

Changes Affecting Elementary and Secondary Education

By Laurie L. Mesibov and Robert P. Joyce

It was a quiet year for legislation related to public elementary and secondary schools. The General Assembly's debates and decisions were once again dominated by the budget, not by major policy questions. Although significant cuts were made in some areas, the General Assembly continued its efforts to improve student performance. It passed legislation (1) funding bonuses under the state's accountability program (known as the ABCs), (2) reducing second-grade class size, and (3) assisting schools that have not performed well under the ABCs or that have not made adequate yearly progress under the federal accountability program, the No Child Left Behind Act. The General Assembly also continued to refine strategies to deal with the perennial problems of North Carolina's high dropout rate and need to recruit and retain teachers.

Financial Issues

Appropriations

S.L. 2003-284 (H 397) appropriates \$6.035 billion to the Department of Public Instruction (DPI) for each fiscal year of the 2003–2005 biennium. This amount includes \$96 million for bonuses under the ABCs and \$26 million for reductions in second-grade class size. It also provides \$5 million in low-wealth supplemental funds for 2003–2004 and \$5.9 million for 2004–2005; \$1 million in small county supplemental funds for 2003–2004 and \$1.9 million for 2004–2005; and \$.5 million each year to assist low-performing local education agencies and to assist schools in meeting the requirements of No Child Left Behind. Appropriations for central office administration, teacher assistants, clerical and custodial staff, and many other items were reduced. Local units were once again granted some flexibility in cutting parts of their budgets. Teachers received a small salary increase, averaging 1.8 percent, although other school employees paid by the state did not.

The authors are School of Government faculty members. Laurie L. Mesibov specializes in school law and is the editor of *School Law Bulletin*.

Transfer of Supplemental Tax Proceeds to Charter Schools

G.S. 115C-238.29H(b) governs local funding for charter schools. It provides that for each student who attends a charter school, the local school unit in which the child resides must transfer to the charter school "an amount equal to the per pupil local current expense appropriation to the school unit for the fiscal year." In 2002 the North Carolina Court of Appeals ruled that the proceeds of a local school supplemental tax are part of the per pupil local current expense appropriation.¹ S.L. 2003-423 (S 965) adds to G.S. 115C-23.9H(b) a provision that a school unit receiving supplemental tax funds must include a per pupil share of those tax proceeds in the amount transferred to a charter school for a student residing in the school unit only if that student attends a charter school located in the supplemental tax district. If a student attends a charter school outside the supplemental tax district in which he or she resides, the charter school is not entitled to supplemental tax proceeds for that student.

Fines and Forfeitures: Proposed Constitutional Amendment

In 1997 the General Assembly passed G.S. 115C-457.1, which created the Civil Penalty and Forfeiture Fund, into which are placed the clear proceeds from all civil penalties or civil forfeitures collected by a state agency and payable to the county school fund pursuant to the state constitution. G.S. 115C-457.3, however, provides that moneys in this fund are to be transferred first to the State School Technology Fund and then allocated to school administrative units on the basis of average daily membership (ADM). Before the issue was decided by the North Carolina Court of Appeals,² there was a question about

1. *Francine Delany New School for Children, Inc. v. Asheville City Board of Education*, 150 N.C. App. 338, 563 S.E.2d 92 (2002), *rev. denied*, 356 N.C. 670, 577 S.E.2d 117 (2003).

2. *North Carolina School Boards Association v. Moore*, ___ N.C. App. ___, 585 S.E.2d 418 (2003). The court also identifies some particular categories of funds that must be made available to the schools pursuant to the state constitution.

whether this arrangement was in conflict with Section 7, Article IX of the North Carolina Constitution, which provides that the clear proceeds of all penalties and forfeitures and of all fines collected “in the several counties” for any breach of the penal law of North Carolina shall belong to and remain “in the several counties” and be used exclusively for maintaining free public schools. Because a key feature of this constitutional provision requires that the proceeds remain in the counties in which they are collected, different counties end up with different per pupil shares of the proceeds.

S.L. 2003-423 (S 965) authorizes a referendum to amend the constitution to allow the General Assembly to place in a state fund the clear proceeds of civil penalties, forfeitures, and civil fines that are collected by state agencies and belong to the public schools. Moneys in this fund are to be appropriated by the General Assembly to the counties on a per pupil basis. This amendment will be voted on in November 2004, although the question on the ballot does not specifically explain the per pupil appropriation of funds. If voters approve the amendment, it will become effective July 1, 2005, and G.S. 115C-457.1 through 457.3 will be amended accordingly.

Medicaid Reimbursement

Local school boards are eligible to receive reimbursement for the costs of some of the services they provide to students with disabilities. Section 10.29A of S.L. 2003-284 amends G.S. 108A-55.1 to require the Department of Health and Human Services (DHHS) to work with DPI and local schools boards to develop efficient, effective, and appropriate administrative procedures and guidelines to provide maximum funding for Medicaid-related services for Medicaid-eligible students with disabilities. DHHS must streamline its procedures and guidelines to ensure that school boards receive reimbursement in a timely manner for services and administrative outreach to Medicaid-eligible students.

Educational Costs for Students in Group Homes

Children with disabilities are entitled to receive a free appropriate public education, which is usually provided in the school administrative unit where their parents, guardians, or custodians are domiciled. A small number of children with disabilities are placed in or assigned to a group home or foster home located in a different school administrative unit. G.S. 115C-140.1 establishes responsibility for payment of these children’s educational expenses. S.L. 2003-294 (S 926) provides that, notwithstanding the responsibility of the local board of education where the group or foster home is located to bear the educational expenses for such children, the school unit in which a child is domiciled must annually transfer to the responsible school unit an amount equal to the actual local cost of educating the child for that fiscal year after all

state and federal funding has been exhausted. The State Board establishes a reserve fund to reimburse local boards for such additional educational costs. Local school units may submit an application to the fund for the costs of special education and related services for any child in a foster or group home whose special education and related services expenses exceed the per child group home allocation.

S.L. 2003-294 also amends the statutes dealing with the licensure of group homes.³

Vocational Education Funding

According to Section 7.37 of S.L. 2003-284, the General Assembly intends to eliminate funding for vocational education in the seventh grade. Local school units must take all of the 2004–2005 budget reductions in vocational education from seventh-grade programs before making reductions to such programs in other grades.

Tax Refund to School Board Cooperatives

G.S. 105-164.14(c) allows many governmental entities, including school boards, to receive an annual refund of sale and use taxes on direct purchases of tangible personal property and services. S.L. 2003-431 (S 100) makes a joint agency created by agreement among local school units to purchase service-related materials, supplies, and equipment eligible for the refund. The refund is not available for electricity and telecommunications services.⁴

Improving Student Performance and Opportunities

Accountability

The state’s ABCs program is aimed at strong accountability, an emphasis on the basics and high educational standards, and local control.⁵ The accountability model focuses on the performance of individual schools and sets goals for student achievement at each school based on the expectation of a year’s growth in achievement for a year’s time. The program rewards schools and certified personnel and teacher assistants based on both growth in student achievement and the overall percentages of students performing at or above grade level. School assistance teams are assigned to the lowest-performing schools. The ABCs was first implemented in 1996–1997 for elementary schools and in 1997–1998 for secondary schools.

3. These provisions are discussed in Chapter 16, “Mental Health,” *North Carolina Legislation 2003* (Chapel Hill, N.C.: School of Government, The University of North Carolina at Chapel Hill, 2004); also available on the School’s Web site, <http://ncinfo.iog.unc.edu/pubs>.

4. A discussion of other provisions of S.L. 2003-431 is included in Chapter 23, “Taxation,” *North Carolina Legislation 2003*.

5. For more information, see www.ncpublicschools.org/abcs/ (last checked August 27, 2003).

The federal No Child Left Behind Act (NCLB)⁶ became law in 2002. Its accountability model requires a measure of school quality called *adequate yearly progress* (AYP). AYP focuses on subgroups of students and the goal of having all students performing at a proficient level no later than 2014. Subgroups include students in major racial/ethnic groups, economically disadvantaged students, students with limited English proficiency, and students with disabilities. For a school to achieve AYP, each subgroup and the overall school must make AYP. Under NCLB, Title I schools can face sanctions if they do not make AYP for two or more consecutive years. The Department of Public Instruction now incorporates AYP into the annual ABCs report.

S.L. 2003-419 (H 797) directs the State Board to assist local school units in implementing NCLB. To do so, the State Board must first identify schools making AYP with subgroups of students and study the instructional, administrative, and fiscal policies and practices of selected schools. Next, based on these policies and practices, and with help from UNC schools of education and the UNC Center for School Leadership Development, the State Board must create assistance models for each subgroup and offer technical assistance to local school units not making AYP. The technical assistance must include peer assistance and professional development by teachers, support personnel, and administrators of schools whose subgroups are making AYP. Priority in providing assistance must be given to school units with high concentrations of schools not making AYP. The State Board and DPI must report to the Joint Legislative Education Oversight Committee by June 15, 2004, and December 15, 2005, on this assistance.

Several sections of S.L. 2003-284 relating to accountability and student performance are similar or identical to provisions adopted in 2002. These include appropriations for continually low-performing schools (section 7.8), immediate assistance to the highest priority elementary schools (section 7.9), evaluation of initiatives to assist high-priority schools (section 7.10), at-risk student services/alternative schools (section 7.11), students with limited English proficiency (section 7.15), and expenditure of funds to improve student accountability (section 7.18). A new provision (section 7.17) directs the State Board to provide assistance to low-performing school systems and to assist schools in making AYP.

Cooperative Innovative High School Programs

North Carolina continues to have a high student dropout rate. At the same time, it has many students who likely would

benefit from accelerated instruction. In an effort to expand opportunities for educational success for these two groups of students, S.L. 2003-277 (S 656) enacts new Part 9 of Article 16, G.S. Chapter 115C. It authorizes boards of trustees of community colleges and local boards of education to jointly establish cooperative innovative programs in high schools and community colleges. These programs must target high school students who are at risk of dropping out before earning a diploma or high school students who would benefit from accelerated instruction. Programs may include the creation of a school within a school, a technical high school, or a high school or technical center located on a community college campus. Students could be eligible for these programs as early as the ninth grade.

The act contains specific requirements for programs that target at-risk students and for programs that offer accelerated learning. It also sets out requirements that apply to both sets of programs. Among other requirements, programs must

- Encourage the cooperative or shared use of resources, personnel, and facilities;
- Emphasize parental involvement and provide consistent counseling, advising, and parent conferencing;
- Be held accountable for meeting measurable student achievement results;
- Establish joint institutional responsibility and accountability;
- Encourage the use of different and innovative teaching methods;
- Develop methods for early identification of potential participating students in the middle grades and through high school; and
- Be centered on the core academic standards represented by the college preparatory or tech prep program of study.

A local board of education and a local board of trustees of a community college apply jointly to establish a program. The act sets out a detailed application process and the components required in an application. After reviewing applications, the State Board of Education and the State Board of Community Colleges must approve two cooperative innovative high school programs in each of the state's economic development regions.

"Education partners" may participate in the development of a program aimed at students who would benefit from accelerated academic instruction. A constituent institution of the University of North Carolina, a private college or university in North Carolina, a private business or organization, and the board of county commissioners in the county in which the program is located may serve as a partner. Such partners apply jointly with the two boards to establish a program.

6. For more information, see www.ncpublicschools.org/nclb (last checked August 27, 2003) and the U.S. Department of Education's Web site at www.nclb.gov (last checked August 27, 2003).

Programs operate under written agreements that are in some ways similar to the charters under which charter schools operate. Programs are exempt from many of the laws that apply to boards of education and school units and boards of trustees and community colleges. However, programs must still provide instruction at least 180 days during nine calendar months and comply with laws and policies relating to the education of students with disabilities and with the provisions relating to discipline of students in Article 27 of G.S. Chapter 115C. Programs are accountable to the local board of education.

Boards of education, boards of trustees of community colleges, and partners may allocate funds; and, the board of county commissioners where a program is located may appropriate funds to it, even if that board is not an education partner.

The State Board of Education and the State Board of Community Colleges must evaluate the success of students in these programs. If, by October 15, 2006, the boards determine that any or all of these programs have been successful, they shall jointly develop a prototype plan for similar programs that could be expanded across the state.

Innovative Education Initiatives Act

In 1993, G.S. 116C-1 created the Education Cabinet, made up of representatives from all levels of education. The cabinet works to resolve issues between existing providers of education, sets the agenda for the State Education Commission, develops a strategic design for a continuum of education programs, and studies other issues referred to it by the governor or the General Assembly. The First in America Innovative Initiative Act, S.L. 2003-277, codified as G.S. 116C-4, directs the Education Cabinet to set as a priority “cooperative efforts between secondary schools and institutions of higher education so as to reduce the high school dropout rate, decrease the need for remediation in institutions of higher education, and raise certificate, associate, and bachelor degree completion rates.” More specifically, the act directs the cabinet to identify and support efforts to strengthen the cooperative innovative high school programs discussed above; reduce the dropout rate; close the achievement gap; create redesigned middle or high schools; provide customized programs for high school students who would benefit from accelerated, higher-level coursework or early graduation; establish high-quality alternative learning programs; establish a virtual high school; and implement other innovative education initiatives designed to advance the state’s education system.

By January 15, 2004, and annually thereafter, the cabinet must report to the Joint Legislative Education Oversight Committee on its activities under this act.

High School Completion and Rigorous Academic Course of Study

S.L. 2003-277 contains an uncodified provision that directs local boards of education and the State Board to identify, strengthen, and adopt policies and procedures that encourage all students to remain in high school and to pursue a rigorous academic course of study. The provision encourages the boards to eliminate or revise any policies or procedures that discourage students from completing high school or from pursuing such a rigorous academic course of study. Local school boards must report to the State Board on the policies they have identified, strengthened, adopted, and eliminated. The State Board too must reexamine its policies and report to the Joint Legislative Education Oversight Committee no later than April 15, 2004, on all changes made to local and state policy and procedures.

Early Entry into Four-Year College Programs

S.L. 2003-251 (H 601) amends G.S. 115C-12, which sets out the powers and duties of the State Board of Education. The law now directs the State Board to encourage the early entry of motivated students into four-year college programs and to ensure that academically talented students have opportunities to start college coursework, either at nearby institutions or through distance learning. The State Board is to act in cooperation with local school units, the Education Cabinet, UNC constituent institutions, community colleges, and private colleges and universities. Additionally, the State Board must adopt policies directing school guidance counselors to make ninth-grade students aware of the potential to complete the high school courses required for college entry in three years.

Character and Civic Education

All students in North Carolina are entitled to the opportunity for a sound basic education. According to the North Carolina Supreme Court, a sound basic education includes “sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student’s community, state, and nation.”⁷

Perhaps in response to this requirement, and to a long-standing concern about preparing students to participate fully in a democracy, Section 7.40 of S.L. 2003-284 amends G.S. 115C-81, the Basic Education Program, in several ways. All schools are encouraged to have student councils. Middle and

7. *Leandro v. State of North Carolina*, 346 N.C. 336, 347, 488 S.E.2d 249, 255 (1997).

high school student councils should be elected and are to be the means through which students have input into the policies and decisions that affect them. This provision is noteworthy because it is an acknowledgment by the General Assembly that students should have input in some situations. (Of course, the existence of student councils does not prevent students from seeking to have input in other ways, such as through petitions to the school board.) Section 7.40 also encourages schools and teachers to discuss current events in a wide range of classes, especially social studies and language arts classes. More specifically, all high schools and middle schools are encouraged to provide a minimum of two classes per grade level that offer interactive current events discussions at least every four weeks.

For several years, G.S. 115C-81(h1) has encouraged schools to include in their courses instruction in respect for school personnel, responsibility for school safety, service to others, and good citizenship. Section 7.40 adds that the instruction should include (1) a consistent and age-appropriate anti-violence message, (2) a conflict-resolution component for students in kindergarten through twelfth grade, and (3) media-awareness education to help children recognize stereotypes and messages that portray violence. As part of the instruction on the responsibility to serve others, all schools are encouraged to provide opportunities for student involvement in community service or service-learning projects. These amendments take effect in the 2004–2005 school year.

Also included in Section 7.40 is an amendment to G.S. 115C-105.35 that directs the State Board to consider incorporating a character and civic education component, which may include a requirement for student councils, into the School-Based Management and Accountability Program.

State Competency Testing Program

G.S. 115C-174.11(b) directs the State Board to adopt tests or other measurement devices to assure that high school graduates possess the skills and knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship. Tests are administered to ninth-grade students, and students have opportunities throughout high school to retake any part of any test they fail.

Under the former statute, the State Board was authorized to either (1) adopt one or more nationally standardized tests or other equivalent measures that measure competencies in the verbal and qualitative areas or (2) develop and validate alternate means and standards for demonstrating minimum competence. These alternative standards had to be more difficult than the regular competency tests described above. S.L. 2003-275 (H 801) requires the State Board to adopt an existing alternative test or equivalent measure or to develop

and validate alternate means and standards. These standards now must be as difficult as the regular competency tests, but not necessarily more difficult. The State Board must also adopt a policy to identify which students and under what circumstances students may meet an alternative standard instead of passing the regular tests.

Students in special education or designated as eligible for special education may be excluded from the regular testing program. In addition, under a new provision, students with disabilities who fail the regular competency tests after two attempts must be given the opportunity to take one of the alternate tests.

Financial Literacy Pilot Programs

To determine the best methods of preparing students to make critical personal financial decisions, Section 7.35 of S.L. 2003-284 directs the State Board to establish a pilot program authorizing and assisting up to five local school units to implement programs for teaching personal financial literacy. The State Board must develop program materials, guidelines, and a curriculum that covers, at a minimum, consumer financial education, personal finance, and personal credit.

Schools for Deaf Students

Every student with a disability is entitled to a free appropriate public education and to an Individualized Education Program (IEP) designed to meet his or her needs. Although the great majority of students with disabilities are served in traditional public schools, some are not. The Department of Health and Human Services (DHHS) operates the state's schools for deaf students and is responsible for providing unique instructional programs to meet the needs of all students enrolled in these schools.

S.L. 2003-253 (S 503) rewrites G.S. 143-216.41 to bring that statute more in line with current special education law and practice. It authorizes DHHS to consider for admission to these schools any deaf/multidisabled North Carolina resident who is at least five years old but not older than twenty-one. The student must be referred by the local education agency, and his or her IEP team must deem the child's admission to the school appropriate. Children who are not North Carolina residents may be considered for admission, but only if their admission does not prevent enrollment of a state resident. Nonresidents are not entitled to free tuition and room and board. DHHS, through the Office of Education Services, must provide unique instructional programs to meet the needs of all admitted students, including vocational and technical training, as called for in a student's IEP. DHHS must also maintain a collaborative relationship with institutions of higher education to provide teacher-training opportunities.

Health Issues

Tobacco-Free Schools

S.L. 2003-421 (S 583) began as an effort to ban the use of any tobacco product on public school grounds during school hours, with a possible exception for outdoor events when an admission fee is charged. The bill evolved to require schools to adopt and enforce a written policy enforcing the requirements of the federal Pro-Children Act of 1994, 20 U.S.C. § 6083. The federal law prohibits smoking inside any school building or school facility used to provide routine or regular K–12 education or library services to children. In addition, the local boards' policy must prohibit use of all tobacco products in enclosed school buildings during regular school hours. The policy may allow the use of tobacco products in school buildings for instructional or research purposes under the supervision of a faculty member if the activity does not include smoking, chewing, or otherwise ingesting tobacco. Students and school personnel must be given adequate notice of the policy, and signs must be posted regarding the use of tobacco products. The policy must require school personnel to enforce the policy. Local school boards are free to adopt a more restrictive policy on the use of tobacco products in school buildings or facilities, on campuses, in or on other school property, or at school-related or school-sponsored events.

Administration of Medication to Preschoolers

The tragic death of a young child who had been given medication by a child care worker without the parents' direction or consent led to the enactment of "Kaitlyn's Law." S.L. 2003-406 (S 226) deals with the administration of medication at a child care facility as defined in G.S. 110-86(2)(f). The new law does not apply to K–12 classes, but it does apply to public and non-public schools that operate preschool programs. S.L. 2003-406 amends G.S. 110-102.1A to make it unlawful for an employee, owner, household member, volunteer, or operator of a child care facility to willfully administer any prescription or over-the-counter medication to a child attending that facility without proper written authorization from the child's parent or guardian. The authorization must include the child's name, date or dates for which the authorization applies, dosage instructions, and the signature of the child's parent or guardian. (Schools also need accurate information about proper storage of medications, although the statute is silent on this point.) It is not a violation of the act if the medication is administered because of a child's emergency medical condition and the medication is administered with the authorization of and in accordance with instructions from a "bona fide medical care provider." A violation that results in a serious injury to a child is a Class F felony; in all other cases, a violation is a misdemeanor.

Miscellaneous

Volunteer Records

Public schools use volunteers in many positions, ranging from classroom helpers to fundraisers, chaperones, tutors, mentors, and assistant coaches. In response to a general concern about school safety—and after several serious incidents involving volunteers—many schools around the country have developed screening programs for potential volunteers and maintain information about each volunteer.⁸

In North Carolina a local school board may maintain a file on any individual volunteer but is not required to do so. Volunteers and school officials alike have been concerned about the confidentiality of the information in such files. S.L. 2003-353 (H 1114) addresses that issue. New G.S. 115C-209.1 provides that records comprising a volunteer file are not public records under the state's public records statute, G.S. Chapter 132. Volunteer records are open for inspection only by (1) the volunteer, former volunteer, applicant to be a volunteer, or that individual's agent; (2) the superintendent and other supervisory personnel; (3) the parent or guardian of any student with whom the volunteer has or had contact; (4) members of the local board of education and the board's attorney; and (5) a party to a lawsuit, by authority of and in accordance with a subpoena or court order. Unless prohibited by state or federal law, a school board also may release or permit inspection of information in a file if, prior to release, the board determines that the release is essential to maintaining the integrity of the school board or to maintaining the level or quality of services provided by the board. The board may also permit inspection of or release of information if the board makes a written finding that there is a "substantial showing" of these criteria. This finding is a public record. When individuals apply to volunteer, the school board must notify them that the board may maintain a file and that information in the file will be open to inspection as S.L. 2003-353 allows.

State Board of Education Advisory Members

S.L. 2003-306 (S 698) amends G.S. 115C-11 to add three new advisory members to the State Board. A superintendent of a local school unit, appointed by the governor; the State Principal of the Year, as designated by DPI; and the current Raleigh Dingman Award winner will each serve as advisors to the State Board for a one-year term. The State Board may exclude these advisory members from closed sessions.

8. For more information, see Ingrid M. Johansen, *Public School Volunteers: Law and Liability in North Carolina* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1999).

Compulsory Attendance Statute

G.S. 115C-378 is the state's compulsory attendance statute. It provides that a parent, guardian, or other person having charge or control of a child between the ages of seven and sixteen years must "cause the child to attend school." Adults responsible for children under the age of seven who are enrolled in public school in kindergarten through grade two are also subject to the law, unless the child has been withdrawn from school. After a child has ten unexcused absences in a school year, the principal must determine whether the parent, guardian, or custodian has made a good faith effort to comply with the law. If the principal determines that such effort has not been made, he or she must notify the district attorney. S.L. 2003-304 (S 421) also requires the principal to notify the director of social services of the county in which the child resides. Upon receiving notification by the principal, the director of social services must determine whether to undertake an investigation under G.S. 7B-302.⁹

Length of a Charter School Charter

Charter schools are public schools that operate under charters from the State Board. S.L. 2003-354 (S 35) amends G.S. 115C-238.29D(d) to increase the maximum period for both initial and renewal charters from five years to ten years. The State Board must review the operations of each charter school at least once every five years to ensure that the school is meeting expected academic, financial, and governance standards. Once a school has a charter, the State Board or a chartering entity subject to the approval of the State Board (a local school board or board of trustees of a UNC constituent institution) may terminate or not renew a charter on grounds set out in G.S. 115C-238.29G.

Election Assistants

S.L. 2003-278 (H 1120) adds new G.S. 163.42.1 to provide that a student who is at least seventeen years of age at the time of an election or a primary election may be eligible for appointment as a student election assistant. The student must be a United States citizen; be enrolled in a secondary educational institution, including a home school; have an exemplary academic record (as determined by that institution); be recommended by the principal or director of the institution; and have the consent of a parent, legal custodian, or guardian. Student election assistants attend the same training sessions as precinct assistants and are sworn in and compensated in the same manner as precinct assistants. The county board of elections must prescribe the duties of student elec-

tion assistants in accordance with guidelines to be issued by the State Board of Elections.¹⁰

Property Acquisition by Counties

In the past several years, a growing number of individual counties have been granted the authority to acquire property and, later, to lease or transfer property to be used for school projects as a way to use the counties' authority under G.S. 160A-20 to finance school projects. S.L. 2003-355 (S 301) amends G.S. 153A-158.1 to extend this authority to all one hundred counties.

Purchasing and Contracting

S.L. 2003-231 (S 620), which deals with new school purchasing procedures, and other acts dealing with purchasing and contracting issues for public schools are discussed in the article by Frayda Bluestein, "Changes Affecting Purchasing and Contracting," in this issue.

Hazing

S.L. 2003-299 (H 1151), which amends G.S. 14-35, the provision prohibiting and defining *hazing*, is discussed in the article by Robert P. Joyce, "Changes Affecting Higher Education," in this issue.

Bills Not Enacted

Bills touching on a wide variety of education issues did not pass in 2003. They included: an education lottery (H 5); a tax increase on cigarettes, with revenues going to education (H 378); proposals to begin the school year after Labor Day (S 779, H 863, S 1002), raise or remove the current statewide cap of one hundred charter schools (H 31, H 32, S 712), raise the compulsory school attendance age from sixteen to seventeen (S 783), and require thirty minutes of physical education each school day (H 303). A bill (H 1135) requiring DPI to develop or study a plan to provide a free and appropriate education to students recommended for long-term suspension also failed to pass, as did a proposed constitutional amendment (S 568) to make the superintendent of public instruction an appointee of the governor, rather than an elected official.

Studies

Rapid Growth

Section 7.29 of S.L. 2003-284 directs the Joint Legislative Education Oversight Committee to study the effects of rapid growth in student enrollment on local education agencies

9. Other provisions of S.L. 2003-304 are discussed in Chapter 21, "Social Services," *North Carolina Legislation 2003*.

10. Other provisions of S.L. 2003-278 are discussed in Chapter 7, "Elections," *North Carolina Legislation 2003*.

and to report its results to the 2004 regular session of the General Assembly.

Activity Buses

Section 7.25(c) of S.L. 2003-284 requires the State Board of Education to study the adequacy of the safety rules and regulations adopted for activity buses by local boards of education. The State Board must report the study results to the Joint Legislative Education Oversight Committee by March 15, 2004.

Credit for Higher Education Courses

A growing number of high school students are interested in taking university and community college courses. Section 7.36 of S.L. 2003-284 directs the State Board to study the issue of weighted grades (used for figuring a student's grade-point average) for high school students who take higher education courses. The State Board must report to the Joint Legislative Education Oversight Committee by December 15, 2003.

School Nurses

Although not labeled a study, Section 7.32 of S.L. 2003-284 requires the State Board to review the standards for the number of school nurses recommended in the Basic Education Program to determine whether local school units are meeting these standards. The State Board must determine whether current standards are adequate to meet students' changing needs and demands for health services. The State Board's review also must consider whether the legal requirements for providing health-related services to public school students need to be changed. The State Board must report on its findings to the Joint Legislative Education Oversight Committee by February 15, 2004.

Driver Education Privatization

Section 29.7 of S.L. 2003-284 requires the State Board to study statewide privatizing of state-funded driver education programs. The board is to report to the Joint Legislative Education Oversight Committee and the Joint Legislative Transportation Oversight Committee by November 30, 2003, on proposals for statewide privatization and cost reduction.

School Employment: Pay and Benefits

Salaries

S.L. 2003-284 (H 397) sets provisions for the salaries of teachers and school-based administrators. For teachers, the act sets a salary schedule for 2003-2004 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 in the largest category of schools who has more than forty years of experience. Of course, many school-based administrators are employed not for ten but for eleven or twelve months, which adds proportionate amounts to their salaries.

These salary schedules are identical to those in place for the 2001-2002 school year and the 2002-2003 school year, so that teachers and administrators who were paid on those schedules in those years and remain on them this year receive a small salary increase for each year by virtue of moving one step up in the experience ranks.

In addition, noncertified employees in the public schools who are employed on October 1, 2003, will receive a one-time bonus of \$550.

ABCs Incentives

S.L. 2003-284 directs the State Board of Education to provide incentive funding for schools that in the 2002-2003 school year met or exceeded levels of improvement in student performance expected under the ABCs of Public Education Program. The awards provided for schools exceeding expectations are up to \$1,500 for each teacher and other certified personnel and \$500 for each teacher assistant; for schools meeting expectations, the awards are \$750 and \$375, respectively.

The General Assembly also expressed its intention to close the achievement gap between white and black students by providing an ABC funding incentive in future fiscal years for employees of schools that make adequate yearly progress as required by the No Child Left Behind Act.

Pay during Military Duty

S.L. 2003-301 (S 714) adds a new section to G.S. 302.1 directing the State Board to adopt rules regarding pay differentials for public school employees who take leaves of absence for military training, military duty, or special emergency management service. Under the rules, which apply to all school employees, the state will pay any salary differential for employees in state-funded positions, the local board will pay the differential for locally funded employees, and charter schools will pay any differential to their employees.

Veterans Day Holiday

G.S. 115C-84.2(b) has for some time required that in setting the school calendar, public school officials must make Veterans Day a holiday for students. S.L. 2003-131 (H 421) makes it a mandatory holiday for all school personnel as well.

Shared Leave

S.L. 2003-9 (H 432) and Section 30.14A of the budget act together give related employees of public schools, community colleges, and state agencies the ability to share leave among themselves; employees of these institutions may also share leave with the immediate family members of their coworkers. That is, a community college employee may share leave with, for example, a public school employee who is an immediate family member. An employee may also share leave with a coworker's immediate family member who is employed by a public school, community college, or state agency, so long as the coworker whose family member receives the leave is employed by the same institution or public school administrative unit as the donating employee.

Job Sharing

In 2002 the General Assembly passed a statute (G.S. 115C-302.2) creating the new category of "classroom teacher in a job-sharing position." Such classroom teachers are employed on a half-time basis and share one position with another teacher. They are paid on the teacher salary schedule and enjoy teacher benefits, both on a pro rata basis. S.L. 2003-358 (S 701) repeals that statute and substitutes a new G.S. 115C-326.5. The new statute contains job-sharing provisions that are very similar to the now-repealed statute, but it makes them available to all public school employees, not just teachers. This change will be effective January 1, 2004.

School Employment: Tenure, Contracts, and Licensure

Administrator Term Contracts

Public school principals, assistant principals, supervisors, and directors are employed by contract. G.S. 115C-287.1 has for a number of years specified that their contracts must be between two and four years long. S.L. 2003-291 (S 955) amends the statute to provide that the *initial* contract period between such an administrator and a school system shall be between two and four years but that subsequent contracts must be for four years.

Time to Tenure for Veteran Teachers

A newly hired teacher who has never achieved tenure in any North Carolina school system must serve for four consecutive years as a probationary teacher before being eligible for "career status"—commonly called tenure. G.S. 115C-325(c)(2) has provided a different rule for teachers who, by contrast, have previously achieved tenure in a North Carolina school system

but who are changing to a new system or returning to the old system after a break in service. For those teachers, the local school system has been able to grant tenure immediately upon hiring the teacher, after one year of probationary service, or after two years. S.L. 2003-302 (H 38) amends the statute to require that the system make the decision either immediately upon hiring the teacher or after one probationary year. This change will become effective with contracts signed for the 2004–2005 school year.

License Revocation for Conviction of Serious Crime

G.S. 115C-296(d) directed the State Board to adopt rules setting out the grounds and procedures for revoking the license of a teacher or school administrator. The board did so, and the rules are now part of the North Carolina Administrative Code. They provide for a hearing in all revocation proceedings. S.L. 2003-408 (S 993) amends the statute to direct the State Board to revoke a license automatically and without a hearing when the teacher or administrator has been convicted of certain serious crimes or has pleaded guilty or *nolo contendere* to such charges.

The teacher or administrator will be informed that the State Board has received a certified copy of the criminal record and will revoke the license unless the teacher or administrator notifies the board that he or she is not the person identified in the criminal record.

The crimes specified are murder, conspiracy or solicitation to commit murder, rape or sexual offense, certain assaults, abduction of children, crime against nature, incest, employing or permitting a minor to assist in an offense against public morality and decency, certain crimes relating to dissemination of improper material to minors, sexual exploitation of children, prostitution, indecent liberties with children or students, solicitation of a child by computer to commit an unlawful sex act, and child abuse.

Licensure of Teachers from Out of State

S.L. 2003-284 adds new G.S. 115C-296.3 streamlining the procedure for licensing teachers who at the time of hiring by a North Carolina school administrative unit are employed as teachers in other states. If such a teacher is (a) fully licensed in that other state and (b) "highly qualified" within the meaning of the federal No Child Left Behind Act, then he or she is deemed to have satisfied the academic and professional preparation requirements for certification. Such teachers need not take and pass a standard examination to demonstrate such preparation (unless required by the No Child Left Behind Act).

If the teacher has less than three years' experience as a full-time classroom teacher, he or she receives initial certification for the length of time needed to accumulate three years of

total teaching experience. Once the teacher has three years of total experience—with at least one full year of it in North Carolina—he or she receives full continuing certification, unless the employing school system recommends otherwise.

A teacher who has at least three years of experience receives continuing certification immediately. If at the end of one year the school system recommends continuing the certification, the State Board will renew it.

Lateral Entry Changes

In 1984 the General Assembly declared it the policy of the state to encourage individuals to move from employment outside the teaching profession into teaching, to supplement the corps of teachers trained in traditional university teacher-training programs. The basic requirements of the so-called lateral entry program are found in G.S. 115C-296(c).

S.L. 2003-284 amends that statute to make several changes: The statute now specifies that lateral-entry teachers must have at least a bachelor's degree. The statute formerly provided for the granting of a provisional teaching certificate for five years and required full certification by the sixth year. Under the changes, the provisional certification will be granted for three years, with full certification required by the fourth year, for teachers covered by the federal No Child Left Behind Act.

Licensure Score

S.L. 2003-284 directs the State Board to review the requirements for initial teacher certification to determine whether the prescribed minimum score on the PRAXIS exam is sufficient to demonstrate an applicant's academic and professional preparation for teaching.

Licensure Study

In 2002 the General Assembly directed the State Board to contract with an outside consultant to study the initial licensure, continuing licensure, and relicensure programs and propose

modifications to them. S.L. 2003-284 amends that directive to require the State Board to conduct the study itself rather than engage a consultant.

Veto of Portfolio Elimination Bill

For several years, the State Board of Education has required teachers in their early years of teaching to participate in a licensure program by which they move from the initial license through a series of steps to a continuing license. As part of that program, teachers holding the initial license were required to assemble a set of materials related to their teaching—termed a “portfolio”—which was to be reviewed as part of the teacher's progress toward a continuing license. In 2002 the General Assembly directed the State Board to suspend the portfolio requirement for teachers who would otherwise have been required to submit one between August 1, 2002, and June 30, 2004.

On May 28, 2003, S 931, which amended G.S. 115C-296(b), was ratified. It directed the State Board of Education to develop a rigorous licensure procedure and specifies that “[t]hese rigorous standards shall not include a portfolio requirement for teachers.” The bill then provided that “No new requirement added by the State Board of Education to the teacher certification process may be required for licensure now or in the future without explicit legislative authorization.”

On June 8, Governor Easley vetoed the bill. In his veto message, the Governor noted that the state constitution grants the State Board the general authority “to administer the free public school system.” The requirement that the legislature approve all future changes in the licensure process “is not only bad public policy, but it is also constitutionally questionable.”

This was only the second gubernatorial veto in the history of the state. ■