School Discipline Law Affecting
North Carolina Public School Students

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For the most part, school discipline law is a matter of local and state level regulation. In North Carolina, as in most states, the state statutes set out the broad principles of public school discipline, and the local boards of education are authorized to develop their own policies. The state statutes, as well as all local district policies, must, of course, comport with the United States Constitution and the state Constitution. In addition, to obtain federal educational dollars, local school districts must abide by federal legislation that affects school discipline. The following outline covers both constitutional and statutory law in North Carolina.

I. Federal Law

A. Federal Constitution

1. **Due process in school suspensions**: There is no federal right to education[1], but the Supreme Court has nevertheless recognized that the right to attend public school is a state-created property right.[2] Children, therefore, cannot be deprived of the right to attend public school without due process of law. The due process rights of children facing a deprivation of the right to continued school attendance, i.e., facing either suspension or expulsion from school, have received only limited attention by the U.S. Supreme Court and the lower federal courts. The following principles have emerged:

    a. **Notice and an opportunity to be heard.** Any student who will be involuntarily removed from school as a result of a disciplinary infraction, even if only for a short period of time (such as a few days), is entitled to oral or written notice of the alleged offense.[3] If

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[1] *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973)

[2] *Goss v. Lopez*, 419 U.S. 565 (1975)

[3] *Id.* The court ruled only on suspensions of up to ten days. As a rule, due process does not apply to in-school suspensions. *See Dickens v. Johnson County Bd. of Ed.*, 661 F. Supp. 155, 156 (E.D. Tenn. 1987). *But see Cole v. Newton Special Mun. Separate Sch. Dist.*, 676 F. Supp.

the student denies the allegation, he must be given an explanation of the evidence the authorities have against him and an opportunity to present his side of the story. For a short-term suspension, which is defined as fewer than ten days, this can be a very informal interchange; no formal hearing is required. In most cases, this informal notice and opportunity to respond should occur prior to the suspension, although if the school authority determines that the continuing presence of the student represents a danger to the other students or staff, the student may be removed immediately. In such a case, the necessary notice and rudimentary hearing must occur as soon as practicable.

b. **Hearing.** More formal procedures are due to a student who is facing a long-term suspension.[4] Neither the U.S. Supreme Court nor the Fourth Circuit Court of Appeals has itemized the extent of those due process protections. In 1972, a North Carolina federal district court stated, that certain protections "appear essential if both the substance and the appearance of fairness are to be preserved."[5] The protections cited are:

(1) Written notice to parents and the student of specific statement of charges
(2) A full hearing, after adequate notice, before an impartial tribunal
(3) The right to examine evidence against the student
(4) The right to be represented by counsel, though not at state expense
(5) The right to confront and examine adverse witnesses
(6) The right to present evidence
(7) The right to a record of the proceeding
(8) The right to have the decision based on substantial evidence.

The North Carolina Court of Appeals cited *Givens v. Poe,* as well

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749, 752 (S.D. Miss. 1987) (where a high school student whose in-school suspension involved sitting in a detention room that isolated her entirely from the learning environment, this constituted a total exclusion from the education process, thus implicating due process protections).

[4]*Goss, supra, note 2; In Re Roberts,* 150 N.C. App. 86, 563 S.E. 2d 37(2002), *appeal dismissed as improvidently granted,* 356 N.C. 660 (2003).

[5]*Givens v. Poe*, 346 F. Supp. 202 (1972).

as the federal constitution when it ruled that a student facing long-term suspension has the right to a factual adjudication.[6] The Court held, "[W]e construe the Due Process Clause of the United States Constitution, applicable to the States through the Fourteenth Amendment, to require that petitioner have the opportunity to have counsel present, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident."[7] (As of 2011, the state statute was changed and now itemizes the due process protections afforded in the context of a long-term suspension. That statute is discussed below under State Legislation.)

In a later case, *Hardy v. Beaufort Co. Board of Education,*[8] the Court of Appeals took the position that a student deprived of the right to procedural due process cannot state a claim for the constitutional wrong unless he or she can show prejudice. In *Hardy,* the court found that no prejudice could be shown when the board failed to offer the student a full evidentiary hearing before a long-term suspension was imposed because the student admitted her guilt. This result, however, is in direct conflict with the U.S. Supreme Court's holding in the case of *Carey v. Piphus*, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978). In *Carey*, which was a claim by elementary school students alleging a denial of due process in their suspension from school without a hearing, the Supreme Court reversed the lower court which had held there must be actual damage. The Court held, "Because the right to procedural due process is 'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due

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[6] *In Re Roberts*, 150 N.C. App. 86, 563 S.E. 2d 37 (2002) *appeal dismissed as improvidently granted,* 356 N.C. 660 (2003).

[7] *Id.* at 150 N.C. App. 93, 563 S.E.2d at 42. Note that in relying on *Roberts,* the Court of Appeals in *Alexander v. Cumberland Co. Bd. of Educ.*, 171 N.C. App 649, 615 S.E.2d 408 (2005), changed the final phrase "or to call witnesses to verify his version of the incident" to "*and* to call witnesses to verify his version of the incident." (emphasis added).

[8] 201 N.C. App 132, 685 S.E.2d 550 (2009) (note that this case is reported as being reversed. It was not reversed, however. The report was due to an error made by the N.C. Supreme Court in a related case. The Supreme Court stated that it was reversing this case, when in fact it was reversing a case involving the same party, cited at 200 N.C. App. 403, 683 S.E.2d 774 (2009).

process be observed, . . . we believe that the denial of procedural due process should be actionable for nominal damages without proof of actual injury." *Id*. at 266, 98 S.Ct. 1054. *Carey v. Piphus* was cited with approval by the North Carolina Supreme Court in 1980 in *Jones v. Dept. of Human Resources*, 300 N.C. 687, 268 S.E.2d 500 (1980).

2. **Due process for corporal punishment**: No notice or opportunity to be heard is required by due process before corporal punishment is administered.[9] After-the-fact common law tort remedies are considered to be adequate to afford due process to a child who is wrongly paddled or is subjected to excessive corporal punishment. The administration of corporal punishment does not violate the Eighth Amendment protection against cruel and unusual punishment, as that amendment applies only in the criminal context, not the school discipline context.[10]

3. **Privacy/ Search & Seizure**

   a. **In general.** The Fourth Amendment right to be free of unreasonable search and seizures applies to children in public school.[11] The standards for what constitutes an unreasonable search is dependent on the circumstances, and children in school are not entitled to the same degree of privacy as adults in their homes would be. In the public school setting, a child and his belongings may be searched when there are reasonable grounds for suspecting that the search will turn up evidence that the student violated the law or school rules. The scope of the search must be reasonably related to the circumstances that justified the interference in the first place. A search may not be "excessively intrusive" in light of the age and sex of the student and the nature of the infraction.[12] A high school girl's purse could be searched by the principal when he had received a report from a teacher that she was smoking on campus, in violation of the school rules, and the search could continue more thoroughly when the principal found

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[9] *Ingraham v. Wright*, 430 U.S. 651 (1977).

[10] *Id.*

[11] *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

[12] *Id.*

rolling papers that were associated with illegal drug use.[13] Nevertheless, a 13-year-old girl could not be strip-searched upon suspicion that she was hiding non-prescription drugs, as that was considered excessively intrusive.[14]

b. **Drug searches.** Random drug testing for all students in public schools has not yet been authorized by the U.S. Supreme Court, although the most recent opinions on the subject point in that direction.[15] Under current Supreme Court precedent, all participants in extracurricular events may be required to submit to random drug testing.[16] In allowing such random testing, though, the Court noted that in the case before it, the results of the tests were not turned over to law enforcement and could not result in exclusion from school (only exclusion from extracurricular activities).

B. **Federal Legislation**

1. **Gun Free Schools Act.** In 2002, Congress passed the Gun Free Schools Act, which states that any state receiving federal education money must have a law in effect requiring local school districts to expel from school for a period of not less than one year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school.[17] The law allows for modification of the expulsion requirement for a student on a case-by-case basis if such modification is in writing.

2. **Individuals with Disabilities Education Act (IDEA).** Special protections are available to children with learning-related disabilities who are eligible for special education and have Individualized Education Programs (IEP's) or who, prior to the disciplinary event, should have been

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[13] *Id.*

[14] *Safford v. Redding*, 129 S.Ct. 2633 (2009).

[15] The Circuit Court of Appeals for the Eighth Circuit, however, has found that random searches of all school children violate the 4th Amendment. See *Doe v. Little Rock School Dist.*, 380 F. 3d 349 (8th Cir. 2004).

[16] *Pottawatomie County v. Earls*, 536 U.S. 822 (2002).

[17] 20 U.S.C. §7151.

identified as having a learning-related disability.[18] These protections apply if the student is suspended for a period of time exceeding 10 days, either consecutively or cumulatively (so long as the accumulated suspensions represent a pattern of misbehavior).

a. **Continuation of educational services.** During a suspension period of more than 10 days, a special education student is entitled to continued educational services.[19] Those services do not need to be delivered in the traditional school setting, but the child must continue to have services necessary to enable the child to progress in the general curriculum and appropriately advance toward achieving IEP goals.[20]

b. **Protection from suspension when the behavior is a manifestation of the child's disability.** Prior to suspending a child eligible for special education services from school for more than ten days, a school must conduct a "Manifestation Determination Review."[21] The purpose of this review is to protect a child from being excluded from school if his or her behavior is a symptom of the disability. A suspension may not occur "if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the local educational agency's failure to implement the IEP."[22]

II. State Law

A. State Constitution

1. **Right to Education**. The state constitution grants the children of North Carolina the right to attend public school.[23] In *Leandro v. State,*[24] the N.C. Supreme Court interpreted the state constitution to require the state to

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[18]20 U.S.C. §1415(k)(1)(D).

[19]20 U.S.C. §1415(k)(3).

[20]20 U.S.C. §1412(1)(A); 20 U.S.C. §1415(k)(3); 34 C.F.R. § 300.121(d).

[21]20 U.S.C. §1415(k)(4).

[22]20 U.S.C .§(k)(1)(E).

[23]N.C. Const., Article I, Section 15 and Article IX, Section 2.

[24]346 N.C. 336, 488 S.E.2d 249 (1997).

provide students in the state with the opportunity to attain a sound basic education. *Leandro,* the holding in which was reaffirmed in *Hoke County v. State*[25], was a school finance case, the import of which is that the state must provide adequate resources so that each child has the opportunity to leave the public schools with sufficient academic skills that he or she can function in society, make informed choices with regard to issues that affect the local and national community, successfully engage in post-secondary education or vocational training, and compete on an equal basis with others in further formal education or gainful employment.[26] The Court did not comment on the relationship between this right and a school district's right to exclude children from the educational process by suspending or expelling them.

In 2010, the N.C. Supreme Court held in *King v. Beaufort Co. Bd. of Education*[27] that students in North Carolina have a constitutional right to continued educational services during a long-term suspension unless the school board can establish that the board has an important or significant reason for refusing to provide some type of alternative education. The court grounded its reasoning on the "equal access" provision in the N.C. Constitution, which guarantees every North Carolina child the right to participate in the public schools.[28] It established that exclusion from alternative services during suspension is subject to an "intermediate" standard of review (rejecting the student's argument that such an exclusion should be subject to strict scrutiny). Interpreting its standard of intermediate scrutiny, the Court stated, "Students who exhibit violent behavior, threaten staff or other students, substantially disrupt the learning process, or otherwise engage in serious misconduct may be denied access. For these students, school officials will have little or no difficulty articulating an important or significant reason for denying access to alternative education under the state standard of intermediate review."[29]

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[25]358 N.C. 605, 599 S.E.2d 365 (2004).

[26] 346 N.C. at 347, 488 S.E.2d 255.

[27]364 N.C. 368, 704 S.E.2d 259 (2010).

[28]N.C. Const. Article IX, Sec. 2

[29]364 N.C. at 378, 704 S.E.2d at 265.

2. **Due Process**

a. Like the federal constitution, the North Carolina Constitution requires that property not be taken "but by the law of the land." [30] This has been interpreted as requiring fundamental due process: the right to notice and a meaningful opportunity to be heard.[31] Nevertheless, the courts in North Carolina have generally grounded their due process opinions in the federal constitution rather than the state constitution.[32]

B. **State Legislation**

1. **Overview –** In 2011, the N.C. General Assembly passed legislation that completely replaced Article 27 of Chapter 115 of the N.C. General Statutes concerning school discipline. While the new provisions continue to leave much about school discipline to the discretion of each individual school board, they nevertheless set certain new standards that apply across the board. The provisions of the revised law are summarized below:

2. **Statement of policy – N.C. Gen. Stat. §115C-390.1(a) –** The policy statement sets the tone of the law: Good discipline in schools is mandatory, but overuse of removal from school as a disciplinary tool is counterproductive. School discipline should balance the interests of providing a safe and productive learning environment with the need to avoid the negative consequences of long suspensions, such as exacerbated behavioral problems, diminished academic achievement, and school drop out.

3. **Definitions – N.C. Gen. Stat. §115C-390.1(b)** – The definition section generally reflects the commonly-accepted definitions for the terms used throughout the law, with a few exceptions.

a. A long-term suspension is a suspension of more than 10 school days. If the offense leading to the suspension occurs within the first 3 quarters of the year, a long-term suspension can be no longer than the remainder of that school year. If the offense leading to the suspension occurs during the final quarter of the school year, the suspension can extend into the first half of the next school year.

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[30] N.C. Constitution, Article 1, §19.

[31] *Jordan v. Civil Service Board*, 153 N.C. App. 691; 570 S.E.2d 912 (2002); *Affordable Care v. N.C. Board of Dental Examiners*, 153 N.C. App. 527; 571 S.E.2d 52 (2002)

[32] *See, e.g., In Re Roberts,* 150 N.C. App. 86, 563 S.E. 2d 37 (2002) *appeal dismissed as improvidently granted,* 356 N.C. 660 (2003).

b. An expulsion is "an indefinite" exclusion of a student from school enrollment. Because a later section allows for reentry, expulsion is not necessarily a permanent exclusion.

c. Firearm – excludes inoperable antique firearms, BB guns, stun guns, air rifles and air pistols. Includes other guns and the frame, receiver, muffler, or silencer for a gun.

d. Parent includes caregiver adults acting in the place of a natural or adoptive parent so long as the person is entitled to enroll a student in school pursuant to Article 25 of Chapter 115C.

4. **Discipline policies – N.C. Gen. Stat. §115C-390.2**

a. *General authority:* Local boards are authorized to adopt policies governing the conduct of students and the use of school discipline, consistent with state and federal law and constitutions. These policies must be published and available to students and their parents at the beginning of the school year and on request. They are generally published on the school district's website.

b. *Off-campus conduct:* Board policies may authorize suspension for off-campus conduct only if the student's conduct is reasonably expected to have a direct and immediate impact on safety at school or orderly and efficient operation of the school. This codifies well-established case law.[33]

c. *Discipline for truancy:* Board policies may not authorize long-term suspension for truancy and must limit short-term suspension for truancy to two days.

d. *No "zero tolerance"*: Board policies may not impose mandatory penalties for identified conduct except as authorized by state or federal law; similarly, board policies may not prohibit the superintendent from considering mitigating and aggravating circumstances when imposing suspension.

e. *Limits on use of long-term suspension:* Board policies must limit the use of long-term suspension to serious offenses that threaten safety or substantially disrupt the educational environment; principals have authority to consider aggravating circumstances of minor offenses as justifying long-term suspension.

f. *Alternative to suspension:* Local boards and school administrators are encouraged to use positive approaches to discipline and alternatives to removal from school.

5. **Reasonable force – N.C. Gen. Stat. §115C-390.3** – School personnel

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[33] *See, e.g., Collins v. Prince William County Sch. Bd.*, 142 Fed. Appx. 144 (4th Cir. 2005) (*aff'g* 2004 U.S. Dist. Lexis 28298 (E.D. Va. 2004*); Beussink v. Woodland R-IV Sch. Dist.,* 247 F. Supp. 2d 698 (W.D. Pa. 2003); *Robinson v. Oak Park and River Forest High School*, 213 Ill. App. 3d 77 (1991).

may use reasonable force to control the behavior of students when necessary.

a. Situations in which reasonable force may be used include:
   (1) To correct students;
   (2) To quell a disturbance threatening injury to others;
   (3) To obtain possession of weapons or other dangerous objects on the person, or within the control, of a student;
   (4) For self-defense;
   (5) For the protection of persons or property;
   (6) To maintain order on educational property, in the classroom, or at a school-related activity on or off educational property;

b. Physical restraint and seclusion are limited by the provisions of N.C. Gen. Stat. §115C-391.1.

c. School employees are protected from liability for using reasonable force (though they can be liable for using force that is determined not reasonable).

6. **Corporal punishment - N.C. Gen. Stat. §115C-390.4** –

a. Individual school boards are permitted to decide whether corporal punishment will be permitted in their district.

b. If corporal punishment is generally permitted, the parents of the children in the district must be given the opportunity to restrict school personnel from imposing corporal punishment on their children. If a parent states in writing that corporal punishment shall not be administered, then it is forbidden.

c. If corporal punishment is permitted, it is limited by the following provisions.
   (1) Parents and the student body must be informed in advance of the offenses that are punishable by corporal punishment;
   (2) Only certain school personnel may administer corporal punishment (principal, assistant principal, or teacher);
   (3) Corporal punishment must not be administered in the presence of other students;
   (4) Corporal punishment must be administered in the presence of a witness (principal, assistant principal, or teacher);
   (5) The student must be informed, in the presence of the witness, of the reason for the administration of corporal punishment;
   (6) The student's parents must be informed that corporal punishment was administered, and be given additional information about the incident upon request;
   (7) The school must keep records of the administration of corporal punishment and report them annually to the State

Board of Education;

(8) The force used may not be excessive; excessive force is force that results in injury to the child.

7. **Short-term suspensions – N.C. Gen. Stat. §115C-390.5** –
   a. Principals have the authority to suspend for up to 10 days.
   b. If a student's short-term suspensions accumulate to more than 10 days in a semester, the principal is to invoke mechanisms identified in the school board's "safe school plan" to assess the needs of and provide services to that student.
   c. Short-term suspended students must be permitted to take home textbooks, get missed assignments and materials, and take major tests missed during the exclusion.
8. **Short-term suspension procedures – N.C. Gen. Stat. §115C-390.6 –**
   a. Prior to the imposition of a short-term suspension, the student must be given an informal hearing. The notice of the charges may be oral and the student's opportunity to respond may be immediately following the notice. The student must be allowed to speak in his own defense. Typically, this occurs in the principal's office, where the student is confronted with the accusation against him and invited to respond.
   b. The informal hearing may occur following the suspension if the presence of the student creates a direct and immediate threat to safety.
   c. Parents must be notified of the suspension and reasons for it, in English and in the primary language of the parent when foreign language resources are readily available.
   d. Short-term suspension are not appealable to the superintendent or the local board unless authorized by the local board's policy.
9. **Long-term suspension – N.C. Gen. Stat. §115C-390.7 –**
   a. Superintendents have the authority to suspend students for more than ten days, upon the recommendation of a principal.
   b. Prior to the imposition of a long-term suspension, the student must be offered a hearing according to the procedures in §115C-390.8.
   c. If the student declines the hearing, the superintendent must review the circumstances and determine that long-term suspension would be consistent with board policies before imposing it.
   d. If a student has assaulted or injured a teacher, the student cannot be reassigned to that teacher without the teacher's consent.
   e. A disciplinary reassignment to a full-time education program that allows the student the chance to make timely progress toward grade promotion and graduation is not a suspension and is not subject to

due process procedures.[34]

10. **Long-term suspension procedures – N.C. Gen. Stat. §115C-390.8 –**
    a. *Notice:* At the time a principal recommends a long-term suspension, written notice must be issued to the student's parent, either the same day or as soon as practicable. The statute itemizes all of the information that must be included in the notice.
    b. *Language:* All notices must be in English and in the primary language of the parents, if foreign language resources are readily available. In addition, all notices must include a short statement in the main foreign language spoken by parents in the district, alerting the parent of the importance of the notice and need to contact school officials.
    c. *Hearing:* Local boards are authorized to develop their own hearing procedures, allowing for a hearing to be conducted by the local board itself, or by a person or panel appointed to conduct hearings. The person or panel that conducts the hearing may not be supervised by the principal that recommended the suspension.
    d. *Authority of hearing officer or panel:* If a hearing officer or hearing panel is appointed, that person/s must determine the relevant facts and credibility of the witnesses based on the evidence presented at the hearing. Following the hearing, the superintendent or local board makes the final decision, adopting the factual determinations so long as they are supported by substantial evidence.
    e. *Due process protections:* All districts must incorporate the following protections into their procedures:
        (1) the student's right to be represented by an attorney, or, at the option of the district, a non-attorney advocate;
        (2) the student's right to be present at the hearing, accompanied by his or her parents;
        (3) the right to review, before the hearing, any audio or video recordings or the incident, as well as any information supporting the suspension that may be introduced at the hearing;[35]
        (4) the right of the student to question witnesses presenting

[34]This section appears to nullify or at least mitigate *Rone v. Winston-Salem/Forsyth Co. Bd. of Educ.,* 701 S.E.2d 284 (N.C. App. 2010), in which the court held that the assignment of a high school student to the Alternative Learning Center, on the grounds that he would not submit to a risk assessment following his display of behaviors considered aggressive and threatening, was a disciplinary decision and entitled the student to a full due process hearing.

[35]The statute does not require the district to produce exculpatory evidence that it does not intend to introduce at the hearing.

evidence against him;[36]

(5) the right to present evidence on his own behalf;
(6) the right to have a record made of the hearing;
(7) the right to make his own record of the hearing;
(8) the right to a written decision based on substantial evidence produced at the hearing.

f. *Appeal.* Unless the initial decision was made by the local board, it may be appealed to the board. The board must make a decision within 30 days following the request for an appeal.

g. *Judicial review.* The decision of the board is subject to judicial review pursuant to the N.C. Administrative Procedures Act.[37] When appealed to court, the student's case is entitled to a peremptory hearing regardless of local rules.

11. **Alternative education services – N.C. Gen. Stat. §115C-390.9** –

a. *Provision of services.* This section requires that students be offered alternative educational services unless there is a significant or important reason for declining such services. Alternative educational services are part or full-time programs, wherever situated, providing direct or computer-based instruction that allow a student to progress in one or more core academic courses.[38] The section is, in part, a codification of the N.C. Supreme Court's decision in *King v. Beaufort Co. Bd. of Education*.[39] Examples of potentially significant reasons are:

(1) The student exhibits violent behavior;
(2) The student poses a threat to staff or other students;
(3) The student substantially disrupts the learning process;
(4) The student otherwise engaged in serious misconduct that makes the provision of alternative educational services not feasible;
(5) Educationally appropriate alternative education services are not available in the local school administrative unit due to

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[36]The statute does not require the presence at the hearing of all witnesses of the incidents leading to the suspension. Hearsay is allowed; the student is not guaranteed the right to confront his actual accusers (especially when those accusers are other students). *See* N.C. Gen. Stat. §115C-390.8(h).

[37]N.C. Gen. Stat. §150B-43 et seq.

[38]N.C. Gen. Stat. §115C-390.1(b)(1).

[39] 364 N.C. 368, 704 S.E.2d 259 (2010).

limited resources;[40]

(6) The student failed to comply with reasonable conditions for admittance into an alternative education program.

b. *Appeal.* If the superintendent declines to offer alternative services, the student may appeal to the board of education, and then to Superior Court. The superintendent must provide a written explanation for the denial of services.

12. **365-day suspension for gun possession – N.C. Gen. Stat. §115C-390.10**

a. *Compliance with federal law.* The federal Gun Free Schools Act mandates a 365-day suspension for gun possession. This section complies with the federal law, requiring board to develop policies requiring a 365-day suspension for a student who brings to school or possesses on school property a firearm or destructive device.

b. *Modification.* The superintendent can modify the 365-day suspension on a case-by-case basis.

c. *Exceptions:* An exception is made for a student who finds, or takes from another student, a firearm or weapon if it is turned over to law enforcement or a school official as soon as practicable, so long as the superintendent determines the student had no intent to use the weapon in a harmful or threatening way. Also exempted is a student using firearms used in activities approved by the school district.

d. *Alternative education:* Students subject to this suspension are entitled to be considered for alternative educational services.

13. **Expulsion – N.C. Gen. Stat. §115C-390.11** –

a. *Authority.* Only the local board of education may expel a student from school indefinitely. No student younger than 14 may be expelled.

b. *Grounds.* The student's continue presence in school must be found, by clear and convincing evidence, to present a clear threat to other students and staff. A student who is a registered sex offender may be expelled.

c. *Procedures.* The local board of education must conduct a hearing before expelling a student. The procedures and rights that apply to students facing long-term suspension apply to students facing expulsion, except that the decision must be based on clear and

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[40]The Court in *King v. Beaufort Co. Bd. of Educ.* did not include lack of resources as a reason for denying services. It did, however, note that districts are required to develop strategies to offer alternative services to long-term suspended students when "feasible and appropriate." *See* N.C. Gen. Stat. §115C-47(32a). In other words, even prior to *King,* the legislature had not mandated that all long-term suspended students have access to alternative learning services, presumably because not all districts have the financial resources to offer them.

convincing evidence.

14. **Readmission – N.C. Gen. Stat. §115C-390.12**
    a. *Eligibility.* Students who have been expelled or suspended for 365 days are entitled to request readmission 180 days following the expulsion or 365-day suspension. If readmission is denied, a student may request readmission again, but not more often than once every 180 days.
    b. *Grounds.* A student is to be readmitted if he or she demonstrates to the satisfaction of the board that the student's presence in school no longer constitutes a threat to the safety of other students or staff.
    c. *Procedures.* Local boards are required to develop and publish policies for readmission for both 365-day suspended students and expelled students. Reasonable conditions may be placed on a student offered readmission.
    d. *Appeals.* A decision on readmission made initially by the superintendent may be appealed to the board of education. Decisions by the board are not subject to judicial review.

C. **Local policies**
1. School districts in North Carolina are free to develop their own Codes of Conduct and Discipline Procedures, so long as they are consistent with applicable constitutional and statutory authority. While policies vary considerably from district to district, some commonalities exist. Following is a description of typical procedures, together with advice for the representative of a student going through the process.
2. *Time constraints* – Because time is of the essence if a child is recommended for long-term suspension, most local policies require that an appeal be requested within a few days following the notice of suspension so that the hearing can be completed within 10 school days. While it is always advisable to adhere to the prescribed time limits, it is also always worthwhile asking for an extension of the limit if the limit has expired. The short time limits are for the protection of the student and must be waived.[41]
3. *Hearing procedures – first level.* The typical hearing is relatively informal and the rules of evidence do not apply. There may be a hearing officer and/or a panel of persons appointed to hear the evidence, or the hearing may be directly before the superintendent or assistant superintendent. Usually, the principal or a representative of the principal presents information about what occurred that led to the recommendation of suspension or expulsion. A report of the investigation is read; witnesses to the event may or may not be present. Hearsay is permitted. Whoever

[41]NC Gen. Stat §115C-390.8 (C)(2).

presents the case for the school may be cross-examined by the student, his or her parent, or the student's counsel. Following the school's presentation, the student will be permitted to present testimony and will be permitted to present witnesses on his behalf. The student and his witnesses may be questioned by the hearing panel or superintendent. Often, each side will be permitted to make a closing statement. Most hearings are less than an hour in length.

4. *Strategy* – Sometimes, the student will simply deny that he/she engaged in the conduct he/she is accused of. More often, however, the student will admit to at least the same of the conduct, but want to show that he or she is not as culpable as it appeared to the principal, or that the length of the suspension is excessive given all the circumstances. Particularly if the latter is the case, it is generally useful to build up the positive aspects of the student. Evidence that the student is now in a mentoring program, or is now getting counseling, or has gotten a job could be helpful. If the circumstances that led the student to violate the school rule are no longer present, those facts should be made known. Statements from the student's pastor, Sunday School teacher, scout leader, employer, neighbor, sports coach, etc. about the student's character are worth submitting, either in person or in writing. If the student admits the conduct, the student should apologize and say whatever he or she can that might persuade the decision-maker that the student does not pose a continuing threat to the safety or discipline of the school. If the student is willing to "make up" for the conduct in some other way (take on certain responsibilities at the school, for example) or is willing to accept certain other restrictions (offering to be searched, offering to be restricted from extra-curriculars), those should be offered. Both the principal and the superintendent can use their discretion to modify the length or terms of the suspension, so attempts at negotiation are worthwhile.

5. *Appeals to the board.* Although a record is made of the lower hearing, many boards will accept new evidence when they hear the case. Thus, if the student represented himself at the initial hearing, but now has counsel, counsel should not feel bound by what the student did or said at the earlier stage (except to the extent that the student will lose credibility if he or she changes his story, and except to the extent that new evidence is restricted by board policy).

   In most districts, the board will allow both written and oral advocacy. A written argument in support of the student should generally be presented before the board meeting, but it can usually be submitted at the meeting as well. Additional letters of support, a statement by the student, a statement by the student's parent, etc. are all fair game at the board level. Counsel may make an argument as well. Remember that members of boards of

education are not judges; they ran for office because they wanted to make a positive difference for children in their districts. They may well respond to non-legal arguments about the needs of the child, the future of the child, etc.

6. *Appeals to Superior Court.* A final decision of a local board of education on discipline matters is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes (The Administrative Procedures Act).[42] A petition for judicial review must be filed on behalf of the student within 30 days of service of the written copy of the final decision of the board.[43] The statute allows the court to accept an untimely petition for good cause shown. Following receipt of a Petition for Judicial Review, the local board must produce the record of its proceedings. Generally, new evidence is not accepted at this level, but a court may remand to allow for the taking of new evidence by the board if shown the new evidence is material, not cumulative, and could not reasonably have been presented at the earlier proceeding.[44] Petitions for Judicial Review are heard without a jury; each side may present a brief and an oral argument. Counsel should check with the local rules regarding deadlines for filing briefs. These appeals are entitled to a peremptory setting. The Superior Court may reverse the decision of the board of education if it is found to be in error for any of the following reasons:

   (1) In violation of constitutional provisions;
   (2) In excess of the statutory authority or jurisdiction of the agency;
   (3) Made upon unlawful procedure;
   (4) Affected by other error of law;
   (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
   (6) Arbitrary, capricious, or an abuse of discretion.[45]

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[42]N.C. Gen. Stat. §115C-390.8(i); § 115C-45; 150B-43 et seq.

[43]N.C. Gen. Stat. §150B-45.

[44]N.C. Gen. Stat. §150B-49.

[45]N.C. Gen. Stat.§150B-51.