distributing proceeds from the 1983 and 1986 local sales taxes, reflects the General Assembly's concern for the counties with greatest needs and the least ability to pay for school construction. As a result of these provisions, poorer counties have received more state aid per student for construction than larger, high-income counties have.⁶⁵

From 1984 to 1993 the new state aid measures (the earmarked portion of sales tax revenues and money from the two funds established in 1987) provided local units nearly \$1.5 billion in additional funds for school construction.⁶⁶ While this additional state aid was substantial, it was only half of the \$3 billion spent on school construction during this period. Counties provided the other half by using

58. Governor's Commission on Public School Finance, *Access to Equal Educational Opportunity in North Carolina* (Raleigh, N.C.: GCPSE, 1979).

59. G.S. Ch. 105, Art. 40.

60. G.S. 105-487.

61. G.S. Ch. 105, Art. 42.

62. G.S. 105-502.

63. G.S. 115C-546.1 and -546.2; G.S. 115C-489.1 and -489.2.

64. 1995 N.C. Sess. Laws (Reg. Sess. 1996) ch. 631, sec. 14.

65. Charles D. Liner, "Twelve Years and \$3 Billion Later: School Construction in North Carolina," *Popular Government* 60 (Fall 1994): 30-43.

66. *Id.*

local revenue sources and debt financing. Debt financing has become increasingly popular, in part because the most effective way for a county to take advantage of state aid is to leverage it by issuing bonds and using earmarked sales tax proceeds to pay debt service payments.

In 1996, when school construction needs were estimated at over \$6 billion, the General Assembly turned back to state general obligation bonds as a way to meet these needs. In the Public School Building Bond Act of 1996,⁶⁷ the legislature authorized, and the voters approved, issuance of up to \$1.8 billion in state general obligation bonds for school capital outlay purposes. Of this total, \$1.77 billion is to be divided among the state's school administrative units in amounts specified for each school unit. Overall, 40 percent of the total is allocated on the basis of average daily membership (ADM), 35 percent on the basis of ability to pay, and 25 percent on the basis of the unit's growth. All school units participate in the allocation based on ADM but not in allocations based on the other two factors. A match, derived through a formula, is required for every dollar of bond proceeds allocated according to ADM and high growth. A county may meet the match requirement by nonstate expenditures for public school facilities made on or after January 1, 1992.

The remaining \$30 million (of the \$1.8 billion) must be distributed among small school systems; no local match is required for these funds. Counties must report annually to the State Board on the match requirement and on the impact of the bond proceeds on the property tax rate for that year.

Between 1987 and 2004, \$812,475,285 of the Public School Building Bond was allotted; the fund balance was \$74,832,629.⁶⁸ A five-year facilities study conducted by the School Capital Construction Study Commission, released in 2001, identified \$6.2 billion in facilities spending needed through 2006.⁶⁹ Besides the \$3.01 billion gap between spending and the projected needs are additional needs created by many school districts that are growing faster than the 2001 survey projected. Overall the state's student population has grown about 6 percent in the past five years, but in some urban districts the increase has been between 15 and 23 percent.⁷⁰ Legislation calling for smaller class sizes also heightens the need for new facilities spending.⁷¹ A preliminary facility needs survey and report came out in

April 2006.⁷² For the years 2006–2011, the survey projects facility needs of \$9.7 billion. The survey again cites increasing ADM as a reason for the dramatic increase in facility needs, and also cites the need to integrate pre-kindergarten facilities with public school facilities.

In 2004 the legislature established a Local School Construction Financing Study Commission charged with examining the present system of local financing for school facilities, studying alternative options, and making a final report in April 2006.⁷³

A new source of state aid for school construction is the Education Lottery Fund. Forty percent of the revenue in this fund must be allocated to the Public School Building Capital Fund, apportioned as follows: 65 percent on a per average daily membership basis; and 35 percent to local schools in counties in which the effective county tax rate as a percentage of the effective state average tax rate is greater than 100 percent.

A minor source of state aid for school capital outlay is the State Literary Fund, which was established in 1825 as an endowment for education. Revived early in the twentieth century, it became a permanent loan fund for local school units constructing and equipping their facilities. The fund is maintained by the State Board, which makes loans for ten years at a rate of interest not to exceed 8 percent per year. The borrowing procedure is outlined in Article 32 of G.S.115C and in State Board of Education rules.

LOCAL FUNDS

Although the public school system is primarily financed by the state, the average county allocates nearly a third of its funds for the operation of the public schools. These locally raised revenues are used principally to provide, equip, and maintain the physical plants for the schools and to supplement the state's support of the operating budget.

Local administrative units, and thus county commissioners, are required by statute to finance some areas of school operation. The General Statutes specify several categories that must be provided for mainly from local revenues.

1. Buildings, furniture, and apparatus [G.S. 115C-521(b)]
2. Garage and maintenance equipment for school buses [G.S. 115C-249(e)]
3. Liability insurance [G.S. 115C-47(25)]
4. Maintenance of plant [G.S. 115C-521(c) to 115C-524]
5. Site acquisition (G.S. 115C-517)
6. Furnishing of superintendent's office (G.S. 115C-277)

67. 1995 N.C. Sess. Laws (Reg. Sess. 1996) ch. 631.

68. Public School Building Capital Fund Annual Report (2004), available on the Web at www.schoolclearinghouse.org.

69. North Carolina Public Schools Facility Needs Survey (2000–2001) available on the Web at www.schoolclearinghouse.org.

70. North Carolina State Board of Education, 2002–2004 State Board of Education Annual Report, available at http://www.ncpublicschools.org/state_board/annualrpt/02-04/14eeo.html.

71. See, e.g., G.S. 115C-472.10.

72. North Carolina Public Schools Facility Needs Survey, Preliminary Report (April 2006), available on the Web at www.schoolclearinghouse.org.

73. As of June 2006, no report had been issued; in fact, it is unclear whether the commission has actually undertaken the study.

7. School building supplies [G.S. 115C-522(c)]
8. Water supply and sewerage facilities [G.S. 115C-522(c)]

Counties may raise money for school construction through a general obligation school bond issue or through installment financing; school administrative units have no authority to issue bonds or otherwise borrow money for construction. Projects may also be paid for from current revenues, including county property taxes, local sales and use taxes, voter-approved supplemental property taxes, proceeds from the sale of capital assets, proceeds from claims against fire and casualty insurance policies, and other sources.⁷⁴

FEDERAL FUNDS

Although public education is a state and local responsibility, since the 1950s the federal government has assumed a significant role in public education, primarily by providing funds to states. Congress generally conditions a state's receipt of federal funds on the state's compliance with federally defined conditions.

For example, the No Child Left Behind Act of 2001 created rigorous testing, reporting, and academic progress requirements for all states receiving Title I funds (all fifty states). Title I, which is aimed at raising the academic achievement of low-income children, is the largest source of federal education funds. Significant federal funding also goes to programs for children with disabilities and to the school breakfast and lunch program.

Most federal moneys are categorical funds, which means that they are appropriated by Congress to the states for specific educational purposes. These funds are channeled through the State Board for distribution to local units, but the board has little control over the programs themselves. In general, poorer school units receive more federal dollars relative to their enrollment than wealthier units do.

The School Budget and Fiscal Control Act

The legal responsibility for public education is shared by state government, local boards of education, and boards of county commissioners. The primary responsibility, both for policy making and for financing, rests at the state level with the General Assembly and the State Board. Local responsibility is divided between boards of education and boards of county commissioners. Broadly speaking, the school board formulates educational policy, while the commissioners control the county's financial policy and determine the amount of the county funds that goes to the schools.

In practice, of course, the division of responsibility is not that simple. In appropriating funds for schools, the commissioners cannot help but influence educational policy. And school boards, if they are dissatisfied with the share of county resources allocated to them, are entitled to take their case beyond the commissioners to the courts. Recognizing that it has created a framework for local school funding that has a built-in potential for conflict, the General Assembly also enacted legislation encouraging local boards of education and boards of county commissioners to conduct periodic joint meetings to promote "greater mutual understanding of immediate and long-term budgetary issues and constraints affecting public schools and county governments." In particular, the boards are encouraged to assess school capital outlay needs and develop a joint plan to meet those needs.⁷⁵

Because the relationship between the two boards is fundamentally financial, and because some local government budgeting procedures are inappropriate for school operations, the General Assembly has provided a separate budgeting procedure for school boards, which are exempt from the Local Government Budget and Fiscal Control Act.⁷⁶ Budgeting procedures for school boards are established in the School Budget and Fiscal Control Act (School Budget Act), codified at G.S. 115C-422 through -452. This act outlines a uniform budgeting, accounting, and fiscal-control procedure that every school board must follow. The act also establishes a budgetary relationship between school units and their local tax-levying authorities that dovetails with the provisions of the Local Government Budget and Fiscal Control Act.

Major features of the School Budget Act include the following:

1. Each school administrative unit must operate under a balanced annual budget resolution that authorizes all expenditures, regardless of revenue source.
2. Each administrative unit's superintendent acts as its budget officer, and each unit also must have a finance officer.
3. The state's substantial financial role in public education is reflected in special reporting requirements, special provisions for disbursing state moneys, and a state-designed, mandatory uniform budget format.
4. Local governments' role in supporting the schools and participating in the school budgetary process is described in the act.
5. A special dispute-resolution procedure is available when a school board is dissatisfied with the county's appropriations to the school unit.

74. G.S. 115C-426(f).

75. G.S. 115C-426.2.

76. G.S. Ch. 159, Art. 3.

UNIFORM BUDGET FORMAT

G.S. 115C-426 charges the State Board with preparing and promulgating, in cooperation with the Local Government Commission, a uniform budget format for school administrative units. This format mandates the fund structure and chart of accounts, thereby establishing the framework within which financial information is presented and budgetary decisions are made. Administrative units prepare their budgets in conformity with the uniform format—the format in which school boards must transmit proposed school budgets to the county commissioners.

In addition to creating a framework for decisions, the uniform format facilitates the fiscal management of each local school unit. It also supports the collection of accurate and reliable data on public school system operations and allows comparisons among school units.

Each administrative unit must maintain at least four funds (a fund is an independent accounting and fiscal entity): a state public school fund, a local current expense fund, a capital outlay fund, and a school food services fund. The state public school fund accounts for current operations funded by state moneys made available to the local unit by the State Board. The local current expense fund accounts for current operations. It is funded by county revenues; supplemental taxes; fines, penalties, and forfeitures received from the court system; state money disbursed directly to the administrative unit; and other moneys available for current operations. The capital outlay fund accounts for land acquisition; construction, reconstruction or renovation, acquisition, and equipping of buildings; acquisition or replacement of furniture, furnishings, instructional apparatus, and similar equipment; and acquisition of school and activity buses. It is funded by both state and county capital outlay appropriations, local supplemental school taxes, if any, and minor sources such as proceeds from insurance and the sale of capital assets. The school food services fund's purpose is described by its name. The uniform budget format sets out in detail the project, program, and function breakdown within each fund.

The uniform format also permits school units to establish other funds to account for federal grant moneys, special tax areas, and trust and agency accounts. A school unit's decision to establish additional funds will depend on its programs, revenue sources, and accounting practices.

BUDGET PREPARATION AND ADOPTION

The budget calendar

The superintendent submits a proposed budget and budget message to the school board no later than May 1 and makes the proposed budget and budget message available for public inspection in the superintendent's office. The budget message "should contain a concise explanation of the

educational goals fixed by the budget for the budget year, should set forth the reasons for stated changes from the previous year in program goals, programs, and appropriation levels, and should explain any major changes in educational or fiscal policy."⁷⁷

The school board considers the superintendent's proposed budget, holds a public hearing if it chooses to, makes changes it decides are advisable, and submits the entire budget to the board of county commissioners no later than May 15, unless that board has set a later date.

By July 1 the county commissioners must make appropriations to the school administrative unit, unless the school board agrees to extend this deadline. (Note that in many years the board of commissioners must act before the General Assembly has adopted the state budget, which may make budgeting decisions difficult.) Shortly after the county acts, the school board adopts its budget resolution. The following sections discuss this process in more detail.

Submission to the Board of County Commissioners

The school board normally transmits the administrative unit's budget to the county commissioners in mid-May. Although the board of commissioners may extend the May 15 deadline, it may be reluctant to do so. Education is a substantial part of a county's budget, and the county's budget officer needs time to review the school board's requests before submitting the entire county budget to the board of commissioners around June 1.

Although the county budget officer is free to recommend funding levels for programs different from those requested by the school board, he or she must also present the school board's actual requests to the county commissioners because G.S. 115C-429 directs the school board to submit its budget to the board of county commissioners.

Although the superintendent must make the proposed budget available for public inspection in the superintendent's office, the school board is not required to publish a notice of the budget request or hold a public hearing on it before transmitting the request to the county commissioners. While the School Budget Act does not explicitly say so, it relies on the open meetings law, the public records law, and procedures in the Local Government Budget and Fiscal Control Act to provide opportunities for public knowledge, inspection, and comment on the school budget. The school board's proposed budget often is available, along with the county's budget, in the office of the clerk to the board of county commissioners; funding for schools is also very likely to be a topic of discussion at the county's budget hearing.

⁷⁷ G.S. 115C-427(b).

School financial information

In light of their funding responsibilities, commissioners have an interest in the total financial operations of their county's school unit(s) and need all relevant information to make informed decisions. The School Budget Act recognizes the validity of this interest and the need for information by providing that the board of county commissioners is entitled to a broad range of information on the financial operations of public schools.

First, the school board must submit its *entire* budget to the county commissioners, not just that part for which county funding is requested. Second, the person who conducts the annual audit of school operations must file a copy of the audit report with the commissioners. Third, at the commissioners' request, the school board must make available all books, records, audit reports, and other information bearing on the financial operation of the local administrative unit. Finally, the school finance officer must make periodic reports to the county commissioners, if they request them in writing.⁷⁸ School board records are, of course, also subject to G.S. Ch. 132, the public records law.

COUNTY APPROPRIATION

The county commissioners review the school board's proposed budget as part of the county's regular budget process. Although the commissioners have the entire proposed budget and may examine it line-by-line, they appropriate only county revenues and may prescribe their use only within statutory limits.

The county's budget ordinance should include at least two appropriations to each school administrative unit in the county: one to the local current expense fund and one to the capital outlay fund. The current expense fund includes instructional, support, and other operating expenditures of the school system. The capital outlay fund includes appropriations for site acquisition, new buildings, renovation of existing buildings, furnishings and equipment, new school buses, activity buses, and other vehicles.

The board of county commissioners may make lump-sum appropriations to these two funds. Or it may allocate all or part of its appropriations to particular *purposes* or *functions*—as defined in a chart of accounts promulgated by the State Board—in the current expense funds or to specific projects in the capital outlay fund.⁷⁹ The purpose categories are instructional programs, supporting services, community services, and nonprogrammed charges. Each purpose is comprised of from two to seven *functions*. The uniform chart of accounts identifies three categories of capital outlay projects.

1. Category I: acquisition of real estate and construction and renovation of buildings
2. Category II: acquisition or replacement of furnishings and equipment
3. Category III: acquisition of school buses, activity buses, and other motor vehicles

Capital outlay appropriations for Category I may be allocated according to the specific acquisition, construction, or renovation project. Category II and Category III appropriations are allocated by the entire category rather than by individual items of equipment or furniture or individual vehicles. These allocations serve, in effect, as a maximum authorization for the use of county money for each of the projects, purposes, and functions specified, and the board of education must observe them when it adopts its own budget resolution.

The commissioners may not, however, control the school board budget for current expenses at the line-item level. They may not direct the school board to limit expenditures within a given function to specified line items; nor may they in any other way limit the school board's line-item discretion. For example, they may not direct that funds be spent on the band or on athletic teams or set a principal's salary. Nor may commissioners bypass the budget process and contribute county funds directly to individual schools for purposes they favor.

The board of county commissioners is also limited in its authority to amend the county's budget ordinance with respect to the school board budget. G.S. 159-13(b)(9) prohibits the board from reducing school appropriations after it adopts the county budget ordinance unless the school board consents to the reduction or economic conditions require a general reduction in county spending. Before the county commissioners make any such reduction, they must hold a public meeting at which the school board has an opportunity to present information about the reduction's impact. In addition, the commissioners must vote publicly on any decision to reduce appropriations to a school unit, although they may unilaterally increase the school board budget.

G.S. 115C-437 permits the county and each school unit within it to establish procedures for transferring county appropriations to school units. If a school unit and county cannot agree on a transfer procedure, the county must remit the moneys to the school unit in monthly installments sufficient to meet the unit's needs for the coming month.

Apportionment

If a county has only one administrative unit, the board of commissioners may divide its school appropriations between current expense and capital outlay as it sees fit, subject only to the school board's ability to challenge this division under the dispute-resolution procedure. In coun-

78. G.S. 115C-429(a); -447; -429(c); -436(a)(4).

79. G.S. 115C-429(b)

ties with more than one administrative unit, the School Budget Act requires that county appropriations to local current expense funds be apportioned among the school units according to each unit's ADM. On the basis of those figures, the "dollar amount obtained by dividing the amount . . . appropriated to each unit by the total membership of the unit" must be the same for each unit.⁸⁰

The apportionment requirement is designed to promote equity and prevent favoritism in current operations appropriations among school units in the same county. However, as the capital outlay needs of units may differ, the apportionment requirement does not apply to county appropriations for capital outlay.

BUDGET DISPUTES

The board of county commissioners appropriates funds to many departments and agencies and generally exercises sole discretion over the amounts. County departments and agencies must accept the commissioners' decision, but school boards have a statutory right to challenge their decisions on school funding.

G.S. 115C-431 establishes a procedure for resolving disputes when a school board is dissatisfied with the county appropriation. The process begins with a formal determination by the school board that the amount of the county appropriation to the local current expense fund, or the capital outlay fund, or both, is "not sufficient to support a system of free public schools." After such a determination, the two boards must meet and attempt to resolve their differences. A mediator, selected by the two boards or by the senior resident superior court judge, conducts the initial meeting.

If the dispute is not resolved at the joint meeting, mediation is available at the request of either board. Unless the boards agree otherwise, each board will be represented in the mediation by a working group. Working group members are the chair of each board or the chair's designee, the superintendent and county manager or their designees, each board's finance officer, and each board's attorney. Mediation sessions are closed to the public.

Mediation must end no later than August 1, unless both boards agree to continue. If the mediation continues beyond August 1, the board of county commissioners must appropriate the same amount to the school unit's current expense fund as it appropriated the previous year.

If the working groups reach a proposed agreement, each board must approve it. If no agreement is reached, the mediator announces that fact but may not disclose any other information about the mediation or make any recommendations or public statement of findings or conclusions.

Within five days of the mediator's announcement that no agreement was reached, the board of education may file an action in superior court. G. S. 115C-431(c) states that the court "shall find the facts as to the amount of money necessary to maintain a system of free public schools, and the amount of money needed from the county to make up this total." A judge will hear the case unless one of the boards requests a jury trial. Under the rule set in *Kinston City Board of Education v. Board of Commissioners*, the trial court judge may summon a jury from another county if necessary in order to provide a fair trial.⁸¹ The issue submitted to the jury "shall be what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools."⁸²

The court orders the board of county commissioners to appropriate a specific sum to the school board (which may be the amount the county originally appropriated) and to levy any additional property taxes needed to meet that sum. The court's findings of fact are conclusive and will not be overturned on appeal unless the "findings were made arbitrarily or in abuse of statutory duty," according to *Board of Education of Onslow County v. Board of Commissioners*.⁸³

Special appropriation to local current expense fund

A court order to the board of county commissioners to increase the funding for the school unit may create a significant disruption in the county's budget. The dispute procedure recognizes this urgency by setting short deadlines and accelerating scheduling for a case to be heard in court.

In spite of the accelerated procedure, disputes sometimes are not resolved until mid-fall or even later in the budget year. If the superior court's decision is appealed and the judge feels that the appeal cannot be resolved in time for additional taxes to be levied that year, he or she will order the board of county commissioners to appropriate to the school unit's local current expense fund "a sum of money sufficient when added to all moneys available to that fund to equal the amount of this fund for the previous year."⁸⁴ (Presumably "amount" in this context refers to the amount budgeted for the fund, not the amount actually spent.)

This provision is intended to establish a reserve in case the final decision goes against the county. The school board should consider the difference between the court-ordered appropriation and the actual county appropriation as a kind of trust fund. If the final decision favors the county, the difference will revert to the county.

80. G.S. 115C-430.

81. *Kinston*, 29 N.C. App. 554, 225 S.E.2d 145 (1976).

82. G.S. 115C-431(c).

83. 240 N.C. 118, 121, 81 S.E.2d 256, 258 (1954).

84. G.S. 115C-431(d).

This provision has only a limited effect. First, it applies only to the local current expense fund, not to the capital outlay fund. Second, the provision is useful only if the local current expense fund appropriation is lower for the disputed budget year than it was in the previous year. If the county's current expense appropriation is the same or higher than that of the previous year, the provision has no effect.

Appeals

Even though a losing party has the right to appeal the trial court's decision, the state court of appeals effectively blocked almost all appeals from superior court in its 1993 decision in *Cumberland County Board of Education v. Cumberland County Board of Commissioners*.⁸⁵ In that case, the board of education and board of county commissioners disputed the amount of county funding for the 1992–1993 school year. The boards followed dispute resolution procedures then in effect; ultimately the board of commissioners appealed the superior court's ruling in favor of the school board to the state court of appeals. The appeals court did not hear the case until October 1993—five months after the 1992–1993 school year had ended.

The court dismissed the appeal, ruling that the matter was moot because the school year at issue was over. The court recognized that its decision created a barrier to almost all appeals to the appellate court because any dispute would most likely be moot by the time it reached the appellate level, at least for current expense appropriations. Nevertheless, the court stated, the General Assembly was the appropriate body to solve this problem.

Additional taxes

If the final judgment demands further appropriations from the county that are greater than its available resources, the board of county commissioners is authorized to levy supplemental property taxes in addition to those already levied in the county budget ordinance.⁸⁶ If the court's order is entered before September 1, the second levy should be collected as a part of the original one. If the order comes after September 1, the new taxes become due on the date levied, and interest begins to accrue 120 days later.

BUDGET EXECUTION BY THE SCHOOL BOARD

After the commissioners have made their appropriations to the board of education, or after the dispute-resolution procedure has concluded, the school board must adopt a budget resolution. If the school board does not act by July 1, it must

make interim appropriations for salaries and the usual ordinary expenses of the administrative unit.

The budget resolution must account for all expenditures of the school administrative unit, regardless of the revenue source. G.S. 115C-432(b) subjects the school board to several budget directions and limitations. The budget must be balanced and must contain sufficient appropriations to fund continuing contracts and past deficits. Estimated revenues from any supplemental taxes must be realistic; the estimated percentage of collections may not exceed the percentage of collections from the previous year.

G.S. 115C-432(b) requires the school budget resolution to observe any allocations the county has made in its appropriations to the school unit. For example, if the county allocates \$75,000 of its local current expense fund appropriation to Adult Education, the school board must appropriate \$75,000 of county money for that function. If the school board has other funds available, it may increase the total funds spent on that (or any other) function.

School budget amendments

Once adopted, the school board may need to amend its school budget resolution in response to changing circumstances. The amended budget must remain balanced, and the county commissioners must approve certain changes.

Amendments to capital outlay projects. G.S. 115-426(f) groups capital outlay expenditures into six categories.

1. Land acquisition
2. Acquisition and construction of buildings
3. Acquisition or replacement of furnishings and equipment
4. Acquisition of school buses
5. Acquisition of activity buses and other motor vehicles
6. Other items assigned to capital outlay by the uniform budget format

G.S. 115C-433(b), which governs amendments to appropriations for capital outlay projects, may be interpreted two ways. Under the first interpretation, a proposal to amend the school budget resolution to increase or decrease funding for projects in categories (1) and (2) above must be approved by the board of commissioners only if the school board is considering amending a project that has been the subject of an allocation. A second view is that commissioner approval is required for any change in the school budget resolution affecting a project in category (1) or category (2) if the commissioners have allocated *any* portion of the appropriation. The second interpretation rests on a very literal reading of the statute and seems unnecessarily harsh. If the commissioners want to maintain some control over county appropriations for school capital outlay, they may do so by

85. 113 N.C. App. 164, 438 S.E.2d 424 (1993).

86. G.S. 115C-431(e).

allocating the capital outlay appropriation among specific projects.

Because the statute is silent about changes in allocations in the other four categories of capital outlay expenditures, the school board may change these allocations as it sees fit.

Amendments within the current expense fund. If the commissioners make a lump-sum appropriation to current expenses, the school board may amend the current expense budget on its own. If the commissioners have allocated all or part of the county's appropriation to the local current expense fund for specific functions, the school board acting alone may modify an allocation only to a limited extent—increasing or decreasing an allocation up to 25 percent. Any amendment that results in a larger change must be approved by the commissioners.

This 25-percent rule applies unless the board of commissioners reduces the percentage change that will invoke commissioner review at the time the county budget is adopted. The commissioners may select a percentage anywhere from 10 to 25 percent and may apply different percentages to different allocations. The school board always has discretion to amend an allocation by less than 10 percent.⁸⁷

Transfers to or from the capital outlay and current expense funds. Out of respect for the board of commissioners' allocation decisions and the requirement of apportionment, transfers of county moneys from the capital outlay fund to the local current expense fund, or vice versa, are permitted but tightly restricted.⁸⁸ First, they may be made only to meet emergencies that were both "unforeseen and unforeseeable" when the school budget resolution was adopted; for example, if a hurricane lifts the roof off a school building. Second, a proposed transfer must be approved by the board of commissioners.

The school board initiates a transfer between the capital outlay and current expense funds by adopting a resolution that states the following:

1. The amount of the proposed transfer
2. The nature of the emergency
3. Why the emergency was unforeseen and could not have been foreseen
4. What objects of expenditure will be added or increased
5. What objects of expenditure will be reduced or eliminated

The school board sends copies of the resolution to the board of commissioners and to other school boards (if any) in the county. Within thirty days, the commissioners must offer those school boards an opportunity to comment on

the transfer and then act on the request. If the commissioners do not act within thirty days, approval is assumed, although the school board may agree to an extension of the thirty-day deadline. Once the commissioners act, the county must notify the requesting school board and any other board that commented on the request.

SCHOOL FINANCE OFFICER

Each school unit must have a school finance officer, who is appointed by the superintendent with the approval of the school board and serves at the superintendent's pleasure.⁸⁹ Although the statute permits the superintendent, with the approval of the school board and the county commissioners, to designate the county finance officer as school finance officer, this is rarely, if ever, done. In counties where there is more than one school unit, the statute also permits one person to serve as school finance officer for all units in the county as long as the arrangement is approved by the affected superintendents and school boards as well as the board of commissioners. This, too, is an unusual arrangement.

G.S. 115C-436 describes the major duties of the school finance officer. The school finance officer is responsible for keeping the accounts of the school unit; receiving and depositing moneys; investing idle cash; signing and issuing checks, drafts, and state warrants; and providing the pre-audit certificate required on all contracts, agreements, and purchase orders. The finance officer must make any periodic financial reports that the superintendent or the school board requests and provide periodic financial reports to the county commissioners if they request them in writing. G.S. 115C-446 requires semiannual reports to the Local Government Commission.

The state pays for one school finance officer for each county as part of the Basic Education Program, and every finance officer paid in whole or in part with state funds must meet standards set by the State Board. In counties with more than one school unit, the amount of funds each unit receives for this officer is determined by applying its percentage of the total county average daily membership to the salary schedule for the appropriate finance officer certification level.

MANAGEMENT OF FUNDS

Incurring obligations

The School Budget Act requires an annual balanced budget, and a school unit may not incur an obligation unless (1) the budget resolution adopted by the school board includes an appropriation authorizing the obligation and (2) the appropriation contains an unencumbered balance sufficient to

87. G.S. 115C-433(b).

88. G.S. 115C-433(d).

89. G.S. 115C-435.

pay the sums that will become due during the current fiscal year. In addition, a preaudit certificate signed by the school finance officer is necessary if evidence of the obligation is in the form of a contract, agreement, or purchase order. An obligation that does not meet these conditions is invalid and unenforceable.⁹⁰

Disbursements

Claims against a school unit may be paid only if they have been approved by the school finance officer or the school board. Finance officers may approve claims if (1) they determine the amount to be payable, (2) the budget resolution includes an appropriation authorizing the expenditure, and (3) either an encumbrance has been created for the transaction or an unencumbered balance sufficient to pay the claim remains in the appropriation.⁹¹

If the finance officer disapproves a bill, invoice, or other claim, the board of education may approve it only if an appropriation appears in the budget resolution and the school board has an unencumbered balance in the appropriate fund that is more than the amount to be paid. If the board authorizes payment, it must do so by formal resolution, stating the reasons for the action. The resolution must be put in the minutes along with the names of members who voted for it. The board chair or some other member designated for this purpose signs the certificate (see the next paragraph) on the check or draft given in payment. If payment results in a violation of law, all members who voted to allow payment are jointly and severally liable for the full amount of the payment.

With the exception of payroll checks, all payments made by the school unit by check must bear a certificate signed by the school finance officer, or by a school board member as described above, indicating that the payment has been approved as required by the School Budget Act.

Special funds of individual schools

Individual schools often handle cash, which may include gate receipts from athletic events, dues of student organizations, or yearbook money. The board of education must appoint a treasurer for each school that handles \$300 or more in cash during the school year. The treasurer keeps appropriate records and reports to the superintendent and finance officer of the administrative unit as they or the board of education prescribe.⁹²

The board of education has two options for handling these special funds. It may require that all funds of individual schools be deposited with and accounted for by the

school finance officer, or it may permit the treasurer at the school to be responsible for the funds.

Investment of idle cash

When there is a cash balance in any fund held by the school unit, the unit may either deposit it at interest or invest it.⁹³ The unit's finance officer is responsible for managing the investments. Because the unit may invest only moneys it has actually received, the county finance officer remains responsible for investing county funds allocated to the school unit until the county transfers them to the school finance officer.

Annual audit

To ensure compliance with the School Budget Act and permit monitoring of local school units' financial status, each unit must have an annual audit of its accounts and the accounts of the individual schools.⁹⁴ The school board selects the auditor, who must be a certified public accountant or an accountant certified by the Local Government Commission as qualified to audit local government accounts. The auditor reports directly to the school board, and copies of the audit report are filed with the secretary of the Local Government Commission, the State Board of Education, the local board of education, and the board of county commissioners.

Other County Responsibilities

SPECIAL SCHOOL ELECTIONS

Special school elections may be held to vote on proposals to⁹⁵

1. authorize a local supplemental tax,
2. increase the supplemental tax rate in an area that already has a supplemental tax of less than the maximum rate set by statute,
3. enlarge a city administrative unit by consolidating areas of a county unit into the city school unit,
4. supplement and equalize educational advantages by levying a special tax in an area of a county administrative unit enclosed in one common boundary line,
5. abolish a supplemental school tax,
6. authorize the county to issue school bonds,
7. provide a supplemental tax on a countywide basis pursuant to merger of all administrative units within a county,

90. G.S. 115C-441.

91. G.S. 115C-441(b).

92. G.S. 115C-448.

93. G.S. 115C-443.

94. G.S. 115C-447.

95. G.S. 115C-501.

8. annex or consolidate school areas from contiguous counties and provide a supplemental school tax in such annexed or consolidated areas, or
9. vote school bonds and taxes in certain merged school administrative units.

If an election is held on any of these issues and the proposition is rejected, another election on the same issue in the same area may not be called for at least six months. An election on whether to abolish a local tax district may not be held any sooner than one year after the election establishing the district or after an election on the issue of dismantling the local tax district. If a local tax district is in debt or has unmet obligations, no election may be held on the issue of abolishing that tax district.⁹⁶

The board of county commissioners' involvement begins when it receives a petition from a county or city school board requesting a special school election. The petition, which must be approved by the school board, need not originate with the school board itself. It can also be submitted by a majority of qualified voters who have resided for the preceding year in an area adjacent to a city administrative unit; these voters may petition the county board of education for an election on the question of annexing their area to the city unit. For other types of special elections, 25 percent of the qualified voters in a school area may initiate a petition and submit it to the board of education. The school board must consider the petition and decide whether or not to approve it.

If a petition is approved by the school board, it is submitted to the county commissioners; G.S. 115C-506 requires the commissioners "to call an election and fix the date for the same." In *Yancey County Board of Education v. Board of County Commissioners*,⁹⁷ the North Carolina Supreme Court held that, if a petition for an election on authorizing a special supplemental tax is properly presented, the duty of the board of commissioners is ministerial and not discretionary; it is obliged to call the election. This rule probably does not apply to petitions for school bond elections because of inconsistent provisions in the laws regulating local government debt, but it does seem to apply to all other kinds of special elections listed above. The school board may withdraw a petition at any time before the election is called. All school elections, whether for county or city school administrative units, are held and conducted by the appropriate board of elections.

VOTED SUPPLEMENTAL TAXES

Under G.S. Chapter 115C, Article 36, the voters within a school unit may approve by referendum the levy of supplemental taxes for any item of expenditure in the school budget. The maximum supplemental tax rate voters may approve under general law is \$0.50 per \$100 value (or \$0.60 per \$100 for a school administrative unit or school area with a total population of 100,000 or higher). Some school units have higher rates authorized by local legislation. The maximum rate of the tax and the uses to which the proceeds may be put are established by the terms printed on the tax referendum ballot.

In almost all cases the special tax is levied by the county commissioners; in a very few units, by a city council. G.S. 115C-511 establishes the procedure for levying a supplemental tax approved under the general law procedures. (The levy of a supplemental tax approved pursuant to a local act is also subject to that act.) Based on an estimate of the appraised valuation of the unit from the county tax assessor, the school board, in the proposed budget it submits to the commissioners, requests a specific rate for the supplemental tax. The board's request, which may not exceed the maximum approved by the voters, establishes the maximum that may be levied by the board of county commissioners for that year. The commissioners, however, have discretion in setting the rate as long as they do not exceed the rate requested by the school board.

A supplemental tax is not part of a county's appropriation to the school unit. Both G.S. 115C-511 and G.S. 159-26(b) anticipate that the tax-levying authority acts simply as an agent for the school unit or tax district in collecting the tax. Two practical effects arise from this. First, while commissioners may consider the availability of supplemental tax proceeds when setting the county's appropriation to the school board, they may not specify how the proceeds of the tax are to be used by the school board. This decision is the school board's, subject only to the terms of the ballot measure under which the tax was approved. Second, the school unit is entitled to the proceeds of the tax remitted monthly, less the actual cost of levying, computing, and collecting the tax if the board of commissioners decides to deduct it.⁹⁸ If collections exceed budget estimates, the school board receives the excess; if actual collections are less than the estimates, the school board must adjust expenditures to account for the shortfall.

FINES, PENALTIES, AND FORFEITURES

Article IX, Section 7 of the state constitution provides that "the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of

96. G.S. 115C-502.

97. 189 N.C. 650, 127 S.E.2d 692 (1925).

98. G.S. 115C-437.

the penal laws of the State, shall belong to and remain in the several counties and be used exclusively for maintaining free public schools.” For years there have been questions about the meaning of this provision—both as to which penalties and forfeitures it covers and as to the method of their disbursement.

In 1988 the state supreme court determined that Article IX, Section 7 applied not only to penalties and forfeitures in criminal cases, but also to penalties and forfeitures in civil cases.⁹⁹ And in 1996 the court in *Craven County Board of Education v. Boyle* made it clear that this constitutional provision covers penalties and forfeitures collected by a state agency, not just those collected by a county agency.¹⁰⁰ In the wake of this ruling, which directed a significant amount in environmental penalties directly to the Craven County finance officer, the General Assembly acted to appropriate moneys collected under Article IX, Section 7 to a centralized state fund, for subsequent disbursal to local school administrative units. To address the apparent conflict between the establishment of this centralized fund and the language in Section 7 stating that the clear proceeds “shall belong to and remain in the several counties,” the legislature proposed a constitutional amendment.

Voters approved the proposed amendment and, effective January 1, 2005, the General Assembly, as authorized, placed in a state fund the clear proceeds of all civil penalties, forfeitures, and fines collected by state agencies, which belong to the public schools under Article IX, Section 7(a). “Clear proceeds” is defined as the full amount of these penalties, forfeitures, and fines, diminished only by the actual costs of collection. The limit on actual collection costs is (effective July 2006) 20 percent of the amount collected.

G.S. 115C-457.2 requires that the clear proceeds be deposited in the Civil Penalty and Forfeiture Fund. In the past the funds were automatically transferred to the State School Technology Fund, but now the General Assembly must appropriate the moneys to the State Public School Fund in the current operations budget.

Appropriations from the Civil Penalty and Forfeiture Fund to the School Technology Fund were \$18 million for 2005–2006 and are \$18 million for 2006–2007; appropriations to the State School Public School Fund were \$102.5 million for 2005–2006 and are \$107.5 million for 2006–2007. These funds will be allotted, by the State Board, on behalf of counties, to local school administrative units on a per pupil basis.

APPROVAL OF PURCHASE PRICE FOR SCHOOL SITES

A school board may not execute a contract to purchase a site or make any expenditures for a property without the county commissioners’ approval “as to the amount to be spent for the site”¹⁰¹ The requirement applies whether the county has made a blanket capital outlay appropriation or has allocated moneys for this particular project. In 1975 in *Painter v. Wake County Board of Education*, the state supreme court considered an earlier version of this statutory provision; its ruling indicates that this approval requirement applies only when the school board is using funds from the county.¹⁰²

If the two boards disagree over this matter, they may resolve the dispute through the judicial procedure that is used to resolve budgetary disputes. If they do so, the issue to be resolved is the amount to be spent for the site, not its location. The school board has the sole authority to choose school sites; if the court finds the amount it proposes to spend reasonable, the school board will most likely prevail.

CONTINUING CONTRACTS FOR CAPITAL OUTLAY

School administrative units may enter into continuing contracts for multiyear capital improvement projects or outlays, even when the school unit’s budget resolution for the current year does not include an appropriation for the entire obligation incurred.¹⁰³ Three conditions for these continuing contracts must be met: (1) the budget resolution must include an appropriation authorizing the current fiscal year’s portion of the obligation; (2) an unencumbered balance of that appropriation for the current fiscal year must be sufficient to cover the unit’s current fiscal year obligations under the contract; and (3) the board of county commissioners must approve the contract by a resolution binding the board to appropriate sufficient funds to pay the amounts falling due under the contract in future fiscal years.

LEASE PURCHASE CONTRACTS

Local boards of education may use lease purchase or installment purchase contracts to finance the acquisition of certain kinds of equipment: automobiles and school buses; mobile classroom units; photocopiers; and computers and computer hardware, software, and related support services.¹⁰⁴ The contract term may not exceed the useful life of the property being acquired. The school unit may give the seller an interest in property being financed under installment purchase as security for payment. The school board need not obtain the commissioners’ approval of a lease purchase contract as long as the contract term is less than three

99. *Mussallam v. Mussallam*, 321 N.C. 504, 364 S.E.2d 364 (1988).

100. 343 N.C. 87, 468 S.E.2d 50 (1996).

101. G.S. 115C-426(f).

102. 288 N.C. 165, 217 S.E.2d 650 (1975).

103. G.S. 115C-441(c)(1).

104. G.S. 115C-528.

years and the total amount financed under the contract is below the lesser of \$250,000 or an amount equal to three times the local school system's annual state allocation for classroom materials and equipment. Commissioners must approve other contracts. In addition, the Local Government Commission must approve contracts for terms of five years or longer that obligate a school board to pay \$500,000 or more over the term of the contract. The school board must submit information concerning these contracts as part of the annual budget it submits to the board of county commissioners.

GUARANTEED ENERGY SAVINGS CONTRACTS

G.S. 115C-47(28a) authorizes local school boards to use *guaranteed energy savings contracts* to purchase an energy conservation measure—such as a facility alteration or personnel training related to a facility's operation—that reduces energy consumption or operating costs.¹⁰⁵ These contracts for the valuation, recommendation, or implementation of energy conservation measures in school facilities are paid for over time, and energy savings are guaranteed to exceed costs. Local boards of education may finance energy conservation measures by using installment contracts or lease-purchase contracts.

OPERATIONAL LEASES

In an *operational lease* the lessee obtains no ownership interest or option to obtain an ownership interest in the leased property. G.S. 115C-530 authorizes local boards of education to enter into operational leases of real or personal property for use as school buildings or facilities. Leases for terms of three years or longer, including optional renewal periods, must be approved by the board of county commissioners. Approval obligates the commissioners to appropriate sufficient funds to meet the payments due in each year of the lease; the school board's budget resolution must include an appropriation for the current fiscal year's portion of the obligation as well as an unencumbered balance sufficient to pay the obligation.

Under G.S. 115C-530, school boards may make improvements to leased property. Contracts for repair and renovation must comply with the energy guidelines in G.S. 115C-521(c) and must be approved by the board of county commissioners if they (1) are subject to the competitive bidding requirement in G.S. 143-129(a) (the current threshold for which is \$100,000) and (2) do not otherwise constitute continuing contracts for capital outlay.¹⁰⁶

MERGERS

As described above in the subsection on public school governance at the local level, action by the county board of commissioners is one of the three ways merger of school units may be achieved.

BONDS FOR SCHOOL FACILITIES

Counties, not local boards of education, have the authority to issue bonds or otherwise borrow money for school capital outlays.¹⁰⁷

CONSTRUCTION OF SCHOOL FACILITIES

Under G.S. 153A-158.1 any county may, with the consent of the board of education, construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county.

School Reform Efforts

Standards and *accountability* are the current buzzwords in school reform efforts, both at the state and the federal level.

Beginning in the mid-1980s, the General Assembly embarked on an ambitious reform of public school education, adding programs designed to achieve better student learning by applying more stringent educational standards and increasing the accountability of school personnel for their students' performance. Among these programs are appropriations specifically directed toward improving the performance of at-risk populations, as the *Leandro* court mandated. At the same time, school boards and individual schools have been given both new authority to determine how to improve student performance and new flexibility in determining how to deliver the educational program.

Even as the General Assembly offered school boards new flexibility, it constructed a safety net for schools in trouble. Schools that are "low-performing," that do not follow appropriate fiscal management practices, or that have serious safety problems not appropriately addressed by local officials are subject to state intervention.

In addition, the federal government, in a significant departure from its traditional nonintervention into state and local educational policy, has enacted funding legislation contingent on meeting statewide requirements for student achievement, annual testing and reporting requirements, and tightened teacher qualification standards. Schools that

105. G.S. 143-64.17 through -64.17K.

106. See G.S. 115C-441(c1) and -426(f)].

107. A more detailed discussion of this subject appears in David M. Lawrence and M. John Vogt, "Capital Planning, Budgeting, and Debt Financing," Chapter 17 in the forthcoming electronic publication, *County and Municipal Government in North Carolina*, ed. David M. Lawrence (Chapel Hill, NC: UNC School of Government, 2007).

fail to make adequate yearly progress toward these standards are subject to a series of escalating sanctions.

These and other key school reforms measures are described briefly in the following subsections.

BASIC EDUCATION PROGRAM

As discussed in the earlier section on “Current System of School Finance,” the Basic Education Program describes the educational program that should be available to every public school student in North Carolina. Its primary goal is to ensure that students have access to a basic, adequate program, no matter where they attend school. The State Board’s concern with quality, as well as equity, is reflected in its adoption of a comprehensive definition of the Basic Education Program. The program includes not only a required curriculum (instruction in arts, communication skills, physical education and personal health and safety, mathematics, media and computer skills, science, second language, social studies, and vocational education), but also requirements for staffing, libraries, technology, support services, and facilities. Local school boards are responsible for implementing the Basic Education Program and are free to supplement it.

THE ABCS OF PUBLIC EDUCATION

For years the General Assembly has enacted programs designed to improve student learning and achievement. In 1996 the General Assembly passed the School-Based Management and Accountability Program.¹⁰⁸ In response to the legislature’s directives in this act, the State Board of Education developed the ABCs of Public Education, which focuses on individual school Accountability, student achievement in Basic subjects, and local Control and flexibility over school operations and use of state funds. The program is based on a model of state recognition, reward, assistance, and intervention.

The ABCs program represents a substantial shift in authority and accountability, not just from the state to local school boards but also from local boards to individual schools. Each school, through a school improvement team, must develop a school improvement plan designed to enhance student performance and identify strategies for helping students improve. Individual schools have new authority over the use of staff development funds and the school calendar. Local boards of education are required to provide “maximum flexibility to schools in the use of funds to enable the schools to accomplish their goals.”¹⁰⁹

If a local board accepts a school improvement plan that includes a request for waiver from certain state laws, rules,

or policies, the board must submit the request to the State Board for its approval. The local board must describe the circumstances under which the waiver will be used and explain how it will contribute to improved student performance. A local board also may request waivers of laws, rules, or policies that affect the central office staff.¹¹⁰

The most visible part of the ABCs program is its accountability model. Under this program, the State Board sets a standard of minimum student improvement for each school. Schools that perform much better than expected on state achievement tests in reading, writing, and mathematics will receive recognition and financial rewards that may be used for bonuses for individual employees or, if those employees support the idea, for some other school purpose. Schools that fare poorly may be identified as low-performing and thereby become eligible for state assistance and, possibly, intervention by a state assistance team. If an assistance team is assigned to a school, testing of certain staff members may occur and the jobs of teachers and administrators may be at risk. Statewide implementation of the program began in 1996–1997 in elementary and middle schools; implementation in high schools began in 1997–1998.

The *Leandro* court cited this program with approval in analyzing the state’s ability to provide the opportunity for a sound basic education. In fact, under the court’s order, the standard for assessing whether a student is receiving a sound basic education is whether he or she scores “at grade level” or above as defined by the ABCs. Students not meeting this benchmark are presumably not being offered the opportunity for a sound basic education. The court did not specify what percentage of students statewide must score at grade level or above to satisfy the state’s duty; nor did it determine the effect of scores concentrated at grade-level or below within subcategories of students, such as African Americans, Latinos, or economically disadvantaged students.

BUDGET FLEXIBILITY AND ACCOUNTABILITY

In recent years the General Assembly has granted local school boards increased flexibility in their use of state school funds.¹¹¹ State funds come to school boards with fewer restrictions than in the past, and boards also may request waivers of some of the restrictions still in place. With this flexibility comes increased accountability. Under G.S. 115C-451(b), the State Board must issue a warning and require remedial action when a local school board willfully or negligently fails or refuses to comply with state laws and regulations regarding budgeting, management, and

108. G.S. 115C-105.20 through -105.41.

109. G.S. 115C-105.25(a).

110. G.S. 115C-105.26 sets out the laws, rules, and polices that are subject to waiver.

111. G.S. 115C-105.21.

expenditure of funds. The State Board also has authority to suspend the budget flexibility granted to a local board. During the suspension, the State Board may require the local board to use funds only for the purposes for which they were allotted or for other purposes specifically approved by the board.

EXCELLENT SCHOOLS ACT

The Excellent Schools Act (S.L. 1997-21) was passed in 1997 to address the problem of attracting and retaining good teachers in our public schools. It raises the standards of teaching through changes in teacher education, certification requirements, professional performance and evaluation, acquisition of tenure, demotion and suspension, dismissal, and salaries.

AT-RISK STUDENTS

Several legislative endeavors focus on at-risk students as part of larger reform efforts, particularly the ABCs program.

G.S. 115C-105.41 requires school units to identify students who are at risk of academic failure. At the beginning of the school year, schools must develop a personal education plan for any student not performing at grade level (as identified by the end-of-grade test). The plan may include summer school, Saturday school, and extended days. Local school units must pay the cost of providing these activities and whatever extra student transportation is necessary.

G.S. 115C-12(24) requires each local board of education to develop at least one alternative school or alternative learning program. Boards must annually assess whether these schools or programs are using the best practices for improving student performance and are staffed with well-trained employees.¹¹²

The annual growth standard for each school set under the ABCs program has identified some schools that need special assistance because of their high proportion of economically disadvantaged students and relatively low percentage of students performing at or above grade level. These are the “highest priority” elementary schools for which the legislature has earmarked funds for reducing class size in the early grades and promoting staff development. Similar measures apply to continuously and chronically low-performing schools.

The legislature has also focused attention on the state’s high student dropout rate. For example, it has authorized partnerships between trustees of community colleges and local boards of education to create innovative high schools

targeted at students who are at risk of dropping out of school.

THE NO CHILD LEFT BEHIND ACT OF 2001

The federal No Child Left Behind Act of 2001 (NCLB) is a funding statute that creates a system of standards parallel to, and more stringent than, those established by the state ABCs program.¹¹³ Its accountability model requires a measure of school quality called “adequate yearly progress” (AYP). AYP measures the progress of schools as a whole and of student subgroups such as major race and ethnic groups, students with disabilities, students with limited English proficiency, and economically disadvantaged students. For a school to achieve AYP, the overall school *and* each subgroup must make AYP. The goal of NCLB is to have all students performing at a proficient level by the year 2014.

Title I schools that fail to make AYP for two years in a row face sanctions; these sanctions increase with each succeeding failing year, ending with complete school restructuring after five years of failure to make AYP. In addition to imposing penalties on schools that fail to make AYP, the NCLB creates new national qualification standards for teachers of core subjects. The cost of these measures, and of the required student assessments and reporting, is an issue of great concern to public school officials.

The NCLB is a complicated piece of legislation, and its implementation is still at an early phase. It may take many years to judge the efficacy of this federal intervention into educational reform. In the meantime, the act has the potential to sow some confusion within the state. Unlike the ABCs program, which has a system of flexible standards for each school—judging its progress in comparison to its starting point—the NCLB imposes a single absolute standard for all schools. Because of this difference in standards, and the NCLB requirement that all student subgroups make AYP, schools that are performing well by ABCs standards can fail to make the grade under the NCLB.

ADMINISTRATOR CONTRACTS

Since 1995 individuals hired as principals, assistant principals, supervisors, and directors have been employed under contracts of from two to four years, not under the tenure system that applies to teachers.¹¹⁴ This change allows school boards to “nonrenew” an administrator’s contract, subject to statutory restrictions and procedures, rather than go through the dismissal process required by the tenure statute, which both limits the grounds for dismissal and often requires a costly and prolonged procedure.

112. G.S. 115C-47(32a).

113. Pub. L. No. 107-110, 115 Stat. 1425.

114. G.S. 115C-287.1; G.S. 115C-325.

SAFE SCHOOLS

In 1997 the General Assembly said, “If students are to aim for academic excellence, it is imperative that there is a climate of respect in every school and that every school is free of disruption, drugs, violence, and weapons.”¹¹⁵ Many efforts are underway to make schools safe and orderly so that students and staff can focus on education. Among the actions taken are the following:

- Creation of the North Carolina Center for the Prevention of School Violence
- Enactment of more-serious disciplinary consequences for students who bring a weapon to school or who physically assault and seriously injure others
- Expanded list of situations in which a student may be expelled (permanently separated from school)
- A requirement that principals report to law enforcement specific illegal acts occurring on school property
- Restrictions on admission to school for disruptive students
- Widespread use of school resource officers
- Authority for school boards to conduct criminal record checks of job applicants
- Creation of safe school unit plans by each local board
- Availability of state assistance teams to promote or restore a safe and orderly learning environment
- Inclusion of conflict resolution in the curriculum; use of peer mediation programs
- Expanded list of situations in which school employees may use reasonable force, including corporal punishment
- Growth of alternative schools
- Improvements in school security systems

Even with all these measures, it is unfortunately impossible to guarantee safety at school.

CHARTER SCHOOLS

In 1996, as part of its educational reform efforts, the General Assembly authorized the establishment of charter schools—public schools that operate under a charter from the State Board and are free from many of the restrictions that affect other public schools.¹¹⁶ The legislature set a statewide cap of one hundred charter schools. In 1997–1998 thirty-four charter schools began operation; by 2004–2005, there were ninety-seven charter schools in operation.

As long as a school meets the terms of its charter, it is not bound by most of the state statutes and regulations that apply to other public schools. However, unlike other public

schools, a charter school may be closed by the State Board’s revocation of its charter if it fails to live up to the terms of that charter.

North Carolina’s first charter schools began operating in the 1997–1998 school year. Any child who qualifies for admission to a North Carolina public school may be admitted to a charter school, but no child can be required to enroll in a charter school. Teachers already employed by a local board of education may take a leave of absence from their regular position to teach at charter schools.

State and local current expense funds follow students to charter schools. This means that local school units and charter schools participate on an equal footing in the allocation of state and local current expense funds distributed on the basis of ADM. For every child who resides in the unit and attends a charter school the local school unit must transfer to the charter school an amount equal to the per pupil local current expense appropriation; this amount includes a proportionate share of the clear proceeds of fines and forfeitures collected under Article IX, Section 7 of the state constitution (as discussed above in the subsection on “Fines, Penalties, and Forfeitures”).¹¹⁷

Counties are not required to appropriate capital funds to charter schools.

Conclusion

Complex challenges face North Carolina’s public schools, and issues related to school finance, student achievement, and student assignment continue to defy easy solution. Equity remains a serious concern, along with many new questions about the state’s duty to offer all students access to a “sound basic education.” School boards must educate increasing numbers of students with limited English proficiency and students with disabilities. Costly school security efforts continue, but they can never guarantee safety. Construction and renovation of facilities must keep pace with increasing enrollments, reductions in class size, and new teaching methods. Increasing access to technology and deciding how best to use it are ongoing challenges for schools. In addition to questions directly related to education, schools also continue to be asked to take on functions—including health care, nutrition, and before- and after-school care—that were traditionally the responsibility of other institutions. The challenge to school boards—working with the board of county commissioners, other community agencies, and concerned parents and other citizens—is to find a way to meet the goal set by the

115. S.L. 1997-443 (Safe Schools Act).

116. G.S. 115C-238.29A through -239.29K.

117. Francine Delany New School for Children, Inc. v. Asheville City Board of Education, 150 N.C.App. 338, 563 S.E.2d 92 (2002).

General Assembly: “[T]he mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential.”¹¹⁸

Additional Resources

Murphy, Janine M., ed., and Robert E. Phay, ed. emeritus. *Education Law in North Carolina*. Chapel Hill, N.C.: Principals’ Executive Program, University of North Carolina at Chapel Hill, 2005. This comprehensive school law treatise is updated regularly. It currently is available by subscription in an online version only. For more information, contact the Principals’ Executive Program, University of North Carolina, 140 Friday Center Drive, Chapel Hill, NC 27514, telephone 919.966.4173, www.ncpep.org.

118. G.S. 115C-105.20(a).

North Carolina Public Schools Statistical Profile 2005.

Raleigh, N.C.: State Board of Education, 2005. This report, available only online, provides general statistical data about public schools and includes information on pupils, personnel, and finances. It contains both state-wide data and data for each local school administrative unit. A new statistical profile is published annually. Available at <http://www.ncpublicschools.org/fbs/stats/statprofile05.pdf>

School Law Bulletin. Chapel Hill, N.C.: School of Government, University of North Carolina at Chapel Hill. This School of Government quarterly publication is available by subscription and on the School’s Web site at www.sogpubs.unc.edu. Each issue contains articles about current school law topics and short summaries of recent court decisions relating to school law. A summary of new legislation affecting public elementary and secondary schools is published annually. ■

Other School of Government Publications

Public Schools and Pregnant and Parenting Adolescents: A Legal Guide

2004

ANNE M. DELLINGER

Explains the relatively clear legal requirements that apply to pregnant and parenting students; offers interpretation of less-clear parts of the law; and sometimes ventures predictions about unresolved legal questions. Refers to the literature on adolescent pregnancy and relays advice from school professionals and others. Designed to make caring for pregnant and parenting adolescents easier and ensure that they benefit as much as possible from their schooling. Intended for superintendents, principals, school board members, school attorneys, counselors, school nurses and psychologists, social workers, teachers, administrators, and state education officials. Third in a series explaining the law to pregnant and parenting adolescents, their parents, and the professionals who work with them. Supported by the Z. Smith Reynolds Foundation, the School of Government at UNC Chapel Hill, the Karl and Anna Ginter Foundation, and the Mary Norris Preyer Fund. Other books in the series are *Health Care for Pregnant Adolescents: A Legal Guide*, *Social Services for Pregnant and Parenting Adolescents: A Legal Guide*, and *Pregnancy and Parenting: A Legal Guide for Adolescents (with special information for their parents)*, which is offered in a Spanish edition as well. All four are available online at www.adolescentpregnancy.unc.edu.

Open Meetings and Local Governments in North Carolina: Some Questions and Answers

Sixth edition, 2002

DAVID M. LAWRENCE

Details the provisions of North Carolina’s open meetings law and sets out the text of the law, updated since the fifth edition (1998) of the book.

Local Government Law Bulletin, No. 103, “Closed Sessions under Attorney–Client Privilege”

Contains a detailed legal discussion of issues involved when a public body holds a closed session to preserve the attorney–client privilege.

North Carolina Juvenile Code and Related Statutes Annotated with CD-ROM: 2005-2006 edition

PUBLISHED BY LEXISNEXIS

An annotated compilation of North Carolina’s Juvenile Code and other selected statutes relating to children. This new edition and accompanying CD-ROM include all changes enacted by the General Assembly through the end of the 2005 session. The Juvenile Code includes laws and procedures that apply to young people who are delinquent or who engage in undisciplined conduct (such as running away from home, being truant, or being beyond a parent’s control). It also contains laws relating to child abuse, neglect, and dependency; termination of parental rights; and the Uniform Child Custody Jurisdiction and Enforcement Act that applies to cases in those areas. Related statutes in this volume deal with juvenile justice agencies, adoptions, schools, and medical treatment of minors. Contains an index.

Legal Guide to Public Employee Free Speech in North Carolina

Third edition, 2002

STEPHEN ALLRED

Examines the legal principles governing the First Amendment right of public employees to speak on matters of public concern and the right of public employers to maintain an efficient workplace. Written to be helpful to lawyers and nonlawyers alike.

Ordering information on page 37