

9

Elementary and Secondary Education

The deaths of fourteen students and one teacher at Columbine High School in Littleton, Colorado, haunt us all. In the wake of this tragedy people all across the country struggled to figure out why Littleton happened and how to prevent violence at schools. At the same time, unfortunately, scores of schools across the country and across North Carolina received threats of violence. Although concern for school safety obviously predated the spring of 1999 and already had led to many changes in school statutes, policies, and operations, Littleton apparently was a catalyst for additional action by the General Assembly.¹ Much of the school law it enacted is aimed at deterring violence or making accountable those responsible for violence or other illegal conduct at school.

As the 1999 school year drew to a close, schools experienced a dramatic increase in bomb threats. Such threats or just rumors of threats cause disruption and may lead to the evacuation of school and a heightened sense of fear and insecurity throughout a community. Threats are also expensive to investigate. The 1999 General Assembly responded to these problems through changes in school discipline statutes, criminal penalties, civil liability for parents, and mandatory driver's license revocations.

The General Assembly also continued its efforts to improve student achievement and accountability. This year the efforts focused not on any major new reform initiative, but on refining and evaluating those already in place. In addition the General Assembly paid greater attention to the need for high-quality alternative learning opportunities for students who are at risk of school failure or who are disruptive. The decision to fund a significant pay increase for teachers and bonuses under the ABCs program has the ultimate goal of improving student learning.

After three very active sessions in 1996, 1997, and 1998, the North Carolina General Assembly in 1999 took a break from enacting major legislation affecting employment in the

1. Governor Hunt also reacted and appointed a Task Force on Youth Violence and School Safety. The task force issued its report in August 1999, and the report is available through the Governor's Web site at www.governor.state.nc.us.

public schools. In 1996 the School-Based Management and Accountability Program, commonly known as the ABCs Program, called for the classification of schools based on certain measures tied to student performance on particular standardized tests. Through that legislation numerous employment consequences for a school's teachers and administrators, including the potential for dismissal, spring from the classification of the school. In 1997 the Excellent Schools Act brought wholesale changes to school employment, affecting everything from teacher training to certification, tenure, and the procedures for dismissal. In 1998 the legislature worked to fine-tune some of the earlier legislation and provided, in a break with the past, for the employment of uncertified teachers in certain circumstances.

The 1999 General Assembly continued the upward movement in teachers' salaries begun with the Excellent Schools Act, tinkered with certification and dismissal provisions, focused on issues related to sexual harassment and improper sexual contact, and aimed at improving instructional conditions for teachers.

Responses to Violence at School

Lose Control, Lose your License

A major rite of passage for American teenagers is getting a learner's permit or driver's license. Before 1997 a minor could get a learner's permit simply by meeting the age requirement, having parental permission, and completing a driver training and safety education course. In 1997 the General Assembly added the requirement that any minor who did not have a high school diploma or its equivalent must have "a driving eligibility certificate." Under G.S. 20-11 a principal or the principal's designee could issue a certificate for a minor student in public school only if (1) the minor was currently enrolled in school and making progress toward a high school diploma or its equivalent, (2) a substantial hardship would be placed on the minor or the minor's family if the minor did not receive a certificate, or (3) the minor could not make progress toward a high school diploma or its equivalent. This certificate requirement was designed as an incentive to keep students in school by taking advantage of the high value teenagers place on being able to drive.

In 1999 a new restriction was added, this one to encourage students to refrain from serious and dangerous misconduct. This restriction, commonly known as "lose control, lose your license," had been introduced in 1998 but did not pass. In 1999, in response to heightened concern about safety, and in spite of opposition from some educators worried about an additional administrative burden, the measure did pass. S.L. 1999-243 (S 57), as amended by S.L. 1999-387 (H 1154), defines circumstances under which students who engage in certain kinds of misconduct would not receive, or would lose, their driving eligibility certificate and therefore, their learner's permit or driver's license. These amendments to G.S. 20-11 cover all minor students enrolled in public schools, including charter schools, community colleges, nonpublic schools, or home schools.

The "lose control, lose your license" restriction applies when a minor student commits certain offenses on school property and receives specified disciplinary sanctions as a result. If the school official has not yet issued an eligibility certificate, he or she may not issue one. If a certificate has been issued, the school official must report information to the Division of Motor Vehicles (DMV). It is the DMV's responsibility to take direct action on the permit or license.

The offenses are (1) possession or sale of alcohol or an illegal controlled substance on school property, (2) the bringing of a weapon or firearm to school or the possession or use of a weapon or firearm at school that results in disciplinary action under G.S. 115C-391(d1) (365-day suspension) or such possession or use away from school that could have resulted in that action if the conduct had occurred at school, and (3) physical assault on a teacher or other school personnel on school property. "School property" is the physical premises of the school, school buses or vehicles under the school's control or contract used to transport students, and school-sponsored curricular or

extracurricular activities that occur on or off the physical premises of the school. The disciplinary actions are (1) expulsion, (2) suspension for more than ten consecutive days, or (3) assignment to an alternative educational setting for more than ten consecutive days. For the conduct to be covered, it must have occurred after July 1 before the student's eighth grade year or after the student's fourteenth birthday, whichever occurred first. The act becomes effective with respect to conduct that occurs on or after July 1, 2000.

A student who loses eligibility for a certificate may regain it. A student is again eligible for a certificate when he or she has exhausted all administrative appeals connected to the disciplinary action and either (1) the conduct occurred before the student was fifteen years old and the student has now turned at least sixteen; (2) the conduct occurred after the student was fifteen and it is now at least one year after the date the student exhausted all administrative appeals connected to the disciplinary action; or (3) no other transportation is available and the student needs to drive to and from school, a drug or alcohol treatment counseling program, or a mental health treatment program.

Additionally a student whose permit or license is denied or revoked because he or she has lost eligibility for a certificate may regain eligibility if, after six months from the date of the ineligibility, (1) the student has returned to school or been placed in an alternative educational setting and has displayed exemplary behavior or (2) the disciplinary action was for the possession or sale of an alcoholic beverage or an illegal controlled substance on school property and the student subsequently attended and successfully completed a drug or alcohol treatment counseling program.

G.S. 115C-12(28) requires the State Board of Education to adopt rules² related to these requirements. These rules must define what is "equivalent to a high school diploma" (because eligibility for a certificate turns on a student's making progress toward a high school diploma or its equivalent), establish procedures that a person who is or was enrolled in a public school (including a charter school) must follow to obtain a driving eligibility certification, require the appropriate school official to provide the driving eligibility certificate for a minor who meets all requirements, provide for an appeal to an appropriate education authority by a minor denied a certificate, define "exemplary student behavior" and "successful completion" of a drug or alcohol treatment counseling program (which are the elements of the requirements for reinstatement of a lost certificate).

The 1997 law on driving eligibility certificates was silent on the school's responsibility to obtain parental consent before releasing the required information about the student to the DMV. Many people questioned whether releasing the information without parental consent would violate the federal Family Educational Rights and Privacy Act (FERPA). That issue was addressed in 1999. Parents, guardians, or emancipated juveniles must provide in advance their written, irrevocable consent for a public school, including a charter school, to disclose to the DMV that the student no longer meets the conditions for a driving eligibility certificate. The only information the school may disclose pursuant to this consent is whether the student is no longer eligible under G.S. 20-11(n)(1) or 20-11(n1). Presumably if consent is not given, the school official will not issue a driver eligibility certificate and the minor will not be able to drive legally.

G.S. 115C-288 assigns the school principal or the principal's designee three specific duties related to driving eligibility certificates. First, the principal must sign certificates for students who meet the conditions in G.S. 20-11. Second, the principal must obtain the written, irrevocable consent described above from parents, guardians, or emancipated juveniles. Third, the principal must notify the DMV when a student who holds a certificate no longer meets the eligibility conditions. For charter schools G.S. 115C-238.29F assigns these duties to the designee of the school's board of directors.

2. For a discussion of the State Board's rule-making process, see Ann McColl, "The North Carolina State Board of Education: Its Constitutional Authority and Rule-Making Procedures," *School Law Bulletin* 29 (Fall 1998): 1-11.

Some educators expressed concerns about the potential cost of administering this act. Section 8.11 of S.L. 1999-237 permits the State Board to use funds appropriated for driver's education for the 1999-2000 and 2000-2001 fiscal years for the costs of issuing driving eligibility certificates.

365-Day Suspension

For several years G.S. 115C-391(d1) has required the school board or superintendent to suspend any student who brings certain weapons onto school property. This requirement applied to weapons as defined in G.S. 14-269.2(b) and 14-296.2(g). The board may modify this suspension on the superintendent's recommendation.

S.L. 1999-257 (H 517), as amended by S.L. 1999-387, amends G.S. 115C-391(d1) by adding weapons as defined in G.S. 14-269.2(b1) and 14-269.2(h) to the weapons that trigger the 365-day suspension. The 365-day suspension now applies to firearms, explosives, bomb threats, and bomb hoaxes. The suspension originally applied to any student who "brings a weapon onto school property." Now it applies to any student who brings a weapon onto or possesses a weapon on educational property and to any student who brings a weapon to or possesses a weapon at a school-sponsored curricular or extracurricular activity off educational property.

S.L. 1999-257, as amended by S.L. 1999-387, enacts G.S. 115C-391(d3). This new section requires a local board of education (but not a superintendent) to suspend any student who makes a false report or perpetrates a hoax with a device that could be reasonably believed to be a bomb or other destructive device on educational property or at a school-sponsored curricular or extracurricular activity off educational property. As in G.S. 115C-391(d1), the board may modify the suspension upon recommendation of the superintendent. G.S. 115C-391(e) allows an appeal to the board of education of a superintendent's decision under G.S. 115C-391(d1) (365-day suspension for weapons), G.S. 115C-391(d2) (action by superintendent when a student assaults another person), and the new G.S. 115C-391(d3) (false reports), although the superintendent does not make the suspension decision in the last instance.

Metal Detectors

An increasing number of schools use metal detectors at school and school-sponsored activities as part of their efforts to keep students and others safe. Section 20.5 of the appropriations act, S.L. 1999-237 (H 168), appropriates \$350,000 to the Department of Crime Control and Public Safety to provide metal detectors to public schools.

Criminal Law

Assault

S.L. 1999-105 (S 637) amends G.S. 143-33 to make it a Class A1 misdemeanor for a person to assault a school employee or volunteer (including certain independent contractors) when the employee or volunteer involved is carrying out his or her duties.

Possession of a Firearm

S.L. 1999-211 (S 1096) amends G.S. 14-269.2 to make it a felony for a school employee to possess or carry a firearm on educational property or to a curricular or extracurricular activity sponsored by a school. Under specified circumstances and depending on the person's status as employee or student at the time of the offense, the offense is a misdemeanor. In any event, the offense can be a misdemeanor and not a felony only if the firearm is not loaded and is in a locked container or locked firearm rack in a motor vehicle. It is not a criminal violation if the person takes

or receives the weapon from another person or finds the weapon and then delivers it, directly or indirectly, to law enforcement authorities as soon as is practical.

Explosives

S.L. 1999-257, as amended by S.L. 1999-387, increases criminal penalties for second and subsequent offenses and authorizes court-ordered restitution for those convicted under G.S. 14-69.1 (making a false report of destructive device at a public building) and G.S. 14-269.2 (perpetrating hoax by use of false bomb or other device at a public building). “Educational property” as defined in G.S. 14-269.2 is a public building. S.L. 1999-257 sets the penalty for a person convicted under G.S. 14-269.2 of possessing or carrying explosives on educational property or for a person convicted of causing, encouraging, or aiding a minor to possess an explosive on educational property or at a school-sponsored curricular or extracurricular activity. A misdemeanor penalty is set for a person convicted of possessing or carrying fireworks on educational property.

Parental Liability

Whenever a child engages in criminal conduct, questions arise about what the parents knew or should have known about their child’s activities and whether the parents should be held accountable for their child’s behavior. S.L. 1999-257 enacts new G.S. 1-538.3 to provide that a parent or legal guardian with care, custody, and control of an unemancipated minor may be held civilly liable to an educational entity for negligent supervision if the child makes a bomb threat, perpetrates a bomb hoax on a school, or brings certain weapons onto school property. The educational entity must prove by clear, cogent, and convincing evidence that four conditions are met. First, that the minor violated G.S. 14-49, -49.1, -50, -69.1(c), -69.2(c), -269.2(b1), or -269.2(c1) or committed a felony offense involving injury to persons or property through the use of a gun, rifle, pistol, or other firearm of any kind as defined as G.S. 14-269.2(b) on educational property. Second, that the parent or guardian knew (or reasonably should have known) of the minor’s likelihood to commit such an act. Third, that the parent or guardian had the opportunity and ability to control the minor. Fourth, that the parent or guardian did not make a reasonable effort to correct, restrain, or properly supervise the minor. If these conditions are met, then the educational entity must prove its damages. Liability is limited to no more than \$25,000 actual compensatory and consequential damages resulting from the disruption or dismissal of school or the school-sponsored activity arising from a minor’s act. The limit increases to \$50,000 in actual compensatory and consequential damages to educational property resulting from the discharge of a firearm or detonation or explosion of a bomb or other explosive device.

License Revocation

Independent of the “lose control, lose your license” law discussed above, S.L. 1999-257 adds new G.S. 20-13.2 and amends G.S. 20-17 to require the DMV to revoke the permit or license of a minor or any other driver who is convicted of specified crimes involving explosives.

Violent Students

S.L. 1999-257 directs the Joint Legislative Education Oversight Committee to study the issue of students who make or carry out threats or violence directed at schools or persons in the schools.

Improving School Safety and Student Achievement

Alternative Schools/Alternative Learning Programs

Educators and others have long been concerned about what happens to students who are suspended or expelled from school and students who simply do not fare well in the regular school setting. One response to this concern, the development of alternative schools and alternative learning programs, was encouraged last year in S.L. 1998-202. It is now mandatory.

Section 8.25 of S.L. 1999-237 amends G.S. 115C-47(32a) to require each local board of education to establish at least one alternative school or alternative learning program by July 1, 2000, although G.S. 115C-105.26(c1) allows the State Board to waive the requirement. G.S. 115C-47(32a) requires local boards to adopt guidelines for assigning students to alternative programs or schools after considering the State Board's policies and guidelines. The General Assembly "urges" local boards to adopt policies that prohibit superintendents from assigning to an alternative learning program any professional school employee who has received within the last three years a rating on a formal evaluation that is less than "above standard."

S.L. 1999-397 (S 1099) adds new G.S. 115C-105.48, which requires that, before a school refers a student to an alternative school or learning program, the referring school must document the procedures used to identify the student as at risk of academic failure or disruptive or disorderly, provide reasons for the referral, and provide all relevant student records to the alternative school or program. Once a student is placed in an alternative school or program, appropriate school staff must meet to review the records and to determine what support services and intervention strategies are recommended for the student. Parents must be encouraged to provide input regarding the student's needs.

G.S. 115C-12(24) directs the State Board to develop guidelines and policies that define what constitutes an "alternative school" and "alternative learning program." The State Board must review the qualifications of teachers assigned to alternative schools and learning programs and include this information in an annual report to the General Assembly.

S.L. 1999-397 amends G.S. 115C-47(32a) to require local boards to regularly assess whether the unit's alternative schools/learning programs incorporate best practices for improving student academic performance and reducing disruptive behavior, are staffed with employees who are well trained and provided appropriate staff development, and are organized to provide coordinated services and provide students with high-quality and rigorous academic instruction.

Safe School Plans

For several years local school boards have been required to have local plans for maintaining safe and orderly schools. S.L. 1999-397 amends G.S. 115C-105.47 to add components that must be in the plan. A plan must have ways to assess and address the needs of students who are at risk of academic failure as well as those who are disruptive and disorderly or both and measures of the effectiveness of these efforts, a statement of the services that will be provided to students who are assigned to an alternative school or an alternative learning program, and a statement of the planned use of federal, state,³ and local funds allocated for at-risk students and alternative schools and alternative learning programs.

Local school boards submit their safe school plans to the State Board of Education. G.S. 115C-105.46 sets out the State Board's responsibilities with regard to these plans, and G.S. 115C-12 is a broad list of the board's duties. G.S. 115C-12(24), as amended by S.L. 1999-237 and S.L. 1999-397, requires the State Board to develop policies that define who is an at-risk student and what constitutes an alternative school and an alternative learning program. The State Board also must measure the effectiveness of alternative learning programs.

3. Section 8.25 of S.L. 1999-237 amends G.S. 115C-105.25(b) to require that funds allocated in the Alternative Schools/At-Risk Student allotment be spent only for alternative learning programs, at-risk students, and school safety programs.

S.L. 1999-397 requires local boards to submit their revised safe school plans to the State Board by July 1, 2000. The State Board must review and make recommendations regarding their implementation, and the local boards are encouraged to consider these recommendations before implementing their safe school plans.

School Improvement Teams

In order to improve student performance, G.S. 115C-105.27 requires each school to have a school improvement team that is responsible for developing a school improvement plan. Each plan must contain strategies for improving performance. S.L. 1999-397 amends G.S. 115C-105.27 to provide that the strategies in the plan must specify the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school.

S.L. 1999-373 (S 977) amends G.S. 115C-288 to add to the list of a principal's duties the duty of ensuring that a school improvement team is established at each school to develop, review, and revise a school improvement plan. S.L. 1999-373 also amends G.S. 115C-47(38) to add to the list of a local board's duties the duty of adopting a policy to ensure that each principal has established a school improvement team. The superintendent or the superintendent's designee must provide guidance to principals.

In addition to the school's principal, each school improvement team has representatives of the assistant principals, instructional personnel, instructional support personnel, and teacher assistants as well as parents of students in the school. The procedure for selecting school personnel to serve on the team was not specified in the act establishing the teams. S.L. 1999-271 (H 1150) amends G.S. 115C-105.27 to provide that assistant principals, instructional personnel, instructional support personnel, and teacher assistants are to elect the representatives of their respective groups by secret ballot.

S.L. 1999-397 requires school improvement teams to revise their plans during the 1999–2000 school year.

Charter School Evaluation

Charter schools are public schools that operate free of many of the restrictions that apply to other public schools. Each charter school is governed by a private nonprofit corporation, and enrollment in a charter school always is voluntary. The General Assembly authorized this new type of public school in 1996 for specific purposes: to improve student learning, increase learning opportunities for students, encourage the use of different and innovative teaching methods, create new opportunities for teachers, provide parents and students with expanded choices for education, and hold the charter schools accountable for student achievement.

Charter schools are a new, as yet unproven approach to public education, and their authorization and operation have been controversial. No one yet knows whether this approach is meeting the goals the General Assembly set for it.

S.L. 1999-27 (H 216) amends G.S. 115C-238.29I(c) by directing the State Board to review and evaluate the educational effectiveness of the charter school approach and make recommendations about its future. The recommendations must be based on (1) the current and projected impact of charter schools on the delivery of services by the public schools, (2) student academic progress in the charter schools as measured, where available, against the academic year immediately preceding the first academic year of the charter schools' operation, (3) best practices resulting from charter school operations, and (4) other information the State Board considers appropriate.

In addition to the evaluation, Section 8.28 of S.L. 1999-237 requires the State Board to study the fiscal impact of charter schools on local school administrative units.

Student Accountability

S.L. 1999-317 (S 942) directs the State Board to develop plans for implementing the Statewide Student Accountability Standards (16 N.C. Admin. Code 6D.0305), including identifying resources and plans for using them to ensure appropriate early and ongoing assistance for students.

Salaries, Calendar, and Leave

Salary Increase for Public School Employees

S.L. 1999-237 enacts for 1999–2000 the teacher salary schedule. The schedule for “A” certificate teachers ranges from \$24,050 for first-year teachers employed on a ten-month basis to \$43,820 for teachers with twenty-nine years of experience. For “G” certificate teachers the corresponding figures are \$25,550 and \$46,560. Certification based on the six-year degree level results in a salary that is \$1,260 higher than the “G” compensation would be, and certification at the doctorate level results in a salary that is \$2,530 higher. The act also sets out salary schedules for principals and assistant principals and salary ranges for other administrators.

For the 1995–1996 school year (the last year before the passage of the ABCs program and two years before the passage of the Excellent Schools Act), the salary schedule called for a salary of \$31,220 for a twenty-year teacher with an “A” certificate. For 1999–2000 the corresponding figure is \$37,890. The increase over that four-year time period is approximately 21 percent.

In addition the General Assembly enacted several other salary-related provisions.

- Non-certificated employees received a 3 percent pay raise. The State Board of Education was empowered to create salary ranges for noncertificated personnel.
- Most public school employees received a one-time \$125 bonus.
- School nurses were continued on the “G” salary schedule.
- Two salary-related studies were directed. The Joint Legislative Education Oversight Committee is to study the issue of salaries for school central office personnel and the need for additional funding. That committee is also directed to study the necessity of establishing a teacher assistant salary schedule.
- In addition to the higher salaries awarded (as described above) for teachers with “G” certificates or higher levels of educational achievement, the salary schedules call for higher salaries for teachers with certification from the National Board for Professional Teaching Standards. Section 8.7 of S.L. 1999-237 directs the State Board of Education to pay for the participation fee for teachers wishing to take the national certification examination. This subsidy is available only to teachers with three years of experience and must be paid back if the teacher does not complete the process or does not teach in North Carolina for at least one year after completing the process.

School Calendar

The General Assembly in S.L. 1999-373 made several changes in the way the school year calendar is constructed.

G.S. 115C-84.2 requires a 220-day calendar each year. Of that 220, 180 must be scheduled for instruction. Of the remaining 40, 10 must be scheduled for teacher vacation days and approximately 10 must be scheduled for state holidays (the number varying slightly year to year depending on when Christmas falls). That leaves 20. Of those 20 days, the statute has provided that 10 may be designated by the local board of education for use as teacher workdays, additional instructional days (meaning that pupils would be in attendance more than 180 days), or other purposes the board may pick. The 1999 legislation changes that number from 10 days to 8. The use of these days may vary from employee to employee or from school to school. The board may

delegate to the individual school the authority to schedule some or all of these 8 (was 10) days. That leaves 12 (was 10).

Those remaining 12 days are scheduled for each individual school by the principal for teacher workdays, additional instruction days, or other purposes and may vary from employee to employee. Before the 1999 legislation the statute said that the principal was to schedule these days “in consultation with the school improvement team.” Now the statute says that the principal is “to work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled.” The 1999 legislation adds a provision specifying that if during the last two years the local school administrative unit has made up an average of at least 8 days for school closings for inclement weather, the local board may designate up to 2 of these days as additional makeup days to be scheduled after the last day of student attendance.

Leave

S.L. 1999-170 (H 820) adds a new G.S. 115C-12.2 directing the State Board of Education to adopt rules to allow any employee at a public school to share leave voluntarily with a spouse, parent, child, brother, sister, grandparent, or grandchild (all including step, half, and in-law relationships) who is an employee of a public school or state agency. It also adds a new G.S. 126-8.3 directing the State Personnel Commission to adopt rules allowing state agency employees similarly to share leave with such relatives who are employed in a public school.

Certification, Hiring, Nonrenewal, and Dismissal Provisions

Assistant Principal Provisional Certificates

S.L. 1999-30 (S 225) and S.L. 1999-394 (H 274) together amend G.S. 115C-284(c), which, before the amendments, provided that the State Board of Education “shall not issue provisional certificates for principals and assistant principals.” That prohibition remains in place for principals, but the 1999 legislation permits the issuance of a one-year provisional assistant principal certificate to an employee of a local board of education if one of two sets of conditions applies. First, the one-year certificate may be issued if the local board determines that a shortage of persons who hold or are qualified to hold a principal’s certificate exists and the employee enrolls in an approved program leading to a master’s degree in school administration before the provisional certificate expires. Second, the one-year certificate may be issued if the employee is enrolled in an approved master of school administration program and is participating in the required internship under the program. The State Board may extend the provisional certificate for a total of no more than two additional years while the employee is completing the program.

The same 1999 legislation also amends G.S. 115C-287.1 to clarify that, in employing a person under a one-year provisional certificate, a local board of education is employing that person as a school administrator—which normally would require a contract of at least two years in duration—but that the employment may be under a contract of only one year in duration since the certificate is issued for only one year.

Hiring Teachers without Certificates

In 1998 the General Assembly added a new G.S. 115C-296.1 permitting a local board of education to determine that there is or will be a shortage of qualified teachers with North Carolina certificates available to teach specified subjects or grade levels and then to employ as teachers individuals who do not meet the qualifications for initial or continuing certification. Under that 1998 legislation, three categories of individuals could be employed, all of whom must have at least a bachelor’s degree. The three categories are (1) individuals licensed in another state, (2) individuals with one year of community college, college, or university teaching experience, and

(3) individuals with three years of other experience if the board determines that both the individual's experience and postsecondary education are relevant to the grade and subject to be taught. Under the 1998 legislation, an individual in the first category receives certification without the necessity of taking the certification exam if he or she is hired for a second year, but individuals in the second and third categories, to receive certification, must pass the certification exam during the first year of teaching and be reemployed for a second year. S.L. 1999-96 (S 898) amends this last provision to clarify that individuals in the second and third categories receive certification if they are reemployed for a second year and if they pass the certification exam during the first year of teaching or *prior to employment*. The effect is to permit someone who might be interested in entering teaching through one of these categories to go ahead and take the exam before beginning employment as a safeguard against spending a year teaching and finding he or she is unable to pass the exam.

Achieving Tenure

G.S. 115C-325(c) provides that a teacher is eligible for tenure after having served for four consecutive years as a probationary teacher. A "year" for this purpose means 120 days worked in a full-time probationary position within one school year. If a teacher does not work 120 days during a year, that year does not count, and the next year worked starts a new set of four consecutive years. Section 34 of S.L. 1999-456 (H 162) adds a new G.S. 115-325(c)(5) to provide that if the teacher fails to get in the 120 days because he or she is out on disability leave or sick leave, then while that year still does not count as one of the four years necessary for tenure, it does not break the streak of four *consecutive years*, and the next year worked adds on to the previous total.

Nonrenewal

G.S. 115C-325(o) has required for years that probationary teachers whose contracts are not to be renewed for the coming year must be notified of that fact by June 1. S.L. 1999-96 changes the notification deadline to June 15.

Dismissal Procedure Changes

The General Assembly rewrote the teacher dismissal provisions of G.S. 115C-325 in the Excellent Schools Act of 1997. In 1999 the legislature made some changes in the new procedures. The first relates to the teacher's request for a hearing upon notification that the superintendent intends to recommend the teacher's dismissal. In such a case the teacher may request a hearing before a case manager or may request a hearing directly before the board of education. If the teacher requests a hearing directly before the board, the 1997 statute provided that the hearing must be held within five days of the request. The 1999 legislation changes that period to ten days.

The second change relates to the participation by the superintendent in a hearing before a case manager. The 1997 statute said that both the teacher and the superintendent had the right to be present and to be heard. The 1999 legislation makes clear that the superintendent may be represented by a designee rather than appearing himself or herself.

The third change relates to preparation of the transcript of any hearing before a case manager. The 1999 legislation makes clear that the obligation of the superintendent is, upon notice from the teacher following a case manager hearing that the teacher wishes the matter to be heard before the board of education, to request that a transcript of the case manager hearing be made and to send it to the teacher within two days of receiving it.

The fourth change relates to the obligation of the superintendent to provide to the teacher a list of witnesses the superintendent intends to call in a dismissal hearing. The 1997 statute said that that list must be provided to the teacher at least ten days before the hearing. The 1999 legislation changes that to eight days.

Sexual Harassment and Improper Sexual Relations

Two acts passed by the 1999 General Assembly concern sexual harassment and improper sexual relations.

Employee Reports of Sexual Harassment

S.L. 1999-352 (H 1267) adds a new G.S. 115C-335 providing that no school board employee is to be disciplined in any way solely for the reason that the employee has filed a written complaint alleging sexual harassment by students, other school employees, or school board members unless the employee reporting the harassment knows or has reason to believe that the report is false.

Indecent Liberties and Sexual Offenses with a Student⁴

North Carolina has had two statutes on the taking of indecent liberties with a child. One, G.S. 14-202.1, prohibits acts of a sexual nature when (1) the perpetrator is sixteen years of age or more, (2) the victim is under the age of sixteen, and (3) the perpetrator is at least five years older than the victim. The other, G.S. 14-202.2, prohibits similar acts when (1) both the perpetrator and the victim are under the age of sixteen and (2) the perpetrator is at least three years older than the victim.

Effective for offenses committed on or after December 1, 1999, S.L. 1999-300 (S 742) creates another set of indecent liberties offenses applicable to acts of a sexual nature by school personnel with a student at a public or private elementary or secondary school. The definition of indecent liberties is essentially the same as the definition in G.S. 14-202.1 and -202.2, except it does not cover acts of vaginal intercourse or sexual acts as defined in G.S. 14-27.1 (for example, oral sex). But another new set of sexual offenses, also created by S.L. 1999-300, covers such acts with elementary or secondary school students. For all of these new offenses, the act must have occurred during or after the time the defendant and victim were at the same school but before the victim ceased to be a student.

The new offenses are as follows. A teacher, school administrator, student teacher, or coach is guilty of a Class I felony if he or she takes indecent liberties with an elementary or secondary school student. [See G.S. 14-202.4(a).] Such a person is guilty of a Class G felony if the act is vaginal intercourse or a sexual act as defined in G.S. 14-27.1. [See G.S. 14-27.7(b).] Age is not relevant for either offense.

Other school personnel and volunteers at a school or at a school-sponsored activity are also subject to prosecution for taking indecent liberties or engaging in intercourse or a sexual act with an elementary or secondary school student. Age is a relevant factor, however. If the school employee or volunteer is four or more years older than the student, the indecent liberties offense is a Class I felony and the offense involving intercourse or a sexual act is a Class G felony. [See G.S. 14-202.4(a), -27.7(b).] If the age difference is less than four years, both offenses are Class A1 misdemeanors. [See G.S. 14-202.4(b), -27.7(b).]

The act states that a person who engages in the above conduct is guilty of the level of offense specified unless the conduct is covered by another law providing for greater punishment. [See G.S. 14-202.4(a), -27.7(b).] Thus a school employee could be convicted of statutory rape, a Class B1 felony, for having vaginal intercourse with a student if the ages of the employee and student meet the requirements for that offense. But the employee could not be convicted of both statutory rape and one of the offenses described above.

⁴ This section was written by John Rubin, Professor of Public Law and Government at the Institute of Government, a specialist in criminal law.

Improving Instructional Conditions for Teachers

Two acts passed by the 1999 General Assembly aim at improving the workload responsibilities of teachers.

Duty-Free Periods

G.S. 115C-301.1 has long provided that all full-time assigned classroom teachers are to be provided a daily duty-free period during regular school hours but only to the extent that the safety and proper instruction of the students allow and only insofar as the General Assembly provides funds. S.L. 1999-163 (S 1093) adds to the statute a provision stating that principals may not, without the consent of the teacher, unfairly burden a given teacher by making that teacher give up his or her duty-free period on an ongoing, regular basis.

Limiting Duties of New and Most Senior Teachers

S.L. 1999-96 adds a new G.S. 115C-47(18a) and amends G.S. 115C-296(e) to direct local boards of education to adopt rules and policies limiting the noninstructional duties assigned to *all* teachers “to the extent possible given federal, State, and local laws, rules, and policies” and specifically providing that teachers with initial certification (that is, teachers in their first years) and teachers with twenty-seven or more years of experience may not be assigned extracurricular activities at all unless they request them in writing. A local board may temporarily suspend the rules and policies for individual schools upon a finding that there is a compelling reason for not implementing the rules or policies. The statute also provides that the noninstructional duties required of teachers are to be distributed equitably.

Miscellaneous

Textbook Commission

The Textbook Commission is responsible for selecting the basic textbooks needed for instruction in public schools,⁵ although G.S. 115C-105.26 authorizes the State Board of Education to grant local boards a waiver from using commission-adopted textbooks. G.S. 115C-85 defines “textbooks” as systematically organized material comprehensive enough to cover the primary objects outlined in the standard course of study for a grade or course. “Textbooks” may be in print or nonprint formats and include technology-based programs.

Section 8.30 of S.L. 1999-237 amends G.S. 115C-88 to change the commission’s method of evaluating books. Formerly every principal, teacher, and parent on the commission had to examine and file an evaluation of each textbook offered for adoption. Now each proposed textbook must be read by at least one expert certified in the discipline for which the textbook is proposed. The commission may use external experts if no commission or advisory committee member is an expert in a particular discipline. In addition the commission may consider other experts’ reviews of a proposed textbook, but these reviews may not substitute for the direct examination of the book by a commission member, advisory committee member, or expert retained by the commission. An amendment to G.S. 115C-87 increases the Textbook Commission’s membership from fourteen to twenty-three members, effective January 1, 2000.

5. G.S. 115C-47(33) grants local boards of education sole authority to select and procure supplementary instructional materials.

Immunization

Children enrolling in public school need proof of certain immunizations unless they have a medical or religious exemption. S.L. 1999-110 (S 614) amends G.S. 130A-154 to require a person who received immunizations in a state other than North Carolina to present an official certificate or record of immunization to the school. The record must contain specified minimum information.

Energy Conservation Measures

S.L. 1999-235 (S 56) amends G.S. 143-64.17(1) and 143-64.17(2), which deal with energy conservation measures and energy savings contracts, and repeals the sunset regarding the authority of a local government unit to enter into a guaranteed energy savings contract.

School-Based Health Clinics

S.L. 1999-4 (S 26) repeals the prohibition of reimbursement for services provided by school-based health clinics under the Health Insurance Program for Children, established in Section 8 of S.L. 1998-1 (Ex. Sess.).

Teacher Absences

Section 8.9 of S.L. 1999-237 provides that if a local education agency's number of teacher absences is higher than the state average, the local board must determine why and develop a plan to decrease the number of absences.

Students with Special Needs

Every year many students who have been identified as disabled in another state enroll for the first time in a North Carolina public school. Because a state has some leeway in setting its own eligibility standards, some of these students may not be identified as children with special needs in North Carolina. S.L. 1999-117 (S 1075) provides that if a local school unit serves a student with a current special education plan from another state while the school determines whether the child is eligible for services in North Carolina, the school unit is entitled to state funding for the services while the determination is being made. The school unit need not repay the funds if the student does not qualify for services in North Carolina.

Breakfast

Section 8.26 of S.L. 1999-237 requires the State Board of Education to expand the free school breakfast program to all kindergarten students by the start of the 2000–2001 school year.

Activity Buses

S.L. 1999-274 (H 1054) amends G.S. 20-142.3 to require all activity buses, as well as all school buses, to stop at all railroad crossings.

Appropriations

S.L. 1999-237 appropriates \$5.26 billion for fiscal 1999–2000 and \$5.28 billion for fiscal 2000–2001 to the Department of Public Education. Some highlights of the budget include \$10 million for low-wealth school systems, \$3 million for small school systems, \$1.1 million to begin implementing a school breakfast program for all kindergarten students, \$5 million for students with limited proficiency in English, and up to \$2 million to develop a high school exit

exam. Allocations for exceptional children are set at \$789.78 per academically and intellectually gifted child with a cap of 4 percent (of the school population) and at \$2,374.17 per child with a disability with a cap of 12.5 percent. Funds are allocated for ABCs bonus awards at the same rate as 1998. Section 8.18 appropriates \$2.5 million from the State Literary Fund to the Department of Public Instruction for the 1999–2000 fiscal year to aid local school units.

Pilot Programs

ABCs Pilot

The ABCs Program, the state's accountability program, focuses on the performance of individual schools in the basics of reading, mathematics, and writing as compared to that school's performance the year before. Schools are expected to have a year's growth in achievement in a year's time. Students are tested annually to determine whether the school has met or exceeded its expected growth in student achievement, as determined by the State Board. A critical element of the ABCs Program is bonuses for personnel in schools that meet or exceed their goals in student achievement.

Section 8.36 of S.L. 1999-237 directs the State Board to establish a pilot program in up to five local school administrative units to test and evaluate a revised school accountability model. The program's purpose is to determine "whether revisions in the present school accountability model under the ABCs Plan are likely to result in more students demonstrating mastery of grade level subject matter and skills on the end-of-grade tests or demonstrating mastery of course subject matter or skills on end-of-course tests." Note that the pilot program is to provide a different way of measuring student mastery, not a direct way to increase student learning and achievement. All units in the pilot are to use the same model, and personnel in participating schools will be eligible to receive financial awards for achievement in addition to awards received under the standard ABCs Program. School systems in the pilot that are not designated "low wealth" must contribute a 25 percent local match for the award. This program expires with the payment of awards for the 2004–2005 school year.

Communication Devices in Buses

S.L. 1999-275 (H 1187) directs the State Board to establish a pilot program in one or more school administrative units, including the Northampton County Schools, to enable local boards of education to use state school transportation funds to install communication devices in school buses.

Studies

Differentiated Diplomas

Section 8.31 of S.L. 1999-237 authorizes the Joint Legislative Education Oversight Committee to study the issue of differentiated high school diplomas. The State Board must report to this committee before implementing any differentiated diploma plan.

School Size

Researchers and educators have long been interested in the relationship between school size and student learning. Now there is new interest in a possible relationship between high school size and the alienation and isolation some students feel at school. Section 8.33 of S.L. 1999-237

requires the State Board to study the relationship between school size and students' academic performance and behavior.

Transportation for Children with Special Needs

Some children with special needs must travel long distances to receive an appropriate special education program, and some cannot ride safely on a regular school bus. Nonetheless, most children with special needs are entitled to an instructional day that is as long as the instructional day for other students. Section 8.24 of S.L. 1999-237 directs the State Board to study the issue of school transportation for children with special needs, including the difficulty local school units have in meeting the length of school day requirements for some children.

Cooperative High School Education Programs

In 1998 the State Board of Community Colleges and the State Board of Education were directed to create a joint task force to study existing policies for cooperative high school education programs. Section 9.1 of S.L. 1999-237 requests the boards to reconsider these policies and make recommendations aimed at increasing the number of high school students participating in these community college programs.

Information Technology Systems

Section 8.34 of S.L. 1999-237 directs the Education Cabinet to study the functions involving information technology systems.

Dropout Rates

S.L. 1999-257 directs the State Board of Education to study the computation of dropout rates for the ABCs Program.

Tax Policy

The Studies Act, S.L. 1999-395 (H 163), establishes the North Carolina Tax Policy Commission to study, examine, and, if necessary, design a realignment of the state and local tax structure in accordance with a clear, consistent tax policy. Although the act gives the commission only this broad direction, the issue of whether local school boards should have independent taxing authority may be a part of the study.

Other Studies

S.L. 1999-395 authorizes the Legislative Research Commission to study driver education programs, teen drivers, seat belts on school buses, resolution of conflicts between boards of education and county commissioners, and school boards review of applicable court orders. The Joint Legislative Education Oversight Committee may study the concept of prekindergarten education. S.L. 1999-395 creates the Commission on Improving the Academic Achievement of Minority and At-Risk Students and establishes the Study Commission on Children with Special Needs. This new commission replaces the Commission on Children with Special Needs, with the repeal of G.S. 120-58 through 120-65.

Unaddressed Areas

The General Assembly took no final action on several controversial issues. These include encouraging school boards to promote community-based schools by redrawing attendance lines and local bills authorizing an additional optional half-cent sales tax for specific counties.

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