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## Elementary and Secondary Education

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In spite of the state's financial problems, the 2001 General Assembly supported ongoing and new programs to improve student learning and achievement. It appropriated funds for smaller classes in kindergarten, employee bonuses under the ABCs of Public Education Program, and special efforts to assist "highest priority" schools. The General Assembly did not enact major school reform legislation but looked for new approaches to such old problems as the needs of at-risk students, the majority/minority academic achievement gap, and the need to better prepare students for the responsibilities of citizenship.

### **Student Learning and Achievement**

#### **Promotion Decisions**

Standardized tests have become the fundamental mechanism for assuring accountability for both schools and students. At the same time, many educators, parents, and others are concerned about the possible negative effects of these tests. Nonetheless, test scores are an increasingly significant factor in decisions to promote or retain thousands of students. G.S. 115C-288(a) authorizes principals to grade and classify pupils, but it does not specify how principals are to make the decision on the appropriate placement of a student in a particular grade level, such as fourth or fifth. Section 28.17 of S.L. 2001-424 (S 1005) imposes new limits on the principal's authority. If a student is already attending a public school, the principal must consider the student's classroom work and grades, scores on standardized tests, and the best educational interests of the child. The principal may not make the decision about the appropriate grade solely on the basis of standardized tests scores, no matter how high they are. And, if a principal's decision to retain a child in the same grade is based partially on the pupil's scores on standardized tests, those test scores must be verified as accurate. The method for verification is not specified, however; nor is the meaning of "accurate."

Although the decision is the principal's, G.S. 115C-45(c)(2), as amended by S.L. 2001-260 (S 532) (discussed in detail below in "Other Student Issues") gives parents a right to appeal the decision to the school board in two situations. First, parents have a right to appeal if they allege a violation of a specified federal law, state law, State Board of Education (State Board) policy, or state rule. Second, parents have a right to appeal if they allege a violation of a local board policy, including any policy regarding grade retention of students. In addition, G.S. 115C-47, as amended by Section 28.17, requires local school boards to adopt policies related to G.S. 115C-45(c) that include opportunities for parents and guardians to discuss decisions to retain a student. This opportunity is available even when the parent or guardian does not have a right to appeal to the school board. However, the law does not specify which school official is to participate in such discussions with the parent.

### **At-Risk Students**

Section 28.17 of S.L. 2001-424 adds new G.S. 115C-105.41, which imposes a responsibility on school units when dealing with students who are not doing well in school. This responsibility is similar to that already imposed by G.S. 115C-105.47, which requires local boards to develop a safe school plan containing procedures for identifying and serving the needs of students at risk of academic failure or of engaging in disruptive or disorderly behavior. Under new G.S. 115C-105.41, school units must identify students "who have been placed at risk for academic failure." Identification may be based on grades, observations, state assessment, and other factors. It must occur as early as it can reasonably be done; waiting for the results of end-of-grade or end-of-course tests is not necessary. The act does not specify how schools are to use this identification. It does, however, require development of a personal education plan with focused intervention and performance benchmarks at the beginning of the school year for any student not performing at least at grade level, as identified by the end-of-grade test. Focused intervention and acceleration activities may include summer school, Saturday school, and extended days. Local school units may not charge for these activities and must provide transportation at no charge for all students for whom transportation is necessary for participation in these activities. Parents should be included in the implementation and ongoing review of personal education plans.

### **Reading at Grade Level**

Under G.S. 115C-105.27, each school must develop a school improvement plan that takes into consideration the school's annual performance goal set by the State Board as part of the School-Based Management and Accountability Program. Section 28.30 of S.L. 2001-424 requires that a school serving kindergarten or first grade students must include a plan for preparing them to read at grade level by the time they enter second grade. In addition, kindergarten and first-grade teachers must notify parents or guardians when their child is not reading at grade level and is at risk of not reading at grade level by the time he or she enters second grade.

### **Achievement Gap**

For many years, educators and legislators, as well as others, have been concerned about the gap in academic achievement between various groups of students. The gap that has received the most attention is that between African-American students and white students. The General Assembly and state and local educators have adopted many measures designed to reduce, and ultimately eliminate, this gap. Gaps between white and other minority students and between

students of different socioeconomic levels also are significant and are the focus of increasing attention.<sup>1</sup>

Section 28.30 of S.L. 2001-424 is another step aimed at reducing the achievement gap between subgroups of students. Under Section 28.30, it is the State Board's responsibility to identify the various subgroups, whether based on race, ethnicity, socioeconomic status, or some other criterion. Section 28.20 amends G.S. 115C-105.35, which deals with the annual performance goals under the School-Based Management and Accountability Program. The program focuses on student performance in the basics of reading, mathematics, and communications skills in elementary and middle schools, on student performance in courses required for graduation, and on other measures for high schools required by the State Board. Under the program, schools are held accountable for their students' educational growth. The State Board sets an expected level of growth for each school and, beginning in the 2002–2003 school year, the State Board must include a "closing the achievement gap component" in its measurement of students' educational growth in each school. This component must measure and compare the performance of each subgroup of students in a school's population, as identified by the State Board, to ensure that all subgroups are meeting state standards.

Another strategy to close the gap involves the creation of a local task force to advise and work with the local board of education and school administrators on closing the gap and developing a collaborative plan for achieving that goal. Section 28.30 amends G.S. 115C-12 to require the State Board to adopt a model for local school units to use, at the discretion of the local board, as a guideline for establishment of local task forces on closing the academic achievement gap.

In addition, an amendment to G.S. 115C-12 requires the State Board to report on the numbers of students who have dropped out of school, have been suspended or expelled, or have been placed in an alternative program. The data must be reported in a disaggregated manner (presumably by race) and must be readily available to the public.

The Commission on Improving the Academic Achievement of Minority and At-Risk Students<sup>2</sup> must determine the extent to which additional fiscal resources are needed to close the academic achievement gap and keep it closed. The commission will terminate when it submits its final report of findings and recommendations to the Joint Legislative Education Oversight Committee and to the General Assembly by January 10, 2003.

### **Highest Priority Elementary Schools**

Under the ABCs Program, the State Board sets an annual expected growth standard for each school and, for some grades, sets levels of student performance to measure whether an individual student is performing at grade level. Although student achievement is improving across North Carolina, a few schools seem to need special assistance to meet their growth standards. In the 1999–2000 school year, there were thirty-seven elementary schools in North Carolina in which more than 80 percent of the students qualified for free or reduced-price lunch and in which no more than 55 percent of the students performed at or above grade level. These are called "highest priority elementary schools"; Section 29.1 of S.L. 2001-424 enacts measures to provide these schools with "the tools needed to dramatically improve student achievement." The budget earmarks \$10.9 million for 2001–2002 and \$12.2 million for 2002–2003 for these schools. Specified amounts must be used (1) to reduce class size in kindergarten through third grade to a maximum of fifteen students; (2) to extend teachers' contracts by five days in 2001–2002 to

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1. The ABCs results for the 2000–2001 academic year provide some indication of the size of the gaps. On end-of-grade tests in grades three through eight, 82 percent of white students, 52 percent of African-American students, 59 percent of Latino students, and 60 percent of American Indian students tested at or above grade level. All groups appear to be making progress at an approximately equal rate, but that improvement does not lead to a substantial reduction in achievement gaps. For the full ABCs report, see [www.ncpublicschools.org/abcs/](http://www.ncpublicschools.org/abcs/).

2. This legislative commission is separate from the Advisory Commission on Raising Achievement and Closing Gaps established by the State Board in 2000. To read about this commission, see [www.ncpublicschools.org/closingthegap/](http://www.ncpublicschools.org/closingthegap/).

permit staff development for those who want the extension; (3) to extend contracts for all teachers by ten days in 2002–2003, five of which will be instructional days; and (4) to provide for one additional instructional support position at each school. The state’s teacher allotment category will no longer fund teacher assistants for these schools. Teacher assistants who lose their jobs in the highest priority schools and whose job performance has been satisfactory must be given preferential consideration for vacant teacher assistant positions at other schools.

Section 29.6 specifies that in order for a school to remain eligible for the additional resources, the school must meet the expected growth for each year and must achieve high growth in at least two out of three years, based on the annual performance standards set by the State Board. However, no adjustment in resource allotment will be made until the 2004–2005 school year. The State Board must contract for an evaluation of these initiatives.

### **Continually Low-Performing Schools**

A “continually low-performing school” is defined in new G.S. 105.37A as a school that has received state-mandated assistance and has been designated by the State Board as low performing<sup>3</sup> for at least two of three consecutive years. Section 29.3 of S.L. 2001-424 enacts this statute to provide for new efforts to assist these schools. The assistance or intervention that the State Board must provide depends on the number of years a school has been low performing.

If a school has already received assistance and is designated low performing for two consecutive years or for two of three consecutive years, the State Board must provide that school with a series of progressive assistance and intervention strategies. The strategies, such as class size reduction or a longer instructional year, must be designed to improve student achievement and maintain achievement at appropriate levels.

A slightly different response is required for schools that have previously received state-mandated assistance and have been designated by the State Board as low performing for three or more consecutive years or for at least three out of four years. The State Board must provide assistance and intervention through actions that are “the least intrusive actions that are consistent with the need to improve student achievement at each school.” The actions must be adapted to each school’s unique characteristics and take into account other actions designed to improve achievement at the school.

Section 29.5 allocates \$1.81 million for 2001–2002 and \$1.99 million for 2002–2003 for “chronically” low-performing schools. These funds must be used to implement any of the following strategies not previously implemented: reduction of class size in grades four through twelve, extension of teachers’ contracts for five additional days of staff development, and addition of five instructional days to the school year.

Section 29.6 sets class size limits for grades K–5. It also requires the State Board to contract for an evaluation of these initiatives.

### **Low-Performing Schools’ Improvement Plans**

Once the State Board has identified a school as low performing, G.S. 115C-105.37 requires the local superintendent to submit a preliminary plan for addressing the school’s needs to the local school board. Section 29.4 of S.L. 2001-424 adds a requirement that the plan describe how the superintendent and other central office administrators will work with the school and monitor its progress.

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3. Low-performing schools are those that fail to meet their expected growth standard and have significantly fewer than 50 percent of their students performing at or about Achievement Level III. In 2000–2001, the State Board assigned a status under the ABCs to 2,157 schools; 30 were low performing. For more information about the ABCs Program, see the DPI Web site at [www.ncpublicschools.org](http://www.ncpublicschools.org).

## **Students with Limited English Proficiency**

The increasing enrollment of students with limited English proficiency (LEP students) presents many challenges to school systems. Section 28.9 of S.L. 2001-424 requires the State Board to develop guidelines for identifying and providing services to LEP students. In addition, the Department of Public Instruction (DPI) must prepare a head count of the number of LEP students by December 1 of each year. Students who score “superior” on the standard English language proficiency assessment instrument may not be included in the head count. Students who are included in the head count must be assessed at least once every three years to determine their level of English proficiency.

## **Limits on Testing**

Many people are concerned about the amount of instructional time spent on testing and about the stress associated with frequent testing. Section 28.17 of S.L. 2001-424, as amended by Section 116 of S.L. 2001-487 (H 338), places limits on the time a school may use for practice tests and the timing of field tests and national tests and on a school’s participation in field tests. Schools may devote no more than two days of instructional time per year to “practice” tests that do not have the primary purpose of assessing current student learning. Students may not be asked to take field tests or national tests during the two-week periods preceding the administration of end-of-grade tests, end-of-course tests, or the school’s regularly scheduled exams. A school may participate in more than two field tests at any grade level during a school year only if the school volunteers to participate in more field tests through a vote of its school improvement team or if the State Board finds that an additional field test must be administered at a school to ensure the reliability and validity of a specific test.

## **Testing Students with Disabilities**

The State Board has adopted policies regarding the testing of children with disabilities. Section 28.17 amends G.S. 115C-174.12 to provide that these policies must provide broad accommodations and alternate methods of assessment consistent with a child’s individualized education program and Section 504 plans. The policies must prohibit the use of statewide tests as the sole determinant of a decision about a child’s graduation or promotion and must provide parents with information about the Statewide Testing Program and the options available to students with disabilities.

## **Other Student Issues**

### **365-Day Suspension for Reports or Threats of Terrorism**

After September 11, 2001, all public entities became concerned about terrorism and bioterrorism. S.L. 2001-500 (S 990) addresses this concern. It adds new G.S. 115C-391(d4) to allow a local board of education or superintendent to suspend for up to 365 days a student who

- makes a false report that there is on educational property or at a school-sponsored curricular or extracurricular activity off educational property any device, substance, or material designed to cause harmful or life-threatening illness or injury to another person;
- intends to perpetrate a hoax and conceals, places, disseminates, or displays any device or other object so as to cause a person reasonably to believe that it is a substance or material capable of causing harmful or life-threatening illness or injury to another person;
- threatens to commit an act of terror or makes a report (knowing or having reason to know the report is false) that there is about to occur or is occurring an act of terror likely to cause serious injury or death, when that threat is intended to cause a significant disruption to the instructional day or a school-sponsored activity or causes that disruption;

- makes a report that there is about to occur or is occurring an act of terror likely to cause serious injury or death, when that report is intended to cause a significant disruption to the instruction day or a school-sponsored activity or causes that disruption; or
  - conspires to commit any of the acts listed above.
- S.L. 2001-500 also amends G.S. 115C-391(e) and G.S. 115C-45(c), as amended by S.L. 2001-260, to provide that a student suspended by the superintendent under new G.S. 115C-391(d4) has an appeal of right from that decision to the board of education.

### **Suspensions for Bomb Threats or Hoaxes**

Section 75 of H 338 (S.L. 2001-487) amends G.S. 115C-391(d3) to authorize the superintendent, as well as the board of education, to suspend for 365 days a student who makes a false report or perpetrates a hoax with a device that could reasonably be believed to be a bomb or other destructive device on educational property or at a school-sponsored curricular or extracurricular activity off educational property. This amendment makes G.S. 115C-391(d3) consistent with 365-day suspensions for weapons under G.S. 115C-391(d1).

### **Appeals to the Local Board of Education**

Formerly G.S. 115C-45(c) provided that “an appeal shall lie from the decision of all school personnel to the appropriate local board of education.” This allowed a student to appeal, for example, his or her failure to be selected for a sports team or a teacher’s decision to reduce credit for homework not handed in on time. Some school boards wanted to be able to limit the appeals they heard, and they now have authority to do so in some situations. Under S.L. 2001-260, all school boards must hear certain student appeals but may decide for themselves whether to hear other kinds of student appeals. All boards may continue to use hearing panels of at least two board members to hear and act on these appeals.

G.S. 115C-45(c), as amended by S.L. 2001-260 and S.L. 2001-500, sets out the circumstances under which a board must hear a student’s appeal. A student has the right to appeal any “final administrative decision” (a decision of a school employee from which no further appeal to a school administrator is available) in three circumstances:

1. The student is disciplined under G.S. 115C-391(c), (d), (d1), (d2), (d3), or (d4);
2. The student alleges that the administrative decision violates a specified federal law, state law, State Board policy, state rule, or local board policy, including policies regarding grade retention of students; or
3. The student is appealing any other decision that by statute specifically provides for a right of appeal to the local board of education and for which there is no other statutory appeal procedure.

After the board hears a student’s appeal of right, the student may appeal the board’s decision to superior court on one or more of the following six grounds:

1. The decision is in violation of constitutional provisions,
2. The decision is in excess of the board’s statutory authority or jurisdiction,
3. The decision was made upon unlawful procedure,
4. The decision is affected by other error of law,
5. The decision is unsupported by substantial evidence in view of the entire record as submitted, or
6. The decision is arbitrary or capricious.

Any student who does not have a right to appeal a final administrative decision to the board may petition the board for a hearing, and the board may grant a hearing regarding any final decision of school personnel. The board must notify the person seeking a hearing whether or not a hearing will be permitted.

S.L. 2001-260 also modifies employees’ rights to appeal to the board. These changes are discussed in the employee section of this chapter.

## Discipline Records

S.L. 2001-195 (H 620) addresses the issue of expunging information about a student's suspension or expulsion from school from that student's official record. Under former G.S. 115C-402, the superintendent or designee was required to expunge the notice of suspension or expulsion if the student graduated from high school or was not expelled or suspended during the two-year period after the student returned to school following a suspension or expulsion. Many school officials were concerned that this requirement could leave a school without information it might need to help a student or to adequately document a student's former problems and the school's response to them.

S.L. 2001-195 amends G.S. 115C-402 by changing the circumstances under which a superintendent *must* expunge a student's record. In addition to the requirement of graduation or two years without a suspension or expulsion, G.S. 115C-402 adds three conditions:

1. The student's parent, legal guardian, or custodian, or the student, if the student is at least sixteen years old or is emancipated, requests that the record be expunged;
2. The superintendent or designee determines that the record is no longer needed to maintain safe and orderly schools; and
3. The superintendent or designee determines that the record is no longer needed to adequately serve the student.

However, even if no appropriate person requests that the record be expunged, the superintendent *may* do so if all other criteria are met.

Every local board's policy on student records must include information on the procedure for expungement. In addition, every board must have policies governing student conduct. S.L. 2001-195 amends G.S. 115C-391(f) to require the board to include in these policies information on the expungement procedure. The notice given to students or parents of a suspension of more than ten days or of an expulsion must identify what information will be included in the student's official record and describe the procedure for expunging that information.

## Notice of Suspension or Expulsion

Because public school students have a property interest in their education, a student is entitled to some level of due process when the student is suspended or expelled from school. Due process includes both notice of the reason for the suspension or expulsion and notice of the student's opportunity to be heard regarding the alleged misconduct. When a student is expelled or suspended for more than ten days, a student's parent or guardian is entitled to notice of the student's rights. S.L. 2001-244 (S 81) adds new requirements to G.S. 115C-391 about the information given to the parent or guardian. If English is the parent's or guardian's second language, the notice must be written in both English and the parent's or guardian's first language when the appropriate foreign language resources are "readily available." Both versions of the notice must be "in plain language" and "easily understandable."

As noted above, G.S. 115C-391 also requires that a parent or guardian be given notice about information that will be part of a student's official record and about the procedure for expunging that information.

## Short-Term Suspension Pilot Program

G.S. 115C-105.20 says, "It is the intent of the General Assembly that the 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." One impediment to learning and achievement by students suspended from school for misconduct is that they do not have access to the instructional program

during their suspension.<sup>4</sup> A second concern is that suspended students who are unsupervised during the day may engage in misconduct or criminal activities in the community. In a small step to address these concerns, S.L. 2001-178 (S 71) establishes a pilot program to place students on short-term suspensions (no more than ten days) in alternative learning programs.

The State Board, in cooperation with the Department of Juvenile Justice and Delinquency Prevention, must establish a pilot program for no more than five school units. Each participating unit must develop a plan that provides for the placement of students on a short-term suspension, with limited exceptions. The plan must cover all students, unless the unit decides to exclude some or all students for whom a recommendation for long-term suspension is pending. Also, students with disabilities for whom the alternative placement is inappropriate under the student's individual education plan may not be placed under the plan. Absences from the alternative learning program are subject to local board policies regarding promotion and course credits. If a unit determines that attendance in the alternative learning program is mandatory for eligible short-term suspended students, the compulsory attendance law applies.

Each pilot unit must, to the extent reasonable and practicable, ensure that students are placed in programs or classrooms separate from those in which violent adjudicated offenders are placed. A unit may not assign students to programs or classrooms in training schools, detention centers, or other similar facilities. A pilot unit may contract with nonprofit corporations or other governmental entities to meet the students' needs and assign students to programs administered and staffed in whole or in part by these entities.

Any unit selected for the program may delay implementation until the local school board determines that adequate funds are available from federal, state, and local appropriations and other sources. If a board determines that it does not have adequate funds, the State Board may select another unit for the pilot program.

### **Dress Codes**

S.L. 2001-363 (H 195) amends G.S. 115C-391, which requires local school boards to adopt policies governing student conduct and establishing procedures for suspension, expulsion, or discipline of a student if the student's behavior could result in suspension, expulsion, or corporal punishment. These policies now must include a reasonable dress code for students.

### **Commercial Use of Student Information**

S.L. 2001-500 adds new G.S. 115C-401.1, which is designed to protect the confidentiality of information obtained from students. It prohibits a person who enters into a contract with a board of education or its designee from selling or otherwise using for a business or marketing purpose any personally identifiable information obtained from a student as a result of the contract. Use of the information is permitted only if the student's parent or guardian has given written consent to the use. However, a person seeking such consent may not solicit it by using school personnel or equipment nor do so on school grounds. A violation of this prohibition is a Class 2 misdemeanor. When the defendant is an organization as defined in G.S. 15A-773(c) (a corporation, unincorporated association, partnership, body politic, consortium or other group, entity, or organization), the fine is \$5,000 for the first violation, \$10,000 for a second violation, and \$25,000 for a third or subsequent violation.

### **Pre-adoption Enrollment**

Generally, only students who are domiciled in a school administrative unit have the right to enroll in and attend school in that unit without paying tuition. G.S. 115C-366.2 creates several

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4. As a general rule, the federal Individuals with Disabilities Education Act (IDEA) requires schools to offer students with disabilities who are covered by IDEA a free appropriate public education during a suspension of more than ten days but not during short-term suspensions.

exceptions to this general rule. S.L. 2001-303 (S 836) amends G.S. 115C-366.2 by including as an exception any child residing in a pre-adoptive home following placement by a county department of social services or a licensed child-placing agency.

### **Teen Court**

The Department of Juvenile Justice and Delinquency Prevention, pursuant to G.S. 7B-1706(c), administers teen court programs to operate as community resources for juveniles. A juvenile diverted to a teen court program will be tried by a jury of other juveniles. If the jury finds that the juvenile has committed the delinquent act, it may assign the juvenile to a rehabilitative measure or sanction, including counseling, restitution, curfews, and community service. Under new G.S. 143B-520, added by Section 24.8 of S.L. 2001-424, teen court programs also may operate as resources to local school units to handle problems that develop at school but have not been turned over to the juvenile authorities.

## **Curriculum**

### **History and Geography**

Although accountability programs focus on reading, writing, and mathematics, one of the liveliest curriculum topics in the General Assembly was not about any of these subjects. Instead, an initial discussion among educators about possible changes to the history and geography curriculum was the catalyst for a section of S.L. 2001-363. It amends G.S. 115C-81 so that both the standard course of study and the Basic Education Program require students to have two yearlong courses on North Carolina history and geography, one in elementary school and the other in middle school. These courses must include instruction on the contributions of various racial and ethnic groups to North Carolina history and geography and may include up to four weeks of instruction relating to the local area in which students reside.

### **Social Studies Curriculum**

Section 2 of S.L. 2001-363, the Student Citizenship Act of 2001, directs the State Board to modify the social studies curriculum in G.S. 115C-81 so that students will receive instruction on participation in the democratic process and hands-on experience in such participation. Both the middle school and high school social studies curricula must include instruction in civic and citizenship education. The new curricula must be implemented in the 2002–2003 school year.

### **Character Education**

For several years, G.S. 115C-47(h) has given local boards of education the option of requiring schools to teach the character traits of courage, good judgment, integrity, kindness, perseverance, respect, responsibility, and self-discipline. S.L. 2001-363 makes “character education” mandatory. Each local school board must develop and implement character education instruction with input from the local community. The instruction must be incorporated into the standard curriculum, rather than simply tacked on as a separate subject. Instruction should address the traits listed above. Local boards are also encouraged to include instruction on respect for school personnel, responsibility for school safety, service to others, and good citizenship. Character education must

begin with the 2002–2003 school year. However, if a local board determines that it would be an economic hardship to meet that schedule, the board may request an extension from the State Board.

Section 28.36 of S.L. 2001-424 requires the State Board to develop a model character education curriculum, using funds appropriated for character education.

### **Display of the Ten Commandments**

In a provision that may well be challenged as a violation of the Establishment Clause of the First Amendment, S.L. 2001-363 amends G.S. 115C-81 to allow a school board to display on real property it controls “documents and objects of historical significance that have formed and influenced the United States legal or governmental systems and that exemplify the development of the rule of law.” Examples of such documents are listed in the statute and include the Magna Carta, the Mecklenburg Declaration, the Justinian Code, and other documents as set out in G.S. 115C-81(g)(3a), as well as the Ten Commandments. A display may not be limited to documents that contain words associated with a religion. No display may seek to establish or promote religion or to persuade any person to embrace a particular religion, religious denomination, or other philosophy. Any display of a document containing words associated with a religion must be presented in the same manner and appearance generally as other documents and objects in the display. A prominent sign quoting the First Amendment must accompany the documents.

## **School Operations**

### **School Classifications**

S.L. 2001-97 (H 15) amends G.S. 115C-74 to give each local board of education the authority to organize the schools in its administrative unit as the board sees fit. G.S. 115C-75, as amended by S.L. 2001-97, sets out recommended classifications and definitions of elementary, middle, junior high, high, senior high, and union schools.

### **School Paperwork**

In 2000 the General Assembly amended G.S. 115C-307 (duties of teachers) and G.S. 115C-47 (duties of school boards) to reduce unnecessary paperwork for educators. S.L. 2001-151 (S 708) continues this effort. It amends G.S. 115C-12 to require the State Board to adopt policies to ensure that the State Board, the State Superintendent, and the staff of the Department of Public Education do not require local school units to produce unnecessary paperwork. Specifically, local units may not be asked to:

1. Provide information already available on the student information management system or housed within the Department of Public Instruction,
2. Provide the same written information more than once during a school year unless the information has changed during the ensuing period, or
3. Complete forms for children with disabilities that are not essential for compliance with the federal Individuals with Disabilities Education Act (IDEA).<sup>5</sup>

However, the State Board may require information that is available on its student information management system or require the same information twice if the State Board can demonstrate both a compelling need for the information and the lack of a more expeditious manner of getting the

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5. Although not specified in S.L. 2001-155, local units may have to complete forms for children with disabilities that are not essential for compliance with the Individuals with Disabilities Education Act but are essential for compliance with other federal statutes, most notably Section 504 of the Rehabilitation Act.

information. The statute does not explain how or to whom the State Board is to make this demonstration.

### **Kindergarten Class Size**

Section 28.44 of S.L. 2001-424 provides that for 2001–2002, the maximum class size limits for kindergarten must be reduced by one. The maximum class size set by the State Board for 2000–2001 was based on an allotment ratio of one teacher for every nineteen students; limits for 2002–2003 are reduced by one, based on an allotment ratio of one teacher for every eighteen students. Local school units may use teacher positions allocated to reduce class size in kindergarten only to hire kindergarten classroom teachers.

### **Charter Schools**

Charter schools operate under a charter application approved by the State Board, and the State Board must approve any material revision to a school’s application. Section 28.26 of S.L. 2001-424 modifies the circumstances under which enrollment growth in a charter school constitutes a material revision. It amends G.S. 115C-238.29D to provide that it is not a material revision of a charter application for a charter school to increase its enrollment annually by up to 10 percent of the previous year’s enrollment or to increase its enrollment in accordance with planned growth set out in the charter application. Enrollment growth above 10 percent that is not in accordance with planned growth in the charter is a material revision of the charter application; the State Board may approve such additional growth only if the conditions in G.S. 115C-238.29D are met.

### **Conflicts of Interest**

S.L. 2001-409 (H 115) repeals G.S. 14-236 and -237 and incorporates the essential provisions of those statutes into an amended G.S. 14-234. This clarifies the coverage of the conflict provisions and creates a uniform standard of conduct for all public officials. This standard and other changes in the law related to construction and purchasing are discussed in detail in Chapter 21, “Purchasing and Contracting.”

### **Emergency Response Plans**

S.L. 2001-500 amends G.S. 115C-47 to authorize local boards of education to adopt emergency response plans relating to incidents of school violence. Emergency response plans are not public records as defined in G.S. 132-1. S.L. 2001-500 also amends G.S. 143-318.11 to allow a public body to meet in closed session to formulate plans by a local board of education relating to emergency response to incidents of school violence.

### **Construction and Purchasing Law**

Changes in school construction law and purchasing law are explained in Chapter 21, “Purchasing and Contracting.”

## **Transportation and Traffic**

### **Interference with School Buses**

School bus safety and adherence to regular bus schedules are important goals. S.L. 2001-26 (S 45) amends two criminal statutes to deal with the problem of persons interfering with the operation of public school buses. G.S. 14-132.2 now provides that a person who unlawfully and

willfully stops, impedes, delays, or detains a public school bus or activity bus being operated for school purposes is guilty of a Class 1 misdemeanor. Willfully trespassing on or damaging a public school bus or activity bus is changed from a Class 2 misdemeanor to a Class 1 misdemeanor. The definition of “disorderly conduct” in G.S. 14-288.4(a) now includes engaging in conduct that disturbs the peace, order, or discipline on any public school bus or activity bus. G.S. 15-1340.23 sets out the punishment for a Class 1 misdemeanor: a fine set by the court and a sentence that ranges from 1 to 120 days of a community, intermediate, or active punishment, depending on the number of the defendant’s prior convictions.

### **Traffic and School Facilities**

Opening a new school or expanding an existing facility affects traffic and safety. Section 27.27 of S.L. 2001-242, which amends G.S. 136-18, facilitates planning for such a change. When any public or private entity acquires land for a new school—and before the entity begins construction of a new school or expands or relocates an existing school—the entity must require information from the Department of Transportation (DOT). Specifically, the entity must request that DOT evaluate the plans and make recommendations to ensure that all proposed access points comply with the criteria in DOT’s policy on street and driveway access. DOT must respond no more than sixty days after the request. However, the entity planning the school is not required to meet DOT’s recommendations.

### **Bus Accidents**

Claims against school employees for accidents involving school buses or school transportation service vehicles are heard and defended under the Tort Claims Act. Under G.S. 143.300.1, the Attorney General is authorized to defend a civil action brought against the driver, transportation safety assistant, or monitor of a public school bus or school transportation service vehicle or school bus maintenance mechanic, as long as certain conditions are met. Section 6.18 of S.L. 2001-424 amends that statute to limit the Attorney General’s authority to defend employees or former employees. The Attorney General must refuse to provide for the defense of a civil action or proceeding brought against an employee or former employee if the Attorney General determines that:

1. the act or omission was not within the scope and course of employment as a state employee,
2. the employee or former employee acted or failed to act because of actual fraud,
3. defense of the action would create a conflict of interest between the state and the defendant, or
4. defense of the action or proceeding would not be in the best interests of the state.

## **Studies**

### **Testing**

Section 28.17 of S.L. 2001-424 requires the Joint Legislative Education Oversight Committee to study the state’s testing program. Section 28.17 requires the State Board to study the benefits and consider the costs of providing students’ parents or guardians with copies of tests administered to their children under the Statewide Testing Program.

The State Board also must report to the Joint Legislative Education Oversight Committee on its objectives for the Statewide Testing Program and on the program’s implementation. The State Board must provide the committee with an analysis of the current resources allocated to meet the needs of students subject to the student accountability standards and submit recommendations for other resources that would best assist such students in meeting these standards.

### **Textbook Distribution**

Section 28.24 of S.L. 2001-424 directs the State Board to contract for an analysis of the best and most efficient method to manage textbook distribution to local schools.

### **Children with Disabilities**

Section 28.29 directs the Joint Legislative Education Oversight Committee, in consultation with the Department of Public Instruction, to examine state laws governing special education and related services for children with disabilities. The committee must identify and recommend changes needed to bring state law into conformity with the federal IDEA.

### **Other Studies**

Part II of S.L. 2001-491 (S 166) authorizes the Legislative Research Commission to study the reporting of threats of school violence and education programs for juveniles in juvenile facilities. Part VIII of S.L. 2001-491 authorizes the Joint Legislative Education Oversight Committee to study the following issues related to public schools: residential charter schools; teaching personal financial literacy; schoolwork of suspended students; nutrition in public schools; classroom experience for school personnel; science, mathematics, and technology education; low-wealth funding formula; education of students with disabilities; prescription of drugs to children diagnosed with ADD/ADHD; high priority school assistance; caseloads for speech and language pathologists; the performance-based licensure program; advisory membership on State Board of Education; and participation of nonpublic school and home-school students in extracurricular activities in public schools. The Committee is to report to the General Assembly in 2002 or 2003.

## **Department of Health and Human Services**

### **More at Four Pilot Program**

Offering high-quality preschool programs to at-risk children often helps them succeed when they later enroll in school. Section 21.76B of S.L. 2001-424 directs the Department of Health and Human Services (DHHS), in consultation with the Department of Public Instruction, to develop the More at Four Program, a voluntary prekindergarten pilot program. The goal of the program is “to ensure that all children have an opportunity to succeed in kindergarten.” Section 76A allocates \$6.45 million of DHHS’s appropriation for each year of the 2001–2003 fiscal biennium for the development and implementation of this program.

### **Office of Education Services**

Section 21.80(b) of S.L. 2001-424 dissolves the Division of Early Intervention and Education and creates an Office of Education Services within DHHS. The office is responsible for managing the schools for the deaf, the Governor Morehead School for the Blind, and their preschool components. The purpose of the office is to improve students’ academic and postsecondary outcomes and to strengthen collaborative relationships with local education agencies and the State Board.

### **Closure of School for the Deaf**

The Central North Carolina School for the Deaf at Greensboro is being closed. Section 21.81 of S.L. 2001-424 amends G.S. 143B-216.40 by deleting that school from the list of schools for the deaf maintained by DHHS.

### **Preschool Programs for Deaf Children**

Section 21.83 of S.L. 2001-424 ends the state's operation of preschool services for deaf children. Other services must be made available to these children.

## **Miscellaneous**

### **Appropriations**

Section 2.1 of S.L. 2001-424 appropriates to the Department of Public Instruction \$5.88 billion for the 2001–2002 fiscal year and \$5.92 billion for the 2002–2003 fiscal year.

### **Council on Educational Services for Exceptional Children**

G.S. 115C-121 establishes the Council on Educational Services for Exceptional Children, a twenty-three-member advisory council to the State Board. Section 28.29 of S.L. 2001-424 changes the composition of the council and redefines its duties.

### **Information Security**

Section 15.2 of S.L. 2001-424 amends G.S. 147-33.83 by directing the State Chief Information Officer to establish an enterprise-wide set of standards for information technology security. This section is discussed in Chapter 13, "Information Technology." If local school administrative units develop their own security standards that are comparable to or exceed the standards set by the information officer, they may implement their own standards and will not be required to get the State Chief Information Officer's approval before purchasing information technology security.

### **E-Procurement**

Section 15.6 of S.L. 2001-424 deals with the state's electronic procurement program; changes in this program are explained in Chapter 21, "Purchasing and Contracting." Any school unit operating a functional electronic procurement system established before September 1, 2001, may continue to operate that system independently until May 1, 2003, or may opt into the North Carolina E-Procurement Program.

## **School Employment: Licensure and Professional Development**

### **Superintendents from Fields outside Education**

G.S. 115C-271 gives each local board of education the discretion to select the superintendent for that school system, but it directs the State Board of Education to adopt rules establishing qualifications for the selection. Until the enactment of S.L. 2001-174 (S 378), the statute further provided that at a minimum a candidate, in order to be qualified, must have served as a principal in a North Carolina public school or "have equivalent experience." As now amended, the statute provides that the candidate must have been a principal or "have other leadership, management, and administrative experience." Further, the statute now directs the State Board to adopt qualifications "that would qualify a person to serve as a superintendent without having direct experience or certification as an educator."

### **Standards Board for Public School Administration Abolished**

Under the requirements of Article 19A of G.S. Chapter 115C, to be licensed as a public school superintendent, deputy superintendent, associate superintendent, assistant superintendent, principal, or assistant principal, an individual must meet certain educational requirements and must pass the North Carolina Public School Administrator Exam. Prior to enactment of Section 28.25 of S.L. 2001-424, the exam was prepared by the North Carolina Standards Board for Public School Administration (subject to approval by the State Board). The Standards Board administered the exam to all applicants and reviewed the educational qualifications of all applicants. The Standards Board then recommended to the State Board that those who qualified be licensed. As now amended, all references to the Standards Board are removed from the statute. The State Board is now directly responsible for preparing and administering the exam and for passing on the qualifications of all applicants for licensure.

### **Teacher Licensure Exam in the Second Year of Teaching**

G.S. 115C-296(a) directs the State Board to require applicants for teachers' licenses to achieve a prescribed minimum score on a standard examination. S.L. 2001-129 (H 1285) directs the board to permit an applicant to fulfill this requirement before or during the applicant's second year of teaching, provided that the applicant take the exam at least once during the first year of teaching.

### **Health Certificate Exams by Non-Physicians and Out-of-State Practitioners**

G.S. 115C-323 requires that every new employee in a public school system (or returning employee after at least a year's absence) present a certificate certifying that the employee has no mental or physical disease that would impair his or her ability to perform the duties of the job. The statute formerly required that the certificate be prepared by a physician licensed to practice medicine in North Carolina. S.L. 2001-118 (H 608) amends the statute so that it now also permits the certificate to be prepared by a nurse practitioner or physician's assistant licensed in North Carolina or by a physician, nurse practitioner, or physician's assistant licensed in another state if evidence of that licensure appears on the certificate.

### **Use of Teacher Mentor Funds**

Section 28.31 of S.L. 2001-424 specifies that state funds appropriated to provide mentors for teachers during the second year of teaching may be used to provide mentors for teachers whose first year of teaching was in a public school in North Carolina, a public school in another state, or a charter school.

### **Pilot Program for Full-Time Mentors**

Section 28.18 of S.L. 2001-424 directs the State Board to establish a pilot program to permit the Charlotte-Mecklenburg, Winston-Salem/Forsyth, and Wake County school units to use funds allocated for mentors to employ full-time mentors. A teacher or instructional support employee employed to serve solely as a mentor under this program is to receive a payment for each individual, up to fifteen individuals, to whom the mentor is assigned, with the amount of each payment to be the same as the amount received as a salary supplement by a teacher or instructional support person serving as a mentor.

### **Leave to Work on Licensure**

Section 28.19 of S.L. 2001-424 directs the State Board to permit initially licensed teachers to receive up to three days of paid leave during the second year of teaching to work on their performance-based licensure required products or to consult with their mentors. If teachers have not successfully completed the performance-based requirements by their third year, they are to receive up to three days of paid leave to complete all requirements. Teachers may take the paid leave only with the approval of their supervisors. Section 28.19 also directs the State Board to study the teacher mentor program and the performance-based licensure program to determine whether adjustments are needed in either.

### **Funds for Noninstructional Support May Be Used for Staff Development**

G.S. 115C-105.25(b) provides some flexibility to school administrative units in transferring funds among allotment categories. Section 28.22 of S.L. 2001-424 adds a new G.S. 115C-105.25(b)(2a) permitting up to 3 percent of state funds allocated for noninstructional support personnel to be transferred for use in staff development.

### **Teacher Academy Development Programs**

G.S. 116-30.01(a) directs the North Carolina Teacher Academy Board of Trustees to establish a statewide network of high quality, integrated, comprehensive, collaborative, and substantial professional development for teachers. Section 28.28 of S.L. 2001-424 adds a requirement that the network include professional development programs that focus on teaching strategies for teachers assigned to at-risk schools. The new provisions also direct the Teacher Academy to use at least 10 percent of its budget for the 2001–2002 fiscal year to deliver programs for teachers assigned to small classes in kindergarten through fifth grade.

## **School Employment: Recruiting, Hiring, and Leave**

### **Criminal Records Checks**

G.S. 115C-322 permits local boards of education to have access to computerized criminal record histories maintained by the State Bureau of Investigation and the Federal Bureau of Investigation for checking on the criminal histories of employees or applicants for employment. S.L. 2001-376 (S 778) amends the statute to make three changes. First, it adds a provision that an applicant for employment who gives false information on an application that is used for a computerized criminal history check is guilty of a Class A1 misdemeanor. Second, it specifies that the requirement that the local board of education make written findings with respect to how it used the computerized criminal information in a particular circumstance may be delegated to the superintendent. Third, it provides that workdays worked by a probationary teacher while the computerized criminal history check is being conducted count toward the 120 days that a teacher must work in a year for the year to count as one of the four years that must be worked before the teacher may gain tenure, even though the statute says that an employee who works before the criminal record check is complete is employed only “conditionally.”

### **Hiring Retired Teachers**

G.S. 135-3(8)c permits retired teachers and state employees to return to employment without losing the right to payment of their retirement pay; but it subjects them to an earnings cap of 50 percent of the salary of the position and provides that if the person receives more than 50 percent pay, retirement benefits are suspended. A special provision of the statute provides that retired teachers who return to teaching are not subject to the 50 percent limit, but may be paid in full and

still receive their retirement benefits. The statute had formerly required that the retired teacher be retired for at least twelve months before returning. Section 32.25 of S.L. 2001-424 amends the statute to reduce the waiting time to six months. This provision expires June 30, 2003.

### **Programs to Increase Supply of Teachers**

Four initiatives found together in Section 29.2 of S.L. 2001-424 are designed to increase the supply of teachers. The first makes \$1 million available each year of the 2001–2003 biennium for scholarship funds for teacher assistants taking courses that are prerequisites for teacher certification programs. The second makes \$1.5 million available each year of the biennium to provide annual bonuses of \$1,800 to teachers certified in and teaching mathematics, science, or special education in middle or high schools in which 80 percent of students are eligible for free or reduced price lunches or in which 50 percent or more are performing below grade level in algebra and biology. (A provision makes clear that the loss of the bonus because the teacher is reassigned to another school or to another field does not constitute a demotion within the meaning of the Teacher Tenure Act.) The third initiative directs the Joint Legislative Education Oversight Committee to study the effectiveness of providing benefits to part-time teachers as a means to recruit certified teachers. The fourth directs that committee to study the potential effectiveness of increasing the size of the Teaching Fellows Program to improve the supply of qualified teachers. A separate initiative, found in Section 28.43, authorizes the State Board to use up to \$200,000 each year of the biennium to enable teachers who have received national teacher certification or other special recognition to advise the State Board on teacher recruitment and other strategic priorities.

### **Leaves to Teach in Charter Schools**

G.S. 115C-238.29F(e)(3) requires school administrative units to grant extended leaves to teachers who wish to teach in a charter school. The statute previously required the school administrative unit to grant a leave for any number of years requested and to extend a leave at the teacher's request for any number of years requested. S.L. 2001-462 (S 139) amends the statute to provide that the initial request of a teacher is to be granted for one year only and that the administrative unit is not required to grant a request for a leave or an extension to any teacher who has already received such a leave from the unit.

### **Teaching Opportunities for Military Personnel**

S.L. 2001-146 (S 803) directs the Board of Governors of the University of North Carolina, the State Board of Community Colleges, and the Department of Public Instruction to work cooperatively to expand opportunities for military personnel to enroll in and complete teacher education programs prior to their discharge from the military.

## **School Employment: Pay**

### **Salaries**

S.L. 2001-424 sets schedules for the salaries of teachers, school-based administrators, central office administrators, teacher assistants, and other noncertified personnel.

For teachers, the act sets a salary schedule for 2001–2002 that ranges from \$25,250 for a ten-month year for new teachers holding an “A” certificate to \$55,910 for teachers with twenty-nine or more years of experience, an “M” certificate, and national certification. For school-based administrators (meaning principals and assistant principals), the ten-month pay range is from \$32,226 for a beginning assistant principal to \$74,920 for a principal with more than forty years of

experience who serves in the largest category of schools. Of course, many school-based administrators are employed not for ten but for eleven or twelve months, which adds a proportionate amount to their salaries. For central office administrators (meaning assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers), the ten-month range is from \$29,320 to \$70,020; again, many are employed for more than ten months. Teacher assistants and other noncertified personnel received an annual salary increase of \$625.00 per individual.

### **Instructional Support Personnel**

Section 28.11(g) of S.L. 2001-424 amends G.S. 115C-325(a)(6), which contains the definition of *teacher* for the purpose of determining who is covered by the Teacher Tenure Act. Before the amendment, the statute provided that a teacher was anyone who holds a current Class A license, is employed in a permanent full-time position, and (1) teaches or directly supervises teaching, (2) is classified by the State Board as a teacher, or (3) is paid as a classroom teacher. The amendment changes the last element to read “is paid either as a classroom teacher or instructional support personnel.” This change makes it clear that school psychologists, guidance counselors, social workers, speech-language pathologists, and media coordinators are eligible for teacher tenure. Section 28.37 directs the Joint Legislative Education Oversight Committee to study salary differentials for instructional support personnel, considering salary differentials based on degrees and other educational credentials, licensure, and other factors.

### **Overtime for Teacher Assistant/Bus Drivers**

Section 28.42 of S.L. 2001-424 contains a provision specifying that a school employee working as both a teacher assistant and a bus driver (a common combination) who works for a combined total of more than forty hours in a week is to receive overtime compensation at a rate of time-and-a-half. The appropriate compensation is to be paid from the teacher assistant and transportation allotments. If the employee and the school system agree, the employee may use compensatory time off rather than receive overtime pay.

### **Substitute Teacher Unemployment Insurance**

Section 28.42 of S.L. 2001-424 adds new G.S. 96-8(10) providing that no substitute teacher or other substitute school personnel is to be considered unemployed for days or weeks when not called to work unless the individual is a permanent school employee regularly employed as a full-time substitute during the period of time for which the individual requests benefits.

### **Salaries of Food Service Workers and Custodians**

Section 28.34 of S.L. 2001-424 directs the Joint Legislative Education Oversight Committee to study the salaries of food service workers and custodians employed in the public schools and report to the 2002 session of the General Assembly.

## **School Employment: Grievances and Harassment**

### **Grievances, Appeals, and the At-Will Status of Employees**

Former G.S. 115C-45(c) allowed just about anyone to appeal to the local board of education just about any action taken by any school employee. With respect to students, an appeal could be taken, for example, because a student was cut from the basketball team or because a student got a C on a paper. With respect to employees, an appeal could be taken, for example, because a

custodian was transferred to a different school or because a teacher assistant was required to drive a school bus on a fill-in basis. Some school boards wanted to limit such appeals in order to reduce the scope of actions that are automatically appealable. S.L. 2001-260 responds to that desire, amending G.S. 115C-45(c) to limit the kinds of matters that an individual has an automatic right to appeal to the board of education.

With respect to students, matters that are now automatically appealable under amended G.S. 115C-45(c) are discussed above in “Other Student Issues” (p. 93).

With respect to employees, the statute as now amended provides that an appeal to the board of education is automatically available from “any final administrative decision” related to the “terms or conditions of employment or employment status of a school employee.” Does the amended statute in fact limit the kinds of appeals that an employee may automatically take to the board of education? On the one hand, the answer appears to be no, because under the amendment all actions that *relate to the terms or conditions of employment or employment status* are automatically appealable, and that is a very broad range. On the other hand, the answer may to some extent be yes, because the only actions automatically appealable are “final administrative actions.” That is, the decision by a principal to change a custodian’s work hours is not automatically appealable to the board of education, as it was under the old provisions of G.S. 115C-45(c), in districts where the policies of the board of education permitted the custodian to take the appeal first to the superintendent (or other administrative official). Under the amended statute, the appeal to the board is available only after the custodian has exercised all avenues for redress in the administrative chain.

The new provisions of the amended statute go on to say that in the case of employment decisions concerning dismissal, demotion, or suspension without pay, a noncertified employee may appeal the decision of the school board to the superior court. In such an appeal, the dismissed, demoted, or suspended employee may allege that the board’s decision to uphold the dismissal, demotion, or suspension was

- in violation of constitutional provisions,
- in excess of the authority of the board,
- made upon an unlawful procedure,
- affected by other error of law,
- unsupported by substantial evidence in light of the entire record, or
- arbitrary or capricious.

Further, a noncertified employee who is to be dismissed (or demoted or suspended without pay) may, under the new statutory provisions, request (and is then entitled to receive) written notice as to the reasons for the dismissal. This notice is to be provided prior to any hearing before the board.

The combined effect of these provisions is not completely clear. Noncertified school employees—custodians, maintenance workers, bus drivers, teacher assistants, food service workers, secretaries, and others—are at-will employees. Until now, that has meant that they are subject to dismissal, demotion, or suspension for any reason or for no reason at all—as are employees at-will in public and private employment generally—as long as there is not an illegal reason at play, such as race or sex discrimination. Now, however, new G.S. 115C-45(c) provides that an employee at will who is to be dismissed, demoted, or suspended without pay is entitled to (1) a statement of the reasons, (2) a hearing before the board of education, and (3) the right to appeal the decision of the board of education to the superior court on the grounds, among others, that the decision of the board was not supported by substantial evidence or was arbitrary or capricious.

Putting those rights together, the statute could be read as ending employment at will for noncertified public school employees. Whether the courts will read the statute in that way remains to be seen. Two factors argue against such a reading. First, the amended statute itself provides, in its final sentence, that “[t]his subsection shall not alter the employment status of a noncertified employee.” The apparent meaning is that such employees are still employees at will. Second, the entire appeals procedure called for by the amended statute, with first an appeal to the board of

education and then on to the superior court, is premised on the fact that there is a “final administrative action” to be appealed from. Suppose a board of education by policy reserves to itself the authority to make the initial decisions to dismiss, demote, or suspend without pay noncertified employees. In such a case, neither the principal nor the superintendent would have the authority to dismiss a custodian but could only recommend such action to the board of education. This procedure would be cumbersome, but with such a procedure in place it could be said that the superintendent’s recommendation to the board is not a “final administrative action” and that the ultimate action of the board itself in voting to dismiss the custodian is not an action that the custodian can appeal to the board or on to the superior court. In that case, the custodian would have no right at all to a hearing. It is not clear if the General Assembly meant to allow such differential treatment of noncertified employees to depend on whether the local board of education delegates dismissal authority to the superintendent or principal. It will be left to the courts to interpret the statute or to the General Assembly to clarify it.

### **Sexual Harassment Policy**

G.S. 115C-333.5 provides that a school employee may not be disciplined for filing a complaint of sexual harassment unless the employee knew or had reason to believe that the report was false. S.L. 2001-173 (H 1149) amends the statute to add a provision authorizing local boards of education to adopt policies addressing the sexual harassment of employees by students, other employees, or board members. Such policies may set out the consequences of sexually harassing school employees and the procedures for reporting incidents of sexual harassment.

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