

# Changes Affecting Elementary and Secondary Education

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By Laurie L. Mesibov and Robert P. Joyce

This was the year of the lottery. For many sessions in a row, the question of adopting a lottery for North Carolina sharply divided the General Assembly. In 2005 the lottery act passed and the Education Lottery Fund was created. Its impact will be measured in the years to come. There were no other major initiatives in education legislation in 2005.

## Financial Issues

### Appropriations

S.L. 2005-276 (S 622), as amended by S.L. 2005-345 (H 320), appropriates to the Department of Public Instruction (DPI) \$6.62 billion for 2005–2006 and \$6.58 billion for 2006–2007. As in years past, moneys were earmarked for a number of special purposes, including supplemental funding for low-wealth counties, small school systems, disadvantaged students, children with limited English proficiency, children with disabilities, academically gifted students, highest-priority schools, and student accountability standards.

### Annual independent audit

G.S. 115C-447 has long required local school administrative units to have an annual independent audit of their accounts and the accounts of individual schools in the unit. Section 7.58 of S.L. 2005-276 amends this statute to give the State Board of Education (State Board) a new role in this process. When the State Board finds it appropriate to review the internal controls of a school unit because of fraud, embezzlement, theft, or management failures, it must notify the unit. If the problems were discovered by the firm conducting the annual audit, the school board must respond by submitting to the State Board and the Local Government Commission (LGC) the audit and a plan for any corrective

actions. The local board must then implement the approved changes before the next annual audit. If the school unit's problems were not discovered by its auditor, the State Board and the LGC must employ an auditing firm to review the local board's internal control procedures—at the expense of the local board. After the audit review and public report, the State Board may determine that significant changes are needed in the school unit's internal control procedures. If so, the local board must submit a plan of corrective action to the State Board and the LGC and must implement the changes they approve before the next annual audit.

### Civil penalty and forfeiture fund appropriations

For years there have been questions about the meaning of Article IX, Section 7 of the state constitution, which states that the clear proceeds of all civil penalties, forfeitures, and fines collected by state agencies belong to the public schools.<sup>1</sup> A constitutional amendment effective January 1, 2005, authorizes the General Assembly to place the moneys collected from such sources in a state fund. The General Assembly must appropriate the funds, on a per pupil basis, to the counties, which must use them exclusively for maintaining free public schools.

Under G.S. 115C-457.2, these funds are deposited in the Civil Penalty and Forfeiture Fund. Section 6.37 of S.L. 2005-276 amends G.S. 115C-457.3 by changing the method of appropriating these moneys. In the past, the funds were automatically transferred to the State School Technology Fund. Now the General Assembly must appropriate the moneys from the Civil Penalty and Forfeiture Fund to the State Public School Fund in the current operations budget. The State Board, on behalf of the counties, then allots the funds to local school administrative units on a per pupil basis.

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1. North Carolina Schools Boards Association v. Moore, 614 S.E.2d 504 (N.C. 2005) is the state supreme court's most recent ruling on the scope of this provision.

G.S. 115C-457.2 requires the clear proceeds of all appropriate civil penalties, civil forfeitures, and civil fines to be deposited in the Civil Penalty and Forfeiture Fund. It defines “clear proceeds” as the full amount of these penalties, forfeitures, and fines, diminished only by the actual costs of collection. Section 6.37 of S.L. 2005-276 amends G.S. 115C-457.2 by raising the limit on collection costs from 10 to 20 percent of the amount collected.

Appropriations from the Civil Penalty and Forfeiture Fund to the School Technology Fund are \$18 million for 2005–2006 and \$18 million for 2006–2007; appropriations to the State School Public School Fund are \$102.5 million for 2005–2006 and \$107.5 million for 2006–2007.

### Sales tax refunds

Local school administrative units (individually and as cooperatives) are among the governmental entities permitted to apply to the secretary of revenue for an annual refund of the state and local sales and use taxes paid on direct purchases of tangible personal property and services (other than electricity and telecommunications services). A refund request must be submitted in writing no more than six months after the end of the unit’s fiscal year. Because the refund comes from a source outside the appropriations and budgetary process, moneys refunded may be spent in whatever manner the local school unit chooses.

The legislature’s intention, in Section 7.51 of S.L. 2005-276, as amended by Section 7 of S.L. 2005-345 (H 320), is to repeal the state sales tax portion of the refund for local school units on purchases made on or after July 1, 2005; it also directs an equivalent amount of state funds to the State Public School Fund for allotment to local units through state position, dollar, and categorical allotments. The intended effect is to funnel all state moneys for public education through the budgetary process by eliminating the state funds going directly to local school units as refunds. Through a technical error, however, Section 7.51 actually repeals both the local refund and the state refund and directs that local refunds be replaced by state funds. It is anticipated that 2006 legislation will restore the local refund so that the provision will affect only state moneys, as originally intended.

Local school units will be able to obtain a refund for sales and use taxes they paid during the 2004–2005 fiscal year. The request for the refund was due by December 31, 2005, and the amount will be refunded during the 2005–2006 fiscal year. Beginning with the 2006–2007 fiscal year, Section 7.51 directs the secretary of revenue to transfer quarterly to the State Public School Fund a calculated amount drawn from state tax collections. The annual amount will be equal to the amount refunded to local school units during the

2005–2006 fiscal year, adjusted up or down in proportion to the increase or decrease in state sales tax collections during that fiscal year. The same amount will be transferred in each subsequent fiscal year, adjusted according to the change in state sales tax collections in that year.

### Lottery

After years of discussion, the General Assembly established a lottery by enacting new G.S. Chapter 18C, the North Carolina State Lottery Act, in S.L. 2005-344 (H 1023), as amended by Part 31 of S.L. 2005-276. The important point for public education is that the lottery will bring in funds for public schools and for college and university scholarships. Net revenues of the State Lottery Fund, which must be at least 35 percent of gross revenues, must be transferred to the Education Lottery Fund. After setting aside a contribution to the Education Lottery Reserve Fund, the Lottery Commission must distribute the remaining revenue in the lottery fund as follows:

- 50 percent to support reduction of class size in early grades to teacher–student allotments not exceeding 1:18 and to support academic prekindergarten programs for at-risk four-year-olds
- 40 percent to the Public School Building Capital Fund
- 10 percent to the State Educational Assistance Authority to fund college and university scholarships

The General Assembly must appropriate funds in each category annually based on revenue estimates. If actual revenues are less than the appropriation, the governor may transfer money from the reserve fund to equal the appropriation. If reserve funds are insufficient to cover all the shortfall, the governor must transfer money for the following purposes, in order of priority:

1. To fund academic prekindergarten programs for at-risk four-year-olds
2. To reduce class size
3. To provide financial aid for needy students to attend college
4. To fund the Public School Building Capital Fund

If actual revenues exceed the appropriation, excess revenues must be transferred in equal portions to the Public School Building Capital Fund and the State Educational Assistance Authority for expenditure in the same manner as appropriations from the Education Lottery Fund.

New G.S. 115C-546.2(d) requires that lottery revenues transferred to the Public School Building Capital Fund be allocated 65 percent on the basis of per average daily membership 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, as defined in the act. Counties may use these moneys to pay for school construction costs incurred after January 1, 2003, but may not use them to pay for school technology needs.

Scholarship provisions are discussed in this issue in “Changes Affecting Higher Education” by Robert P. Joyce.

### School purchasing

The formal bidding statute, G.S. 143-129, requires governing board approval of purchase and construction or repair contracts in the formal bidding range. The statute authorizes the board to delegate its authority to award contracts, reject bids, and re-advertise to receive bids. When this provision was originally enacted, local school units were not governed by it as they now are. S.L. 2005-227 (H 1332) updates the statute to add school superintendents to the list of individuals to whom this authority may be delegated.

## Instructional Issues

### Financial literacy

As young people earn and control more and more money and often have easy access to credit, they need to develop knowledge and skills in personal finance. Section 7.59 of S.L. 2005-276 amends G.S. 115C-81 to require that both the Standard Course of Study and the Basic Education Program include instruction in personal financial literacy for all public high school students. The State Board is responsible for determining the components of the new personal financial literacy curriculum and the course into which this new curriculum can be integrated. The State Board has up to two years to develop and integrate the curriculum into the Standard Course of Study.

### Alternative learning programs and schools

Local school boards have been addressing the educational needs of some students who have academic or behavioral problems in traditional schools—or who have been suspended from school—by establishing alternative learning programs and schools. Under G.S. 115C-12(24) the State Board has been responsible for adopting guidelines for assigning students to such alternative learning environments. S.L. 2005-446 (H 1076) amends the statute to require the State Board to adopt “standards” rather than “guidelines” for alternative programs and schools. The board must also evaluate its standards and change them based on strategies that have proven successful in improving student achievement.

New G.S. 115C-105.47A requires local boards of education to develop a proposal and submit it to the State Board before establishing new alternative learning programs or schools.

If the State Board offers recommendations, the local board must consider them before implementing the program or school. Some of the required elements of a proposal are

- Educational and behavioral goals for students assigned to the program or school
- Policies and procedures for operating the program or school based on the State Board’s standards
- Identified strategies to improve student achievement and behavior
- Documentation that similar programs and schools have demonstrated success in improving students’ achievement and behavior
- Estimated actual cost of operating the program or school
- Documented support of school personnel and the community for implementation of the program or school

S.L. 2005-446 also amends G.S. 115C-47(32a), which requires local boards to adopt guidelines for assigning students to alternative learning programs. Local boards must now adopt policies based on the State Board’s standards and apply these new policies to any new alternative learning program or school implemented, effective with the 2006–2007 school year.

### Content and exit standards

Curriculum and requirements for graduation from high school are ongoing concerns for educators, students, parents, employers, postsecondary institutions, and legislators. S.L. 2005-458 (H 911) repeals G.S. 115C-12(9a) and (9b) and enacts G.S. 115C-12(9c) dealing with the State Board’s authority to develop academic content standards and exit standards. The State Board must develop a comprehensive plan to review content standards and the Standard Course of Study in the core academic areas of reading, writing, mathematics, science, history, geography, and civics. As part of its plan, the State Board must survey a representative sample of parents, teachers, and the public to help determine the priorities and usefulness of academic content standards. Revised content standards must

- Reflect high expectations of students
- Reflect in-depth mastery of the content
- Be understandable to teachers and parents
- Whenever possible, be measurable in a reliable, valid, and efficient manner
- Be aligned with the minimum course requirements for undergraduate admission to the University of North Carolina
- Meet other specific requirements

The State Board must also develop and implement a process to align state programs and support materials with the revised academic content standards for each core academic area on a regular basis. All support materials developed by the State Board must be made available to teachers and parents.

The State Board may develop required exit standards for high school graduation. An amendment to G.S. 115C-174.11 authorizes the State Board to develop and implement a plan for high school end-of-course tests aligned with the content standards.

S.L. 2005-458 also amends G.S. 115C-174.11(c) by deleting provisions related to establishment of a baseline to be used to measure academic growth at the end of the third grade.

#### **Time for standardized tests**

Public school students take an array of standardized tests, and many school officials are concerned about the amount of time devoted to the tests, test preparation, and field testing. In an effort to limit the time students spend taking tests administered through state and local testing programs and participating in field testing, the legislature passed Section 7.37 of S.L. 2005-276, amending G.S. 115C-47(12)(a). The amended statute contains specific requirements for State Board policies and guidelines. Under new guidelines,

1. students may spend no more than two days of instructional time per year taking practice tests that do not have the primary purpose of assessing learning;
2. students may not be subject to field tests or national tests during the two-week period before end-of-grade or end-of-course tests or the school's regularly scheduled final exams; and
3. no school may participate in more than two field tests at any one grade level during a school year unless the school volunteers, through a vote of its school improvement team, to participate in more field tests.

#### **PSAT purchase**

In an effort to help students prepare for college entrance exams, in 1989 the state assumed responsibility for the cost of administering the Preliminary Scholastic Aptitude Test (PSAT) to students in the eighth through tenth grades who had completed or were in the last month of Algebra I and who wanted to take the test. The statute also required the State Board to contract with the College Board to provide comprehensive diagnostic information along with reports of PSAT scores. S.L. 2005-154 (H 403) amends G.S. 115C-174.18 to eliminate the requirement related to diagnostic information.

#### **Center for 21st Century Skills**

Section 7.39 of S.L. 2005-276 directs the State Board to transfer funds earmarked for the Center for 21st Century Skills to the Office of the Governor to establish the center within the North Carolina Business Committee for Education, Inc. The center's purpose is to design curriculum, teacher training, and student assessment tools to support students' acquisition of the knowledge and skills needed for participation in the twenty-first century workforce. The center may propose options to create new mathematics and science summer enrichment programs, expand existing programs, and establish nonresidential high schools focused on mathematics, science, and technology.

#### **Expanding Opportunities for Students**

##### **Virtual high school**

The Internet has made it possible for students who want or need to learn and earn credit without being physically present in a classroom to do so. Section 7.41 of S.L. 2005-276 directs the State Board, the UNC Board of Governors, the Independent Colleges and Universities, and the State Board of Community Colleges to develop E-learning standards and plan infrastructures for providing virtual learning opportunities to students and other citizens through the state's schools, universities, and community colleges. The State Board must initially focus on high schools and use the funds appropriated for this purpose to establish and implement a pilot virtual high school during the 2005–2006 and 2006–2007 school years. If the pilot is successful, the General Assembly intends to provide funds to implement a virtual high school on a statewide basis.

##### **High school innovation**

Section 7.33 of S.L. 2005-276 amends Part 9 of Article 16 of G.S. Chapter 115C, Cooperative Innovative High School Programs, to allow local boards of education to jointly establish cooperative innovative high school programs with universities as well as community colleges. Students may now earn up to two years of college credit in appropriate programs. The applicable governing board (the State Board of Community Colleges, the UNC Board of Governors, or the Board of the North Carolina Independent Colleges and Universities) may exempt a cooperative program from rules usually applicable to a local board of education or administrative unit, community college, UNC constituent institution, or local board of trustees. In the past these programs were automatically exempt from the rules; such exemptions must now be consistent with the limits set out in Part 9.

### **Learn and earn high schools**

According to Section 7.32 of S.L. 2005-276, the Learn and Earn high school workforce development program is designed to create rigorous and relevant high school options. Students have the opportunity to earn an associate's degree or two years of college credit by the end of the year following their senior year in high school. Funds for the program are available to establish new high schools in which a local school unit, two- and four-year colleges and universities, and local employers work together to ensure that high school and postsecondary college curricula operate seamlessly and meet the workforce needs of participating employers. Programs must be evaluated annually.

### **Community college tuition waiver**

An increasing number of high school students are enrolling in community colleges. Some enroll because they are in programs aimed at students who may be more successful in nontraditional programs than in traditional high schools; others may want to take courses not available at their schools. S.L. 2005-193 (S 566) amends G.S. 115D-5(b) to provide for tuition waivers for community college courses taken by high school students—including students in early college and middle college high school programs.

### **Intellectually gifted youth in community colleges**

S.L. 2005-77 (H 583) amends G.S. 115D-1.1, which allows students under the age of sixteen who are both intellectually gifted and sufficiently mature to enroll in community college courses. These students must have the approval of an appropriate authority as identified in the statute. S.L. 2005-77 adds to the list of appropriate authorities the administrator of the college or university where the student is enrolled and the local board of education in which the student is domiciled.

## **Collaborative Efforts to Help Students**

### **School-based child and family team initiative**

Schools alone cannot fully address the many problems that some children face and that affect their school attendance, learning, and achievement. Section 6.24 of S.L. 2005-276 establishes the School-Based Child and Family Team Initiative; its purpose is to identify and coordinate appropriate community services and supports for children at risk of school failure or out-of-home placement to address the physical, social, legal, emotional, and developmental factors affecting their academic performance. The DPI is just one of several agencies charged with collaborating in this initiative. These agencies must provide services and “share responsibility and accountability to improve outcomes for

these children and their families.” Of the many required actions, the one that most directly affects schools directs appropriate state and local agencies to increase the schools’ capacities to address the academic, health, mental health, social, and legal needs of children.

In coordination with the North Carolina Child and Family Leadership Council, each local school board must establish the initiative at designated schools and appoint a school nurse and a school social worker as Child and Family team leaders. These leaders must identify and screen children who are potentially at risk of academic failure or out-of-home placement due to physical, social, legal, emotional, or developmental factors. Each agency’s responsibilities are determined by the results of the screening; school personnel must take the lead role for those children and families whose primary unmet needs are related to academic achievement. Representatives from appropriate agencies will work as a team to coordinate, monitor, and assure the successful implementation of a unified Child and Family Plan.

In each county with a participating school, the superintendent must either identify an existing cross-agency collaborative or council or form a new group to serve as a local advisory committee to monitor and support implementation of the initiative. The new North Carolina Child and Family Leadership Council will review the initiative. The superintendent of public instruction and the chair of the State Board will serve on the council. The DPI must participate in developing and implementing the initiative and provide “all required support to ensure that the Initiative is successful.”

### **Military families**

North Carolina is the permanent home of many military families and the temporary home of many others. S.L. 2005-445 (S 1117) contains many provisions aimed at supporting members of the military and their families, and several of these provisions affect public schools. The DPI must study the feasibility of designating an employee as its liaison to the state’s military bases—to facilitate communication and cooperation between military personnel, their families, and the DPI and between military families and the public schools. The State Board must review and revise policies and practices related to awarding credit for high school courses to ensure that all students, especially the highly mobile children of members of the armed forces, receive credit in the public schools for comparable courses taken out of state.

S.L. 2005-445 amends G.S. 116-235(b)(1), which sets out eligibility criteria for applicants to the School of Science and Mathematics. Eligibility was previously limited to legal

residents of North Carolina. Now a student whose parent is an active duty member of the armed services abiding in the state incident to active military duty at the time an application is submitted is also eligible to be considered for admission, as long as the student resides with that parent.

## Other Student Issues

### Use of seclusion and restraint

Apparently in response to a few highly publicized incidents involving children with disabilities, S.L. 2005-205 (H 1032) was enacted to clarify the use of certain behavior management techniques in public schools. To meet the goal of providing school staff with clear limits, the act sets out in detail explicit restrictions on the use of aversive procedures, seclusion, isolation, mechanical restraint, and physical restraint, as each of these is defined in G.S. 115C-391.1.

Most notably, S.L. 2005-205 prohibits any use of aversive procedures in public schools. An aversive procedure is “a systematic physical or sensory intervention program for modifying the behavior of a student with a disability which causes or reasonably may be expected to cause (1) significant physical harm; (2) serious foreseeable long-term psychological impairment; or (3) obvious repulsion on the part of observers who cannot reconcile extreme procedures with acceptable, standard practice.” Some examples of the third category include electric shock applied to the body, pinching, blindfolding, and denial of reasonable access to toilet-facilities.

The act also defines and imposes limits on the use of (1) seclusion (confinement of a student alone in an enclosed space that he or she cannot leave because of locking hardware, other means of confinement, or the student’s physical or intellectual incapacity); (2) isolation (placing a student alone in an enclosed space from which he or she is not physically prevented from leaving); and (3) physical and mechanical restraints. The act does not prohibit or regulate the use of time-outs (separating a student from other students for a limited period of time in a monitored setting). These limits do not affect law enforcement officers in the exercise of their duties, nor do they change the rights of school personnel to use reasonable force under G.S. 115C-390 or any of the rules and procedures governing discipline under G.S. 115C-391.

S.L. 2005-205 requires local school units to give annual notice of this statutory section and all local board policies developed to implement it to all parents, guardians, and school personnel; the latter category includes not only employees of the local school board but also any person working on school grounds or at a school function and providing educational or related services to students, whether under contract with the school system or another agency.

School personnel must notify the principal or principal’s designee of (1) any use of aversive procedures, (2) any prohibited use of mechanical restraint, (3) any use of physical restraint resulting in observable physical injury to a student, or (4) any prohibited use of seclusion or isolation that exceeds ten minutes or the amount of time specified on a student’s behavior plan.

Once a principal or designee has actual notice or personal knowledge of any of these incidents, that person must promptly (no later than the end of the following workday) notify the affected student’s parent or guardian and provide the name of a school employee the parent or guardian can contact for more information. In addition, the parent or guardian must be provided with a written incident report no later than thirty days after the incident. An amendment to G.S. 115C-47 requires local boards of education to maintain a record of all reported incidents and to provide this record annually to the State Board.

Neither the board of education nor any individual board employee may retaliate against a board employee who reports an incident unless that employee knew, or should have known, that the report was false.

S.L. 2005-205 does not expose any local board of education, its agents or employees, or any institution of teacher education or its agents or employees to any new civil liability or criminal charges. At the same time, it does not limit potential liability or charges under other existing laws.

This act recognizes that many teachers and those studying to become teachers would benefit from training in working with students who present problems in class. S.L. 2005-205 amends the certification requirements in G.S. 115C-296 to require teacher education programs to include positive management of student behavior and effective communication techniques for defusing and de-escalating disruptive or dangerous behavior. In addition, an amendment to G.S. 115C-296(c) requires that, beginning with the 2006–2007 school year, the criteria and procedures for employing teachers through lateral entry must include preservice training in the identification and education of children with disabilities, positive management of student behavior, effective communication for defusing and de-escalating disruptive or dangerous behavior, and the safe and appropriate use of seclusion and restraint. For current teachers, G.S. 115C-105.47(b)(9) now requires professional development to include a training component on the management of disruptive or dangerous student behavior. As part of its Safe School plan, the local school board must identify procedures to evaluate the effectiveness of this training in preventing or addressing such behavior. However, implementation of this training component is required only to the extent that funds have been appropriated for this purpose by the General Assembly or units of local government.

An amendment to G.S. 143-138(b) requires state, county, and local building codes and regulations to allow special locking mechanisms for seclusion rooms in public schools, to be used according to the safety measures specified in S.L. 2005-205.

## Health Issues

### Asthma and anaphylactic reactions

The increasing number of students with asthma or subject to anaphylactic reactions raises important issues about responding appropriately to their needs at school. S.L. 2005-22 (H 496) adds new Article 26A, Special Medical Needs of Students, to G.S. Chapter 115C. It requires local boards of education to adopt a policy authorizing students with asthma or subject to anaphylactic reactions, or both, to possess and self-administer asthma medication while on school property, at school-sponsored activities or events, or in transit to or from school. "Asthma medication" is defined as a medicine prescribed for the treatment of asthma or anaphylactic reactions and includes a prescribed asthma inhaler or epinephrine auto-injector.

The act builds in safeguards to limit the possession and self-administration of asthma medication to children who are able to do this safely. Each board's policy must require that the child's parent or guardian provide the school with

- Written permission
- A written statement from the student's health care practitioner saying that the practitioner prescribed the medication and that the student understands its use and is able to self-administer it
- A written treatment plan and emergency protocol formulated by the practitioner
- A signed statement acknowledging that the school administrative units and its employees and agents are not liable for an injury arising from a student's possession and self-administration of asthma medication
- Backup medication, to be kept at school and to which the student will have immediate access if necessary

The student must demonstrate to the school nurse or nurse's designee that he or she has the skill level necessary to use the medication and any device needed to administer the medication.

Permission for a student to possess and administer asthma medication is effective only while the student is enrolled in the same school and only for 365 days.

If a student uses the asthma medication in a manner other than as prescribed, he or she may be disciplined, but the disciplinary action may not limit or restrict the student's immediate access to the medication.

A local board of education and its members, employees, designees, agents, and volunteers are immune from civil damages to any party for any act authorized under S.L. 2005-22 or for any related failure to act unless that act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing.

S.L. 2005-22 also restructures the statutes dealing with the provision of medical care to students by school employees by amending G.S. 115C-307(c) and enacting G.S. 115C-375.1. This new statute does not change the scope of school employees' authority or duty.

### Nutrition standards

Nutrition is important to a student's health and development, and schools play a significant role in a student's access to nutritious food. Every school day hundreds of thousands of students eat meals or after-school snacks at school. S.L. 2005-457 (H 855) enacts new G.S. 115C-264.3, which directs the State Board to establish statewide nutrition standards for school meals, à la carte foods and beverages, and items served in the After School Snack Program administered by the DPI and local school board child nutrition programs. The nutrition standards must promote gradual changes to increase fruits, vegetables, and whole grain products and to decrease foods high in total fat, transfat, saturated fats, and sugar.

The standards are to be implemented first in elementary schools, which must achieve a basic level by the end of the 2007–2008 school year, and then in middle and high schools. In addition to the elementary schools pilot projects established in 2004, pilot projects in a minimum of eight middle schools and eight high schools across the state will institute the nutrition standards at a time to be determined by the State Board.

### Soft drinks and snacks in vending machines

Concerns about children's health in general and obesity and diabetes in particular have led to new restrictions on the availability of soft drinks and snacks in vending machines at public schools. S.L. 2005-253 (S 961) amends G.S. 115C-264 and G.S. 115C-264.2 to further regulate the sale of beverages in vending machines. With the approval of the local board of education, a school may sell beverages in vending machines as long as

- soft drinks are not sold in elementary schools;
- sugared carbonated soft drinks, including mid-calorie carbonated soft drinks, are not sold in middle schools;
- no more than 50 percent of the offerings for sale to students in high schools are sugared carbonated soft drinks, a category that does not include diet carbonated soft drinks;

- bottled water products are available in the school; and
- soft drinks are not sold at any school during breakfast or lunch periods or in any way that is contrary to the requirements of the National School Lunch Program.

G.S. 115C-264.2 applies to snack vending in all schools. By the start of the 2006–2007 school year, snack vending must meet the “Proficient” level of the “NC Eat Smart Nutrition Standards.” This standard allows no snack vending at elementary schools and directs that 75 percent of the snack vending products sold in middle and high schools have no more than 200 calories per portion or package.

### **Comprehensive eye examinations**

G.S. 130A-440 has long required children entering kindergarten to have a health assessment within twelve months of beginning school. An assessment must include a medical history and a physical examination with screening for vision and hearing. Physicians, physicians’ assistants, certified nurse practitioners, and public health nurses meeting certain standards are qualified to conduct these assessments. Under Section 10.59F of S.L. 2005-276, new G.S. 130A-440.1 requires every child entering kindergarten in the public schools to have a comprehensive eye examination conducted by an optometrist or ophthalmologist not more than six months before the date of school entry. “Comprehensive eye examination” is defined in the statute; vision screening as part of the health assessment does not fulfill this requirement.

A child who does not have documentation of this examination may not attend kindergarten. An exception, for children who have moved to North Carolina within the sixty days preceding school entry, grants a sixty-day extension from the date of school entry for submission of proper documentation. If at the end of the sixty days a child has been unable to obtain the required eye examination, the principal must report this fact to the Governor’s Commission on Early Childhood Vision Care, which will identify alternative ways to provide vision services to the child.

Section 10.59F of S.L. 2005-276 also establishes the Governor’s Vision Care Program in the Department of Health and Human Services (DHHS). The program provides funds for early detection and correction of vision problems in children enrolled in kindergarten through third grade who are eligible for services.

### **Miscellaneous**

#### **Public comment at board meetings**

Most school boards have routinely set aside time at board meetings for public comment, but boards have not been required to do so. S.L. 2005-170 (H 635) enacts new G.S.

115C-51, which applies to boards of education, county commissioners, and city councils. A board of education must now provide at least one period for public comment per month at a regular board meeting in any month in which a regular meeting is held. The board may adopt reasonable rules for the conduct of public comment to

- fix the maximum time for each speaker,
- provide for the designation of representatives to speak for groups of persons supporting or opposing the same positions,
- provide for selection of delegates from groups of persons supporting or opposing the same position when the number of persons wishing to attend exceeds the capacity of the meeting room, and
- provide for the maintenance of order and decorum in the conduct of the meeting.

#### **Education cabinet**

The Education Cabinet works to resolve issues arising among existing providers of education, sets the agenda for the State Education Commission, develops a strategic design for a continuum of education programs, and studies other issues referred to it by the governor or the General Assembly. Section 7.38 of S.L. 2205-276 amends G.S. 116C-1(b) by adding the secretary of health and human services to the Education Cabinet.

#### **Residential schools**

The DHHS operates several residential schools. S.L. 2005-195 (S 630) amends numerous sections of Part 3A of G.S. Chapter 143B to make the accountability system and the requirements for school improvement plans at the Governor Morehead School and the schools for the deaf the same as those for other public schools.

Section 7.54 of S.L. 2005-276 gives schools operated by the DHHS the same opportunities to participate in federal funding as other public schools. An amendment to G.S. 115C-66 provides that DHHS is a public authority for purposes of eligibility for federal grant funds and is the school administrative agency for the schools it operates.

#### **School bus routes**

In the past, school buses were required to travel on state-maintained highways unless road or other conditions made that inadvisable. Now, under an amendment to G.S. 115C-246(b) made by S.L. 2005-151 (S 821), school buses are required to travel on state-maintained highways, municipal streets, or other streets with publicly dedicated rights-of-way unless that is inadvisable. Local boards of education are not responsible for damage to roadways.

**Identify theft**

S.L. 2005-414 (S 1048), the Identity Theft Protection Act, is one response to the ongoing and increasing problem of identity theft. Most of the act's protections are set out in new Article 2A of G.S. Chapter 75 and apply to businesses. Other sections of the act amend G.S. Chapter 132 and limit the way governmental units, local boards of education, and state agencies (including the DPI) may use personal information about students, employees, and others. These provisions are significant because many local school boards have traditionally used students' Social Security numbers as identification numbers for school purposes. New G.S. 132-1.8 directs state and local government agencies to collect Social Security numbers only for legitimate purposes or when required by law. In addition, disclosure of Social Security numbers, both within government and to the general public, must be minimized. This act places a number of more-specific limits on the collection, use, storage, and disclosure of Social Security numbers and lists specific situations in which the limits do not apply.<sup>2</sup>

**School technology needs**

The state and every local school unit must adopt a technology plan. Section 7.43 of S.L. 2005-276 amends G.S. 115C-102.6A(c) to require that the state school technology plan include a baseline template of technology and service application infrastructure and an evaluation component. G.S. 115C-102.7 now requires the DPI to randomly check local school system technology plans to ensure that units are implementing their plans as approved. It also directs the State Board to study and identify the resources school systems need to design schools that meet the needs of twenty-first century learners.

**School accreditation requirement**

To abolish duplicate accreditation requirements, S.L. 2005-155 (H 404) amends G.S. 115C-12(9)(c) by removing the obligation of the State Board to develop a state accreditation program to which local boards must comply. S.L. 2005-155 makes a corresponding amendment to G.S. 115C-81(a3).

**Studies, Pilot Programs, Surveys, and Reports****School transportation**

Section 7.57 of S.L. 2005-276 directs the DPI to study the current allotment formula for school transportation. An independent consultant must conduct the study, propose

options for reducing the severe and growing disparity in funding among school units the formula has created, and make other recommendations.

**Small specialty high schools**

Some education reform advocates say that many students will achieve more in relatively small schools or in schools with a special focus. Section 7.52 of S.L. 2005-276 appropriates funds to create eleven small specialty high schools within existing high schools. The purpose of the pilot program is to improve graduation rates and achieve higher student performance, as measured by standard tests and postgraduate employment or admission to an institution of higher education. The State Board is responsible for evaluating this program.

**School employee salaries**

Section 7.47 of S.L. 2005-276 directs the Joint Legislative Education Oversight Committee to research and study the current salary structure for teachers. Section 2.2(j) directs the governor to analyze the state's current public school salary schedule, trends in salaries, and the current disparity between North Carolina teacher pay and the national average to determine how teacher pay affects the state's ability to recruit and retain highly qualified teachers. Before July 1, 2006, the governor may, after consultation with the speaker of the House and the president pro tempore of the Senate, devise and execute a plan to reduce the disparity and use funds available from the Reserve for Contingent Appropriations to begin executing the plan. In October 2005 the governor acted on this authority to authorize an increase of \$75 a month for state-paid teachers.

**Teacher working conditions**

Section 7.40 of S.L. 2005-276 requires the State Board, in collaboration with the North Carolina Professional Teaching Standards Commission, to administer the Governor's Teacher Working Conditions Survey, establish an advisory board to oversee implementation of survey recommendations, and support the North Carolina Network in providing customized analysis to incorporate into school improvement plans.

**School-based and school-linked health centers**

Section 10.59G of S.L. 2005-276 authorizes the Legislative Research Commission to study and evaluate the impact of school-based and school-linked health centers on the primary care, mental health services, and other health care services delivered to school-aged youth.

2. For a more complete discussion of this issue, see Chapter 20, "Public Records," in *North Carolina Legislation 2005*, ed. Martha Harris (Chapel Hill: University of North Carolina, School of Government, 2006).

### Office of School Readiness

Under Section 10.68 of S.L. 2005-276 the DHHS, the DPI, and the Office of the Governor must establish a study group to develop a plan for an Office of School Readiness. This study group must develop recommendations for the structure of the state's prekindergarten and other early childhood-related programs and design a plan to implement its recommendations.

### Education and economic growth

Section 13.15 of S.L. 2005-276, as amended by Section 25 of S.L. 2005-345, requires the North Carolina Board of Science and Technology to prepare a biennial report by county on the status of trends that reflect the impact of education on economic growth.

### Regional education networks

Section 7.42 of S.L. 2005-276 directs the North Carolina Rural Economic Development Center and the e-NC Authority, in collaboration with many others (including the State Board and representatives from local school units), to perform a feasibility study of developing regional education networks to provide and maintain broadband service access to individual students and teachers at all levels of education.

### Nurses, social workers, and other instructional support personnel

Section 7.38 of S.L. 2005-276 directs the Education Cabinet to study collaboration among school nurses, school social workers, and other instructional support personnel—and their collaboration with local health, mental health, and social services providers—to meet the needs of at-risk children and their families and to support the educational achievement of at-risk children. The cabinet must also address the need for additional training of school nurses, social workers, and other instructional support personnel on multidisciplinary assessments and on referral and care coordination for at-risk students and their families.

### Dropouts and suspended students

S.L. 2005-271 (S 408) directs the State Board to identify research-based methods to reduce the dropout rate and the number of suspended students, especially at schools in areas with high poverty and diverse student populations.

## Criminal Law Changes

### Unlawful absences

Regular attendance at school is essential for student learning and achievement. S.L. 2005-318 (H 779) amends G.S. 115C-380 by increasing the penalty for violation of the compulsory attendance law from a Class 3 to a Class 1 mis-

demeanor. The same change is made in G.S. 116-235(b)(2), which deals with attendance at the North Carolina School of Science and Mathematics.

### Stopped school buses

S.L. 2005-204 (H 1400) amends G.S. 20-217 to clarify when a driver must stop for a school bus and to increase the penalty for failing to stop. A person violating the statute is now guilty of a Class 1, not a Class 2, misdemeanor. A person who fails to stop and willfully strikes any person causing serious bodily injury to that person is now guilty of a Class I felony. For this statute a "school bus" includes a public school bus transporting children or school personnel, a public school bus transporting senior citizens under G.S. 115C-243, or a privately owned bus transporting children. All such vehicles must display on their front and rear a plainly visible sign containing the words "school bus."

## School Employment

### Salaries

S.L. 2004-276 sets provisions for the salaries of teachers and school-based administrators. For teachers, the act sets a salary schedule for 2005–2006 that ranges from \$25,551 for a ten-month year for new teachers holding an "A" certificate to \$56,647 for teachers with twenty-nine or more years of experience, an "M" certificate, and national certification. (By action taken in October 2005, after the General Assembly had adjourned, the governor, acting under authority of Section 2.2(j) of S.L. 2005-276, authorized an increase of \$75 per month for state-paid teachers, raising the ten-month salary at each step by \$750; so the minimum salary, for instance, is \$26,626, rather than \$25,551.) For school-based administrators (meaning principals and assistant principals), the ten-month pay range is from \$32,590 for a beginning assistant principal to \$75,680 for a principal in the largest category of schools who has more than forty years of experience. Of course, many school-based administrators are employed not for ten but for eleven or twelve months and will receive proportionately higher salaries.

In addition, teachers with twenty-nine years of experience or more who are, consequently, at the top of the salary schedule received a one-time bonus equivalent to the average increase of the twenty-six- to twenty-nine-year steps. Principals and assistant principals at the top of their salary range received a one-time bonus of 2 percent.

Salaries of central office administrators are not set by a salary schedule but by local school boards within ranges fixed by the General Assembly. For 2005–2006, each central office administrator received a salary increase of 2 percent or \$850, whichever is greater.

Similarly, noncertified public school employees paid with state funds received an increase of 2 percent or \$850, whichever is greater.

#### **Return to work after retirement**

Under the provisions of the Teachers and State Employees Retirement System (TSERS), covered employees may retire, begin to draw retirement benefits, and then return to work, drawing both salary and retirement benefits. For most covered employees, the maximum salary that can be drawn upon returning to work is 50 percent of pre-retirement salary. This limitation is commonly referred to as the “salary cap.” Faced with severe teacher shortages, the General Assembly, beginning in 1998, amended provisions of the retirement statutes as they related to teachers to permit, under certain circumstances, retired teachers to return to teaching and collect full salary for teaching while drawing full retirement benefits—that is, the salary cap did not apply to retired teachers returning to teach.

For teachers, the statutes provided for a six-month period following retirement during which the teacher could not be employed by a public school (except as a substitute teacher or a part-time tutor) before he or she could return to full-time employment at full pay while still receiving retirement benefits. For other employees, however, there was no waiting period, and sometimes employees retired, began to draw retirement pay, and almost immediately went back to work, drawing salary under the salary cap. The Internal Revenue Service began to examine these practices, calling into question the tax-advantaged status of the retirement system and the ability of employees to make their contributions to the system with pre-tax dollars. In response, the General Assembly, in Section 29.28 of S.L. 2005-276, amended G.S. 135-1 and 135-3 (of the retirement system statutes) and G.S. 115-325(a)(5a) (of the public schools statutes) to make the following changes:

1. For all employees who retire and wish to return to work and draw a salary, there must be a complete six-month period following retirement in which the now-retired employee is not employed by any employer (public school system or not) that participates in the TSERS. This requirement applies both to individuals returning under the salary cap and to teachers returning at full salary.
2. When an employee retires, there may be “no intent” (in the words of the statute) or agreement, express or implied, between the employee and the school unit that he or she will return to service. It is now a violation of the retirement system statutes for a school administrative unit to agree, at the time of retirement,

to rehire any retiring employee, either under the salary cap or as a teacher outside the salary cap.

The provision permitting teachers to return to work outside the salary cap had been scheduled to expire in 2005. The sunset was extended to 2007.

#### **Principal and assistant principal evaluations**

G.S. 15C-333, the statute that requires school systems to conduct regular evaluations of teacher performance, has not expressly required similar evaluations of the performance of principals and assistant principals. Section 7.29 of S.L. 2005-276 adds new G.S. 115C-286.1 to require that the performance of principals and assistant principals be evaluated at least once a year. The evaluations are to include accountability measures for teacher retention, teacher support, and school climate.

#### **School administrator certificate requirements**

G.S. 115C-290.7(b) sets out the qualifications an individual must meet to be certified as a school administrator and thus become eligible to serve as a superintendent, associate superintendent, assistant superintendent, principal, or assistant principal. The statute has required, among other things, that the individual hold either a graduate degree in school administration or a master’s degree in another field plus training in school administration. S.L. 2005-179 (H 11) amends the statute to provide that an individual may qualify for certification with alternative education and training that the State Board determines are equivalent to these graduate degrees.

#### **Teacher assistants as student teachers**

S.L. 2005-302 (H 1414) adds new G.S. 115C-310 directing the State Board of Education to adopt a program to facilitate the process by which teacher assistants may become teachers. Under this program, a teacher assistant who is enrolled in an approved teacher education program in a North Carolina college may, at the discretion of the local school administrative unit, continue to receive his or her salary and benefits as a teacher assistant while student teaching in that same system. The new section encourages school units to assign a teacher assistant who is doing student teaching to a classroom other than his or her regular classroom or, if possible, to place the student teacher in a different school within the system.

#### **Community colleges train lateral entry teachers**

There are two primary ways for an individual to enter public school teaching in North Carolina. First, he or she may complete a regular teacher-education program at a four-year college. Second, the individual may come into teaching

directly from other work, through what is known as “lateral entry.” Anyone who enters the profession through lateral entry must complete certain coursework within prescribed time limits in order to become a regularly licensed teacher. S.L. 2005-198 (H 563) amends G.S. 115C-296 and G.S. 115D-5 to authorize community colleges to offer the necessary courses. The lateral entry teacher must have completed his or her bachelor’s degree at least five years before registering for the community college coursework.

#### **Privacy of school personnel records**

G.S. 115C-321 makes the content of school personnel files confidential (with the exception of certain elements—such as salaries—that are set by statute). Until now, the statute has made no provision for punishing a violation of personnel records confidentiality—although of course an employee caught breaching confidentiality would be subject to dismissal or other adverse employment action. S.L. 2005-321 (S 1124) amends the statute to add a criminal violation: a school official who knowingly, willfully, and with malice gives out confidential information from the school personnel file is guilty of a Class 3 misdemeanor and may be fined up to \$500. Anyone who is not authorized to view a personnel file but nonetheless knowingly and willfully examines a personnel record while it is in its official file is guilty of the same misdemeanor and is subject to the same punishment.

#### **State funds to pay visiting international exchange teachers**

In general, the state allocates teacher positions to each school administrative unit based on the number of students the unit serves. The school unit employs the teachers, and the state provides the salary money for those particular teachers according to the state salary schedule. If the school unit chooses to employ an inexperienced teacher who is low on the salary schedule, the state provides the relatively low salary for that teacher; and if the school unit employs an experienced teacher high on the salary schedule, the state provides the relatively higher salary for that teacher. Section 7.22 of S.L. 2005-276 enacts new G.S. 115C-105.25(b)(5a) to provide that if a teacher allotment is filled by a visiting international exchange teacher under a state-approved program, the state will provide an amount equivalent to the average teacher salary in the state to cover the costs associated with employing the visiting teacher.

#### **School social workers transporting students**

S.L. 2005-355 (H 1491) enacts new G.S. 115C-317.1 providing that a school social worker may not be required to transport students unless his or her written job description or a local board policy imposes that duty. It also adds new G.S. 115C-47(25a) providing that if a school system imposes such a responsibility, it may not require the social worker to

increase the liability limits of or add a business-use rider to his or her automobile liability insurance unless the cost of the added coverage is reimbursed by the school system. The school system may, alternatively, provide the liability insurance coverage itself.

#### **Test for entry into teacher education programs**

An undergraduate student seeking a degree in teacher education must attain a passing score on a preprofessional skills test before being admitted to the teacher education program. S.L. 2005-419 (H 1310) adds new G.S. 115C-296(b2) directing the State Board of Education to permit students to fulfill this testing requirement by achieving a board-set minimum score on the Praxis I test or on the combined mathematics and verbal portions of the SAT. The board is to set the score on the SAT at between 900 and 1200.

#### **Teacher planning time best practices**

G.S. 115C-301.1 requires school systems to give every teacher a regular duty-free period during the regular school day if safety and the proper supervision of students permit and if the General Assembly provides funds. Section 7.30 of S.L. 2005-276 directs the State Board to report on the best practices schools in the state have found for providing teachers a minimum of five hours per week, within the school day, for planning, collaborating with colleagues and parents, and professional development, especially in elementary schools.

#### **Veto of house bill 706 regarding certification of out-of-state teachers**

House Bill 706, “An Act to Amend the Teacher Certification Law to Facilitate the Hiring of Teachers,” passed the House of Representatives and the Senate and was presented to the governor on August 23, 2005. On September 29 the governor vetoed the bill and returned it to the General Assembly, which had by then adjourned. The General Assembly returned to a special session on October 12, but no vote to override the veto was taken during the session.

The bill would have made a number of changes in teacher certification standards in North Carolina’s public schools. It would, for instance, have reduced from five to three years the time within which a teacher who has entered the profession through lateral entry must complete the requirements to obtain regular (nonlateral) certification. The chief change in House Bill 706 concerned teachers licensed in other states who come to teach in North Carolina’s public schools. It would have granted a regular North Carolina teaching certificate to any licensed out-of-state teacher with at least three years of experience as a full-time teacher.

In addition to these substantive changes regarding certification, the bill would have amended G.S. 115C-296, which now provides that the “State Board of Education shall

have entire control of certifying all applicants for teaching positions,” by removing the word “entire” and adding the phrase “subject to law enacted by the General Assembly.”

The governor, in his veto message, reacted to both the substantive changes and to this change in the scope of control over certification. The governor said: “This bill reduces the North Carolina teaching standards to the lowest in America. It cheats our children out of a quality education and dishonestly classifies unqualified teachers as ‘highly qualified.’ Further, it restricts the authority of the State Board of Education to certify teachers and puts it within the General Assembly. Therefore, I veto the bill.”

Between the time of the veto on September 29 and the special session of the General Assembly on October 12, the State Board made some changes in its rules with respect to certifying teachers with out-of-state certifications. The governor and legislative leaders agreed to ask a committee of legislators, educators, and school administrators to make recommendations on additional steps to be taken with respect to certification and easing the teacher shortage. In light of those developments, the General Assembly in its October 12 session took no vote on overriding the veto. ■