

1997 North Carolina Legislation Affecting Elementary and Secondary Education

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Legislation is the most common route to change in public school law, but it is not the only route. A recent decision of the North Carolina Supreme Court interpreting the state constitution may have a significant impact on the state's future education policy. In *Leandro v. State of North Carolina*, ___N.C.___, 488 S.E.2d 249 (1997), the court ruled that the North Carolina Constitution guarantees to every school child a right to access to a "sound basic education." Elements of that education include (1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices about issues that affect the student personally or affect the student's community, state, and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post secondary education or vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.

The decision's immediate effect is to direct the trial court handling the *Leandro* case to hear evidence on whether the state's educational finance system permits all local school systems to offer students a sound basic education. According to the state supreme court, factors the trial court should consider in making this determination include, but are not limited to, educational goals and standards adopted by the legislature, performance levels on standard achievement tests, and the state's general educational expenditures and per-pupil expenditures. The supreme court cautioned the trial court not to overstep and intrude on areas of judgment best left to the legislature, but the court did not identify these areas.

In a second aspect of the *Leandro* case, the state supreme court was asked to interpret Article IX, Section 2(1) of the state constitution, which requires a “general and uniform system” of schools in which “equal opportunities shall be provided for all students.” Do the county-to-county funding inequalities produced by the state’s current public school finance system violate that provision? The supreme court said no.

Because this second aspect of the *Leandro* decision held that the finance system is not constitutionally deficient, the decision, so potentially important in its creation of an education guarantee, did not compel any immediate General Assembly action. The 1997 General Assembly did, however, enact other major changes in public school law—including changes in school safety initiatives, content standards in basic subjects, teacher preparation and certification, charter schools, and evaluation of reform efforts. This article will review changes in the law in areas other than personnel. The following article, “1997 North Carolina Legislation Affecting Employment in the Public Schools,” reviews changes in personnel law.

Appropriations

The Current Operations and Capital Improvements Appropriations Act [Section 2, SL 1997-433 (S 352)] appropriates to the Department of Public Education \$4,510,318,741 for fiscal year 1997–98 and \$4,493,194,418 for fiscal year 1998–99.

The General Assembly earmarked some funds for particular programs and, in some instances, restricted how funds may be used. Some of these limitations reflect an awareness that it is difficult for some school administrative units to undertake additional efforts to improve educational opportunities in the absence of new resources. Other limitations reflect the importance the General Assembly places on certain programs or school reforms. A few of the most important restrictions are described below.

Low-wealth supplemental funds. Section 8.2 of Chapter 443 directs the use of funds to supplemental state allocations to low-wealth counties, describes the characteristics of eligible school units, and sets out the formula for distribution. These supplemental funds may be used for instructional, instructional support, teacher assistant, and clerical positions; instructional supplies and equipment; staff development; textbooks; and salary supplements for both instructional and instructional support personnel. These funds may not supplant local current expense funds.

Small school system supplemental funds. Section 8.3 of Chapter 443 directs the State Board of Education to allocate funds appropriated for small school system supplemental funding to school units that qualify under the terms of this section. These funds must supplement local current expense funds.

Funds for children with special needs. G.S. 115C-109 defines “children with special needs” as all children ages five through twenty who, because of permanent or temporary mental, physical, or emotional handicaps, need special education, are unable to have all their needs met in a regular class without special education or related services, or are unable to be adequately educated in the public schools. One recurring issue for school boards is their inability to predict enrollment of children with special needs. Section 8.28 of Chapter 443 directs the State Board of Education to allocate \$500,000 for the 1997–98 fiscal year to help local school boards meet the costs of educating those children with special needs (1) who are reassigned to group homes but who were not included in the head count of

children upon which original funding was based or (2) who live in counties with special populations that frequently fluctuate in numbers. School boards must apply for the funds.

Exceptional children funds. The term “exceptional children” includes children with special needs (as defined above) and academically or intellectually gifted students (served under Article 9B of G.S. Chapter 115C). Section 8.5 of the budget bill sets the allocation of funds for exceptional children.

Technology partnership. Section 8.24 of Chapter 443 provides that \$500,000 of the funds appropriated to the State Board of Education for each fiscal year of the 1997–99 biennium must be used to establish a public-private partnership to encourage, promote, and expand technology in public schools. As part of this effort, the state board must establish a vocational education computer recycling pilot program in seven local school units.

Funding for alternative schools. SL 1997-239 (S 765) amends G.S.115C-12(24) to direct the State Board of Education to adopt guidelines requiring that school administrative units “use (i) the teachers allocated for students assigned to alternative learning programs pursuant to the regular teacher allotment and (ii) the teachers allocated for students assigned to alternative learning programs only to serve the needs of these students.”

K–2 class size. In the 1993 and 1995 sessions the General Assembly appropriated expansion budget funds to reduce class size in kindergarten through second grade. Section 8.13 of Chapter 443 requires the State Board of Education to allocate these funds to local units on the basis of one teacher for every twenty-three students in each grade. Local units must use the funds to reduce class size, to hire reading teachers, or to otherwise reduce the student-teacher ratio within kindergarten through second grade. Both the maximum average class size for that grade span and the maximum size of an individual class within the grade span are twenty-six students.

Penalties and Forfeitures

Civil Penalty and Forfeiture Fund. Section 7 of Article IX of the North Carolina Constitution provides that “clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.” The state supreme court made it clear, in *Craven County Board of Education v. Boyles*, 343 N.C. 87, 468 S.E.2d 50 (1996), that this provision covers penalties paid to a state agency. In *Boyles*, all proceeds were paid to the local board of education.

Apparently in response, the General Assembly enacted Section 8.20 of Chapter 443, creating the Civil Penalty and Forfeiture Fund, G.S. 115C-457.1 through -457.3. The fund consists of the clear proceeds of all civil penalties and civil forfeitures that are collected by a state agency and are payable to the county school fund pursuant to Section 7 of Article IX of the state constitution. The office having custody of those proceeds must remit them to the Office of State Budget and Management within ten days after the close of the calendar month in which the penalties or forfeitures were collected or received. The Office of State Budget and Management then must transfer the funds to the State School Technology Fund. These funds will be allocated to local school units on the basis of average daily membership (ADM).

Vehicles. The General Assembly enacted a number of new laws to deal with the problem of impaired driving. This article will not summarize all the changes, most of which are in SL 1997-379 (H 448). School boards are affected in situations involving forfeiture of a repeat DWI offender's vehicle. SL 1997-379 applies to persons (1) who are charged with impaired driving or habitual impaired driving and (2) whose driver's licenses are, at the time of the charge, revoked for impaired-driving conduct. If the offense is a covered offense, the law enforcement officer making the charge must seize the vehicle. Under amendments to G.S. 20-28.3, a vehicle is placed under the constructive possession of the county school board pending sale or release. The school board may have vehicles stored on property it owns or leases and charge no storage fee, or the board may contract with a commercial facility for the storage of seized vehicles and pay a fee of not more than \$5.00 per day.

If the driver is convicted of impaired driving, the judge must order the vehicle (1) returned to an innocent owner (not the driver who was arrested), (2) returned to a lien holder, or (3) forfeited for the benefit of the public schools. If the vehicle is ordered to be forfeited, the county school board may sell it or keep it for the board's own use. Sale proceeds are paid to the county school fund. If there is more than one school board in the county, the vehicle's fair market value will be used to apportion the proceeds to each board according to its projected ADM.

Budget Process

Budget flexibility. Under G.S. 115C-451(b), the State Board of Education must issue a warning and require remedial action when a local board of education willfully or negligently fails or refuses to comply with state laws and regulations regarding budgeting, management, and expenditure of funds. Section 8.7 of Chapter 443 amends this statute to authorize the state board also to suspend the budget flexibility given a local board under G.S. 115C-105.21A. During the suspension, the state board may require the local board to use funds only for the purposes for which they were allotted or for other purposes with the state board's specific approval.

Budget disputes. Boards of county commissioners appropriate funds to local boards of education for current expenses and capital outlay. Special procedures exist for resolving budget disputes between local boards of education and boards of county commissioners. SL 1997-222 (S 366) amends G.S. 115C-431, which sets out these procedures. Mediation was added to the process in 1996, and the 1997 amendments refine the mediation process. The most significant changes are (1) the mediator presides at the joint meeting of the boards, (2) the two boards may select the mediator rather than using a court-appointed mediator, (3) the mediator does not make recommendations to the clerk of superior court for resolution of the dispute, and (4) the mediation process must be concluded by August 1 unless both parties agree to an extension.

If the board of education determines that the funds appropriated by the county for current expense or capital outlay, or both, are not sufficient to support a system of free public schools, and the school board wants additional county funds, an initial joint meeting of the two boards must be held. A mediator, selected by the two boards or by the senior resident superior court judge, conducts the meeting. In additional sessions, unless the boards otherwise agree, each board will be represented by a working group. Working group members are the chair of the board or the chair's designee, the superintendent and county manager or their designees, each board's finance officer, and each board's attorney. Mediation sessions with the working groups are private—an amendment to the Open

Meetings Law makes this possible.

If the dispute has not been resolved, mediation must end no later than August 1, unless both boards agree to continue. If the mediation continues beyond August 1, the board of county commissioners must appropriate the same amount to the school unit's current expense fund as it appropriated the previous year.

If the working groups reach a proposed agreement, each board must approve it. If no agreement is reached, the mediator announces that fact but may not disclose any other information about the mediation or make any recommendations or public statement of findings or conclusions. The board of education and the board of county commissioners pay equal shares of the mediator's compensation and expenses.

Safe Schools

In SL 1997-443 the General Assembly says, "If students are to aim for academic excellence, it is imperative that there is a climate of respect in every school and that every school is free of disruption, drugs, violence, and weapons." To help schools achieve these goals, Section 8.29 of Chapter 443 adds new sections to the School-Based Management and Accountability Program, Article 8B of G.S. Chapter 115C. Other safe-schools legislation, affecting student discipline, student enrollment, and reporting requirements, also was enacted. These changes reflect the General Assembly's search for a proper balance between state mandates and local flexibility and control.

Programs

Assistance teams. Under the School-Based Management and Accountability Program, the State Board of Education may assign assistance teams to schools judged to be low-performing in terms of student test scores. Under specified circumstances, the state board may also assign assistance teams to schools with safety problems, whether low-performing or not. G.S. 115C-105.28 authorizes a school improvement team or a school's parent organization to ask the local board of education to provide assistance in promoting or restoring a safe and orderly learning environment. The team or organization must file a copy of the request with the state board. If the local board fails to provide adequate assistance, the school improvement team or parent organization may ask the state board to provide an assistance team to the school.

The State Board of Education may provide the assistance team if (1) the local board or superintendent requests a team and the state board determines that the school needs assistance or (2) the state board determines that the school needs assistance and that the local board failed to provide adequate assistance.

An assistance team must assess the problems, assist school personnel with resolving the problems, and work with school personnel and others to develop a long-term plan for restoring and maintaining a safe and orderly learning environment. The team must make recommendations to the local school board and superintendent; these recommendations are public records. The state board may use up to \$500,000 each year of the 1997-99 biennium to provide safety assistance teams.

School-based committees. Section 8.29 of Chapter 443 adds new Article 27A in G.S. Chapter 115C, Management and Placement of Disruptive Students. New G.S. 115C-397.1 mandates creation of school-based committees to deal with disruptive students. If a teacher has requested assistance from the principal at least twice because of a student's disruptive behavior and the teacher finds that the student's behavior continues to interfere with any student's achievement in class (including the disruptive student's), the teacher then may refer the matter to the school-based committee. The committee must notify the disruptive student's parent, guardian, or legal custodian and encourage participation in committee proceedings.

The committee must take at least one of the following actions: (1) advise the teacher on managing the student's behavior more effectively, (2) recommend to the principal that he or she transfer the student to another class in the school, (3) recommend to the principal that the student have a multidisciplinary evaluation and diagnosis to determine whether the child is entitled to special education services (screening and evaluation are not an automatic consequence of referral to the committee), (4) recommend to the principal that the student be assigned to an alternative learning program, or (5) recommend to the principal that the student receive any additional services that the school or school unit has the resources to provide.

If a principal does not follow the committee's recommendation, he or she must provide a written statement explaining why and identifying any other actions taken to resolve the matter. The principal must send the statement to the committee, to the teacher who referred the student, and to the superintendent.

The act does not limit school officials' authority to discipline students under other laws—most notably their authority to suspend and expel students under G.S. 115C-391—and school officials need not wait until the committee makes its recommendation before acting. Students themselves may not refer a disciplinary matter to the committee, and students may not appeal the committee recommendations to the board of education under G.S. 115C-45. (However, students do have a right to appeal a principal's action in response to the committee's recommendation.)

Local safe school plans. Section 8.29 of Chapter 443 adds new Article 8C to G.S. Chapter 115C to require local boards of education to develop school unit safe school plans. Plans are designed to enable every school in the unit to be safe, secure, and orderly, and so that there is a climate of respect in every school and appropriate personal conduct is a priority for all students and personnel. The board must include parents, the school community, representatives of the community, and others in developing or reviewing the plan.

Every plan must have specified elements, including the following:

1. The standard of behavior expected of school employees and students at different grade levels and the consequences that will result from violations of these standards.
2. The responsibilities of school employees and the disciplinary consequences that may occur if an employee fails to carry out these responsibilities.
3. Professional development matched to the plan's goals and objectives.

4. Procedures for identifying and serving students who are at risk of academic failure or of engaging in disruptive or disorderly behavior.
5. Mechanisms for assessing the needs of disruptive and disorderly students, providing them with services, and removing them from the classroom when necessary, and measures of the effectiveness of the efforts to assist these students.
6. Measurable objectives for improving school safety and order.
7. A plan to work with local law enforcement officials and court officials to ensure that schools are safe and laws are enforced.
8. A plan to provide access to information on implementation and monitoring of the plan.
9. A directive to school improvement teams to incorporate appropriate components of the unit plan into individual school improvement plans.
10. A plan for funds allocated for at-risk students, alternative schools, or both.

The local board must submit its plan to the State Board of Education and make it available to parents and the school community. The local board must implement the plan no later than the beginning of the 1998–99 school year and may amend the plan as often as it considers necessary or appropriate.

New G.S. 115C-105.45 requires the State Board of Education to adopt guidelines for developing local plans and to provide technical assistance to boards. The state board may require a local board to withhold the salary of any employee who delays or refuses to prepare and implement the local safe school plan. It may also revoke a superintendent's certificate for failure to fulfill his or her duties under a local safe school plan. A separate requirement in Section 8.29 of SL 1997-443 requires the state board to develop a plan to reward principals for improving school safety and the school climate. Separate from the safe schools plan, G.S. 115C-507.27 requires each school to develop a school improvement plan. That plan's strategies for improving student performance must include means for addressing school safety and discipline concerns in accordance with the school unit's safe schools plan.

Support Our Students. The Support Our Students (S.O.S.) Program in the Department of Health and Human Services (formerly the Department of Human Resources) was created in 1994 by G.S. 143B-152.1. The program awards grants to organizations for local programs that provide high quality after-school activities for school-aged children and comprehensive, collaborative delivery of services to them. Section 8.29 of Chapter 443 amends G.S. 143B-152.5 and 143B-152.7 so that information provided to applicants includes examples of programs that evaluations have shown are likely to be successful in meeting the program's goals.

At-Risk Students Task Force. Section 8.29 of Chapter 443 directs a new At-Risk Students Task Force to develop a plan for interagency agreements between local school administrative units and other public agencies to provide cooperative services to students who are at risk of school failure, at risk of participation in juvenile crime, or both. This task force will terminate when it makes its report to the Joint Legislative Education Oversight Committee, no later than January 15, 1998.

Alternative learning programs. Section 8.29 of Chapter 443 amends G.S. 115C-12(24) to require the State Board of Education to recommend to local boards ways to measure the academic achievement of students in alternative learning programs or remedial learning programs.

Section 8.29 of Chapter 443 requires the state board and the Secretary of the Department of Health and Human Services to appoint an advisory committee to consider the advisability of, and to develop a proposal for, creating regional residential schools for students whose emotional and behavioral problems are so severe that the public schools cannot serve them.

Student Conduct and Discipline

Other legislative actions seek to maintain school safety by expanding options available to school personnel when they are dealing with students who are violent or disruptive.

Admission of students. Section 8.29 of Chapter 443 amends G.S.115C-366, which governs enrollment in school. When a student who has attended a private or public school in North Carolina or another state comes to enroll, the local board must require the student's parent, guardian, or custodian to tell a school official whether the student is currently under suspension or expulsion from a public or private school or has been convicted of a felony. The board may deny admission to, or place reasonable conditions on the admission of, a student who has been (1) convicted of a felony, (2) suspended or expelled from a public school in North Carolina, or (3) suspended or expelled from another public or private school for conduct that could have led to a suspension or expulsion in the administrative unit in which the student seeks to enroll. If the student has been suspended, the denial of admission or conditions on admission may stay in effect for the period of suspension. A student who is denied admission because of expulsion or conviction of a felony may request that the school board reconsider the denial in accordance with G.S. 115C-391(d).

Reasonable force. Local boards of education have the option of prohibiting the use of corporal punishment except in those situations for which the General Assembly has specifically authorized its use. Section 8.29 of Chapter 443 amends G.S. 115C-391 to expand those situations. School personnel now may use reasonable force, including corporal punishment, to control behavior or to remove a person from the scene "when necessary to maintain order" on school property or at a school-related activity on or off school property. Officers and employees of the state board and local boards are immune from civil liability for using reasonable force, including corporal punishment, in conformity with state law or rules or local rules and policies. The person claiming that unreasonable force was used has the responsibility of proving it was.

Violent students. Section 8.29 of Chapter 443 amends G.S. 115C-391(d2) to give local school boards increased authority to deal with students who engage in assaults while on school property or at a school-sponsored or school-related activity on or off school property. Students who act in self-defense are not subject to these disciplinary measures.

A local board of education *must* remove to an alternative educational setting any student thirteen years old or older who physically assaults and seriously injures school personnel. If the board removes the student to an alternative setting based on conduct that occurred on or before the ninetieth school day, the student must stay in that setting for the remainder of the current school year and the first ninety

school days of the next school year. If the conduct leading to the removal occurred after the ninetieth school day, the board must remove the student to the alternative setting for the remainder of the current school year and the entire subsequent school year. The board may depart from this general rule and authorize a shorter or longer time for a student to remain in an alternative setting, based on recommendations from the principals of both the alternative school and the school to which the student will return. If no appropriate alternative educational setting is available, the board *must* suspend the student for at least 300 days but no more than 365 days.

A local board *may* remove to an alternative educational setting any student who is at least thirteen years old or older who (1) physically assaults a teacher or other adult who is not a student, (2) physically assaults another student if the assault is witnessed by school personnel, or (3) physically assaults and seriously injures another student. If no appropriate alternative educational setting is available, the board *may* suspend the student for up to 365 days.

If a student has been suspended or removed to an alternative setting for assaulting or injuring a teacher, the student may not be returned to that teacher's classroom without the teacher's consent. The school board may assign a student who has been suspended to an alternative educational setting when the suspension is over.

Student records. Section 8.29 of Chapter 443 amends G.S. 115C-402 to provide that each student's official record must include notice of any suspension longer than ten days, any expulsion, and the conduct for which the student was suspended or expelled. This notice must be expunged if the student graduates from high school or is not suspended or expelled again during the two-year period starting the day the student returns from the expulsion or suspension.

Reporting

The General Assembly coupled the new options for dealing with violent or disruptive students with new reporting requirements for court and law enforcement personnel to help school officials identify such students. Local school personnel, as well as the State Board of Education, are required to keep records of, and make reports on, violence in the schools.

Notification by court counselors. Section 8.29 of Chapter 443 adds new G.S. 7A-675.2, directing the juvenile court counselor to notify school officials in specific circumstances in cases involving a student who is a juvenile accused of a crime that would be a felony if committed by an adult. The court counselor must notify the principal in person or by telephone before the beginning of the next school day and must provide written notification within five days. New G.S. 115C-404 describes how principals are to handle these notifications. The principal must store these documents in a safe, locked area separate from the student's other records and may not copy them. The principal must keep the records until he or she receives notification that the judge has dismissed the petition, transferred jurisdiction over the student to superior court, or granted the student's petition for expunction of the records. The principal then must destroy the documents. Notification documents are not public records or part of a student's official record under G.S. 115C-402.

Notification documents may be used only to protect students' safety or to improve educational opportunities. The principal must share these documents with individuals who (1) have direct

guidance, teaching, or supervisory responsibility for the student and (2) have a specific need to know in order to protect safety. These individuals must state in writing that they have read the document and agree to keep it confidential. Failure to maintain the document's confidentiality is grounds for a school employee's dismissal.

If the student graduates, withdraws, is suspended for the remainder of the school year, is expelled, or transfers to another school, the principal must return the documents to the court counselor and, if the student is transferring, provide the name and address of the new school. The court counselor must then notify that school.

Notification by law enforcement officers. Section 8.29 of Chapter 443 amends G.S. 15A-505 to require that any law enforcement officer who charges a student with a felony (except motor vehicle offenses under G.S. Chapter 20) must notify the student's principal, by phone or in person, of the charge as soon as practicable and within no more than five days. If a student is taken into custody, the officer or the officer's immediate supervisor must notify the principal of the arrest in writing within five days. Once a principal has been notified, a representative from the district attorney's office must notify the principal of the final disposition at the trial court level. This notification must be written and made within five days of the disposition.

Principals' reports to law enforcement. Section 8.29 of Chapter 443 amends G.S. 115C-288(g), which requires principals to report specific illegal acts on school property to law enforcement. Under former law, a principal had to report when he or she had "a reasonable belief" that the act had occurred. Now a principal must report only if he or she has personal knowledge or actual notice from school personnel that the act has occurred on school property. Failure to report is a Class 3 misdemeanor.

Teachers' reports. Section 8.29 of Chapter 443 amends G.S. 115C-307 to require teachers, student teachers, substitute teachers, voluntary teachers, and teacher assistants to report to the principal acts of violence in school and students suspended or expelled as required to be reported in accordance with state board policies.

State board reports. Section 8.29 of Chapter 443 adds G.S. 115C-12(27), which prohibits the State Board of Education from including students who have been expelled when calculating the dropout rate. The state board must maintain a separate record of the number of expelled students. The state board must review and modify, if necessary, policies and procedures to ensure that data and reports on violence in school, suspensions, and expulsions are accurate and consistent. The state board must review and consider modifications to its school facility guidelines and develop recommendations on modifications to the design or organization of existing schools to improve school climate and order.

Educational Standards and Content

The push for more stringent educational standards and increased accountability on the part of students and school personnel continued to guide the General Assembly in 1997. The legislature enacted mandates to the State Board of Education to develop academic standards and methods for measuring their attainment and laid down several specific additions to school curricula.

Student Achievement

Academic standards and benchmarks. Section 8.27 of Chapter 443 adds new G.S. 115C-12(9a), directing the state board to develop a comprehensive plan to revise both content standards and the standard course of study in the core academic areas of reading, writing, mathematics, science, history, geography, and civics. The revised content standards must (1) reflect high expectations and in-depth mastery; (2) be clearly grounded in the content of each academic area; (3) be defined grade by grade and course by course; (4) be understandable to parents and teachers; (5) be developed in recognition of the time available for teaching core academic areas; and (6) be measurable, whenever possible, in a reliable, valid, and efficient manner.

High school course content standards must include the knowledge and skills necessary to enter the workforce and must be aligned with the coursework required for admission to UNC constituent institutions. New G.S. 115C-12(9b) directs the state board to develop a plan to implement high school exit exams, grade-level student proficiency benchmarks, and student proficiency benchmarks for academic courses required for admission to UNC and for the knowledge and skills necessary to enter the workforce. The state board may develop proficiency benchmarks for other high school courses.

The state board must develop and implement a process to align, every five years, state programs and support materials with the revised content standards for each core academic area. The state board must develop and make available to teachers and parents support materials, including teacher and parent guides, for academic content standards.

The State Board of Education and the UNC Board of Governors must work together to ensure that the university's teacher and administrator degree programs, ongoing professional development, and other activities in the public schools align with the state board's priorities.

Advanced Placement Tests. Many high school students take Advanced Placement courses hoping to earn college credit for them. Section 8.11 of Chapter 443 directs the UNC Board of Governors to encourage the University system to provide education for teachers of Advanced Placement courses and to develop a standardized system of credit for the Advanced Placement Tests.

Group performance on tests. SL 1997-243 (S 1066) directs the State Board of Education to analyze the results of end-of-grade and end-of-course tests by race, gender, and economic status of students, to identify groups of students who are performing statistically below the state benchmark. The state board must consider ways to focus resources to address these students' needs and report the results of its study to the Joint Legislative Oversight Committee before November 15, 1998.

School improvement teams. Every school must have a school improvement team to develop a plan to improve student performance, and every team must include parents of children enrolled in the school. SL 1997-159 (H 977) amends G.S. 115C-105.27 to address election of parents to the team. Unless the local board of education has adopted an election policy, parent members of the team must be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose.

Low-performing schools. The School-Based Management and Accountability Program provides for

the identification of some schools as “low-performing” schools under G.S. 115C-105.37. Section 8.45 of Chapter 443 clarifies that low-performing schools are those in which there is a failure to meet the minimum growth standards set by the state board and in which a majority of students tested in accordance with G.S. 115C-174.11(c) (not a majority of all students in the school) are performing below grade level.

Curriculum

American history instruction. A concern that school officials were unnecessarily censoring references to religion in American history courses led to an act that has implications broader than reassuring teachers about references to religion. SL 1997-422 (S 442) amends G.S. 115C-81(g), the civic literacy section of the Basic Education Program. Under the new law, local boards of education must allow and may encourage any teacher or administrator to read or post excerpts of documents that reflect United States history, including the United States Constitution, decisions of the Supreme Court of the United States, and acts of Congress. Local boards, superintendents, principals, and supervisors may not allow “content-based censorship” of American history, including religious references in these writings, documents, and records. Perhaps to narrow the potential impact of this prohibition, Chapter 422 also says, “Local boards and professional school personnel may develop curricula and use materials that are limited to specified topics provided the curricula and materials are aligned with the standard course of study.” Similarly the State Board of Education must adopt a policy to ensure that the textbooks it adopts have no content-based censorship of American history, although the state board may adopt textbooks limited to specified topics, if the textbooks are aligned with the standard course of study or are grade-level appropriate.

American Sign Language. Section 8.5 of Chapter 443 provides that American Sign Language may be offered for credit as a modern language in public schools, four-year state universities, colleges, and community colleges.

CPR and Heimlich maneuver. SL 1997-273 (S 457) amends G.S. 115C-81(e1), the school health education program for students from kindergarten through ninth grade. This program now must include teaching of cardiopulmonary resuscitation (CPR) and the Heimlich maneuver by using hands-on training with mannequins so that students become proficient in order to pass a test approved by the American Heart Association or American Red Cross.

Enrollment

The General Assembly enacted several important changes to the law governing student enrollment (in addition to the changes discussed above allowing schools, in certain circumstances, to deny admission to students who left their former school for disciplinary reasons).

Initial entry. SL 1997-204 (S 1101) amends G.S. 115C-364, dealing with initial entry of students into a school system. A local board of education *must* enroll a child who is presented for enrollment at any time during the first 120 days of a school year if the child is five years old on or before October 16 of that school year or if the child has been attending school that school year in another state before the child became a resident of North Carolina. After the first 120 days of a school year, a school board

may enroll a child who meets the age requirement or who was enrolled in another state. Under former law a board was required to enroll for initial entry only those students who were presented during the first month of the school year.

Gifted four-year-olds. An unanticipated stir was caused by SL1997-269 (H 1099), which amends G.S. 115C-364 to allow principals to admit to kindergarten some four-year-old students who otherwise would be too young to enroll. A child who will be five on or before April 16 of the school year may enter kindergarten if (1) the child is presented for enrollment no later than the end of the first month of the school year and (2) the principal finds, based on information submitted by the child's parent or guardian, that the child is gifted and has the maturity to justify admission. Educators immediately expressed concern that large numbers of parents might seek to enroll their children, but subsequent State Board of Education guidelines for principals set very stringent standards for a child to qualify as "gifted." Few children will be able to qualify. In addition, a proper evaluation of a child (as required by the guidelines) will be costly, and cost may be a significant barrier for some families.

Domicile. SL 1997-271 (S 958) addresses a problem that was becoming increasingly severe. Many children live with someone other than a parent, legal guardian, or legal custodian appointed by the court and often for a reason unrelated to school enrollment. Under former G.S. 115C-366, a school board could refuse to enroll these students if their parent or guardian or legal custodian was not domiciled in the school unit (unless a child was a child with special needs), and enrollment policies were not consistent across the state.

New G.S. 115C-366(a3) expands the conditions under which a child who is not domiciled in a school unit is entitled to enroll without the payment of tuition. First, the student must reside with an adult domiciled in the unit as a result of (1) the death, serious illness, or incarceration of the parent or guardian; (2) abandonment by the parent or guardian; (3) abuse or neglect by the parent or guardian; (4) the parent's or guardian's physical or mental condition, which prevents him or her from providing adequate care and supervision of the student; or (5) the loss of the student's home as a result of a natural disaster. Second, the student may not be under a term of suspension or expulsion for conduct that could have led to suspension or expulsion in the new school unit. Third, the adult with whom the student resides and the student's parent, guardian, or legal custodian must have signed an affidavit confirming the qualifications, attesting that the student's residency is not primarily related to attendance at a particular school and stating that the adult with whom the child resides has responsibility for all educational decisions. If the parent is unable, refuses, or is unavailable to sign this affidavit, then the adult with whom the student resides must attest to that fact in the affidavit.

After receiving the proper affidavit(s), the school board must assign the student to an appropriate school. If the board finds that the information in one or both affidavits is false, the board may remove the student. A person who willfully and knowingly provides false information in the affidavit is guilty of a Class 1 misdemeanor and must pay the local board its cost of educating the student during the enrollment. Repayment of state funds is not required.

Charter Schools

Charter schools are public schools operated by a board of directors of a nonprofit, tax-exempt corporation. These schools are exempt from most state statutes and rules that apply to other public

schools. North Carolina's first charter schools began operating in the 1997–98 school year, under statutes enacted in 1996. SL 1997-430 (S 297) amends the original charter school statutes. The amendments deal with some of the issues left unresolved by the original legislation and were enacted in response to problems charter schools and local boards of education faced in implementing the charter school program.

Applications and Charter Approval

G.S. 115C-238.29B authorizes any person, group of persons, or nonprofit corporation to apply to establish a charter school. An applicant must submit the application for preliminary approval to a chartering entity, which may be the local board of education of the administrative unit in which the school will be located; the board of trustees of a constituent institution of the University of North Carolina, so long as the institution is involved in the planning, operation, or evaluation of the charter school; or the State Board of Education. Only the state board may grant final approval of a charter school. Under the original legislation, a charter school applicant could bypass the local board of education. Now, however, if a charter school submits its application to a UNC institution or the state board, the applicant must submit a copy to the local board of education within seven days of its submission to the chartering entity. The local board of education may comment on, or submit information concerning, the application to the chartering entity no later than January 1 after the application was submitted. When determining whether to approve the application, the state board must consider this information and the charter school's impact on the school unit's ability to provide a sound basic education to its students.

An amendment to G.S. 115C-238.29I gives the State Board of Education flexibility in establishing the timeline for steps in the approval process as long as the board grants final approval by March 15 each year.

Originally, charter schools were expected to operate under a charter and a contract. Amendments to G.S. 115C-238.29B and -238.29E and other statutes eliminate the contract so that each charter school operates only under a written charter signed by the entity to which the charter school is accountable. No other terms may be imposed on the charter school as a condition for receipt of local funds.

G.S. 115C-238.29E also deals with questions of a charter school's accountability to a local school board when a UNC institution of the state board, rather than the local school board, granted the preliminary approval to the charter applicant. Only those charter schools that applied for and received preliminary approval from the local board are accountable to that board for purposes of ensuring compliance with applicable laws and the provisions of the charter. All other charter schools are accountable to the state board, except that a charter school may agree to be accountable to the local board rather than to the state board.

Material revisions to the provisions of a charter application must be approved by the State Board of Education. An amendment to G.S. 115C-238.29D(d) specifies that enrollment growth, within certain limits, is not a material revision. Beginning with the charter school's second year of operation, and annually thereafter, the state board must allow the school to increase its enrollment by 10 percent of the previous year's enrollment or as is otherwise provided in the charter.

Facilities and Other Property

If a charter school has received final approval, but is unable to find a suitable location within the school administrative unit in which it applied to operate, the state board may authorize the charter school to operate in an adjacent school unit for one year. If a charter school leases space from a sectarian organization, the students and classes must be physically separated from any parochial school students. Religious artifacts, symbols, iconography, or materials may not be on display in the charter school's entrance, classrooms, or hallways. The charter school may not use the name of a sectarian organization from which it leases space in the name of the charter school.

A local school board must lease to a charter school any available building or land in the school unit unless the board demonstrates that the lease is not economically or practically feasible or that the local board does not have adequate classroom space to meet its own enrollment needs. A local board may provide a facility free of charge to a charter school, although the charter school is responsible for the facility's maintenance and insurance.

An amendment to G.S. 115C-238.29F(i) clarifies that when a charter school dissolves or its charter is not renewed, its net assets that were purchased with public funds are the property of the local school unit in which the charter school is located. This amendment removes the concern that the local school unit would get all of a dissolved charter school's assets, including those purchased with private funds.

Students

Eligibility. In 1996 the General Statutes provided that charter schools must enroll any eligible student who applied, but if too many students applied, acceptance to the school would be by lot. As a result, some charter school organizers and employees were concerned that their own children might not be able to enroll in their school. Amendments to G.S. 115C-238.29F(g) authorize a charter school to give enrollment priority to children of the school's principal, teachers, and teacher assistants and to siblings of currently enrolled students. In addition, for the first year of its operation, a charter school may give enrollment priority to children of the initial members of the school's board of directors as long as (1) the number of such children is less than 10 percent of the total enrollment or twenty students, whichever is less, and (2) the charter school is not a former public or private school. Once enrolled in a charter school, students are not required to reapply for enrollment. Remaining in effect is the requirement that within one year after the charter school begins operation, its student population "shall reasonably reflect" either the racial and ethnic composition of the general population or that of the special population that the school seeks to serve in the local school unit in which the school is located.

Transportation. Charter schools are no longer required to provide transportation for students in the school unit where the school is located. Instead, G.S. 115C-238.29F(h) requires a charter school to develop a transportation plan so that transportation is not "a barrier" to any student who resides in the school unit in which the charter school is located. A local school board may contract with the charter school to provide transportation to students in the unit who reside at least one and one-half miles from the charter school, and the school board may charge for the cost of providing the transportation. A local board may refuse to provide transportation if it demonstrates that there is not available space on the buses or that it would not be feasible.

Finances

Students with special needs. G.S. 115C-238.29H now provides that if a child with special needs enrolls in a charter school then leaves that school and enrolls in a public school under the control of the local school board during the first sixty school days in the school year, the charter school must return a pro rata amount of funds allocated for that child to the State Board of Education. The state board will reallocate these funds to the school administrative unit in which the child attends public school. If a child with special needs enrolls in a charter school during the first sixty school days (and stays), the state board must allocate the pro rata amount of additional funds for children with special needs to the charter school.

Use of state funds. Under G.S. 115C-238.29GH (a1), charter schools now may use state funds for operational and financing leases for real property or mobile classroom units or for payments on loans for facilities or equipment. State funds may not be used to obtain any other interest in real property or mobile classroom units. A charter school's indebtedness does not constitute an indebtedness of the state or its political subdivisions.

Accountability. Under G.S. 115C-238.29, all charter schools are subject to audit requirements adopted by the State Board of Education. Section 8.19 of Chapter 443 amends G.S. 115C-238.29F(f) to provide that these requirements may include the requirements of the School Budget and Fiscal Control Act.

Other Issues

Fees. Charter schools have never been allowed to charge tuition. An amendment to G.S. 115C-238.29F prohibits them from charging fees, in contrast with local school boards, which may charge modest, reasonable fees as long as the board adopts and follows an appropriate fee waiver policy.

Disputes. Disputes may occur between a charter school and the State Board of Education. New G.S. 115C-238.29G(c) encourages the use of mediation, conducted in private, to resolve these grievances.

Insurance. The State Board of Education must adopt rules to establish reasonable amounts and types of liability insurance that a charter school's board of directors is required to obtain. Sovereign immunity is waived to the extent of indemnification by insurance.

Facilities and Purchasing

Operational leases. An operational lease, defined according to generally accepted accounting principles, is a lease in which the lessor obtains no ownership interest or option to obtain an ownership interest in the leased property. An operational lease is a pure rental agreement. SL 1997-236(S 71) adds new G.S. 115C-530 authorizing local boards of education to enter into operational leases of real or personal property for use as school buildings or school facilities. Leases for terms of three years or longer, including optional renewal periods, must be approved by the board of county commissioners, which approval obligates that board to appropriate sufficient funds to meet the payments due in each year of the lease. In addition the school board's budget resolution must

include an appropriation authorizing the current fiscal year's portion of the obligation and an unencumbered balance to pay the current fiscal year's obligation.

Under G.S. 115C-530 and an amendment to G.S. 115C-521(d), school boards may make improvements to leased property. Contracts for repair and renovation must comply with the energy guidelines in G.S. 115C-521(c) and must be approved by the board of county commissioners if they are subject to the competitive bidding requirement in G.S. 143-129(a) (the current threshold for which is \$100,000) and do not otherwise constitute continuing contracts for capital outlay [see G.S. 115C-441(c1) and -426(f)].

The Local Government Commission must approve operational leases if they meet the conditions in G.S. 159-148(a)(1) through -148(a)(3)—that is, when the contracts extend for five or more years and cost at least \$500,000.

Guidelines. The Basic Education Program's facilities standards were dropped in 1996 and replaced by guidelines developed by the State Board of Education. SL 1997-222 (S 366) amends G.S. 115C-521(c) to clarify the use of these facilities guidelines. A local board of education may not invest any state money in erecting, repairing, or equipping a school building until the board has (1) developed its plans based on a consideration of the state board's facilities guidelines, (2) submitted the plans to the state board for its review and comments, and (3) reviewed the plans based on the state board's comments.

Purchasing. The threshold for formal bidding on purchase contracts for local school boards is established as the "expenditure benchmark" in G.S. 143-53.1. SL 1997-412 (S 862) allows school boards to ask the Division of Purchase and Contract for an increase in the benchmark. Chapter 412 amends G.S. 143-53 to authorize the director of the Division of Purchase and Contract to delegate authority to local school administrative units for securing offers for contracts under the benchmark. The director also may prescribe procedures for securing offers.

Chapter 412 amends G.S. 143-52 to provide that bid tabulations (summaries of bids prepared after the bid opening) become public records "in accordance with rules adopted by the Secretary of the Department of Administration" and that all contract information is a public record after the award of the contract.

Procurement card pilot. Procurement cards are cards issued to public employees to be used like credit cards for small and emergency purchases. Several local governments in North Carolina have found that the cards increase efficiency. Section 27.1 of Chapter 443 establishes a pilot program for the use of procurement cards by local school boards, state agencies, community colleges, and universities. Local school units that are not participating in the pilot program may not use procurement cards until July 1, 1998.

Miscellaneous Provisions

Mediation in special education. Parents of a child with special needs have a right to challenge decisions related to their child's identification as a child with special needs and related to their child's educational program and placement. When challenges are made, G.S. 115C-116 sets out procedures

for resolving them. Under the former law, the superintendent or an assistant or associate superintendent conducted mediation of special education disputes. However, parents and advocates for students with disabilities did not view the process as effective because school administrators are not impartial mediators. SL 1997-115 (H 1098) amends G.S. 115C-116(b) to create a new system of voluntary, nonadversarial mediation in special education disputes. The process is designed to clarify parents' concerns and to resolve disputes. Developing a system of mediation is consistent with the requirements of the federal Individuals with Disabilities Education Act, which provides federal funds to states for special education.

Before there is a request for formal administrative review, either party may request mediation, which begins if the other party consents. The parties select the mediator. Time periods related to administrative review of the dispute are tolled upon filing a request for mediation, and a good faith effort to mediate the dispute is presumed to constitute good cause for a continuance. If mediation is requested before a request for formal administrative review, the school board must pay the mediator's fees for one mediation session. If parties continue mediation, then the board will pay unless the parties agree otherwise. Parties also may participate in a mediation settlement conference under G.S. 150B-23.1 after a request for administrative review has been filed. The parties may agree to use other dispute resolution methods or to use mediation in other circumstances.

School calendar. Local school boards and schools have new flexibility in adopting their school calendars. Section 8.38 of Chapter 443 repeals G.S. 115C-84.1(c). The remaining sections of G.S. 115C-84.1 and G.S. 115C-84 are repealed effective July 1, 1998. Until that time, school units will operate under the provisions of G.S. 115C-84.1(a) (school day) and -84.1(b)(school month).

New G.S. 115C-84.2, effective July 1, 1998, requires each local school board to adopt a calendar consisting of 220 days, all of which are within the fiscal year. The calendar must include

1. A minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. The hours in an instructional day may vary according to local board policy and among schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and scheduled amount of instructional time may count toward the required minimum as allowed by the State Board of Education. The calendar must include a plan for making up days and instructional hours missed when schools are closed because of weather.
2. A minimum of ten annual vacation leave days.
3. The same days or number of days of legal holidays as the State Personnel Commission designates for state employees.
4. Ten days for use as teacher workdays, additional instructional days, or other purposes. A local board may allow individual schools to schedule some or all of these days. A local board may schedule different days for different purposes and different dates for different personnel.
5. Remaining days scheduled by each individual school by the principal in consultation with the school improvement team. The principal may schedule different days for different purposes and

different days for different personnel.

The board must abide by the following limitations:

1. The maximum number of workdays for teachers employed for ten months is 200.
2. The calendar must include at least thirty consecutive days when teacher attendance is not required unless the school is a year-round school or the teacher is employed for more than ten months.
3. School may not be held on Sunday.
4. Veterans Day must be a holiday for all students.

In an emergency the State Board of Education may order general, and if necessary, extended recesses or adjournment of public schools.

Driving eligibility certificates. SL 1997-507 (H 769) amends G.S. 20-11, making an additional requirement for minors seeking a limited learner's permit or a provisional driver's license. They must have a "driving eligibility certificate" or a high school diploma or its equivalent. Public school students must get the certificate from their school principal or his or her designee within thirty days of the date the student applies for the permit or license. The principal must certify that (1) the student is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent, or (2) a substantial hardship would be placed on the student or his or her person's family if the student does not receive a certificate, or (3) the student cannot make progress toward obtaining a high school diploma or its equivalent. The same requirement applies to home school, private school, and charter school students as well as community college students (see [1997 North Carolina Legislation Affecting Higher Education](#) on this topic).

G.S. 20-13.2 requires the Division of Motor Vehicles (DMV) to revoke the permit or license of a minor if the proper school authority notifies the DMV that the person no longer meets the requirements for a driving eligibility certificate. Revocation lasts until the person turns eighteen or submits an eligibility certificate or a high school diploma or its equivalent. These provisions are effective August 1, 1998, and do not apply to anyone who holds a North Carolina limited learner's permit issued before December 1, 1997, or who is a provisional licensee and holds a North Carolina driver's license issued before December 1, 1997.

New G.S. 115C-12(27) directs the State Board of Education to issue rules defining what is "equivalent to a high school diploma" and rules for procedures to obtain driving eligibility certificates. These rules must provide for an appeal to an appropriate education authority. The state board also must develop policies as to when it is appropriate to notify the DMV that a person no longer meets the requirements for a driving eligibility certificate.

Open meetings. Whether it meets in open or closed session, a board of education must keep a record of the meeting. SL 1997-290 (S 844) amends G.S. 143-318.10(e) to require any public body to keep a "general account" of the session so that a person not in attendance would have a reasonable understanding of what transpired. These accounts may be written narratives or video or audio

recordings. As with minutes, accounts of closed sessions may be withheld from public inspection so long as public inspection would frustrate the purpose of the closed session.

School buses. SL 1997-315 (S 617) amends G.S. 66-58 to clarify that school buses and school activity buses may not compete against private sector businesses in providing transportation services. New G.S. 66-58(9a) specifies that public school buses or school activity buses may be used for purposes allowed under G.S. 115C-242 or G.S. 115C-247.

Speeding on school grounds. SL 1997-341 (S 625) adds new G.S.20-141(e1), authorizing local authorities to set lower speed limits on school property than those set in G.S. 20-141(b) if the school unit requests or consents to the lower speed limit. A person who exceeds the speed limit is responsible for an infraction and must pay a penalty of at least \$25.

Athletic trainers. SL 1997-387 (S 660) adds the Athletic Trainers Licensing Act, Article 34 of G.S. Chapter 90, to regulate persons offering athletic trainer services. Beginning January 1, 1998, only someone who is licensed by the new North Carolina Board of Athletic Trainer Examiners may practice as an athletic trainer, perform activities as an athletic trainer, or indicate that he or she is an athletic trainer. Persons who serve as student-trainers or in similar positions under the supervision of physicians or licensed athletic trainers are exempt from this requirement. Previously certified athletic trainers and persons actively engaged as athletic trainers since August 1, 1994, may be licensed without taking the exam if other requirements are met. G.S. 90-535 permits school units to hire unlicensed persons who may perform the activities of athletic trainers in the scope of their employment.

Commissions and Studies

Legislative Study Commission on Public Schools. The Studies Act of 1997, SL 1997-483 (S 32), establishes the Legislative Study Commission on Public Schools to study issues relating to equity for public school systems. The commission must submit an interim report to the General Assembly when it convenes in 1998 and a final report when the 1999 General Assembly convenes. The commission will terminate when it files its final report.

School Technology Commission. The School Technology Commission is charged with developing a state school technology plan for using funds to improve student performance through the use of learning and instructional management technologies. Section 8.26 of Chapter 443 amends G.S. 115C-102.5 by increasing the size of the commission and requiring the appointment of four members of the General Assembly, two from the Senate and two from the House of Representatives, to the commission.

Standards and Accountability Commission. Section 8.27 of Chapter 443 repeals Article 8A of G.S. Chapter 115C, the North Carolina Education Standards and Accountability Commission, and establishes the Committee on Standards and Accountability to advise the State Board of Education on student performance standards.

School law revision. As it did in 1996, the General Assembly in 1997 provided a mechanism to initiate significant changes in school law. Section 8.15 of Chapter 443 authorizes the co-chairs of the

Joint Legislative Education Oversight Committee to appoint a subcommittee to revise the public school laws. The subcommittee may (1) conduct a comprehensive review of the public school laws; (2) identify laws that are outdated, vague, unnecessary, or otherwise in need of revision; (3) recommend revisions. On a related note, SL 1997-18 (S 70) repeals many obsolete or redundant school laws and reporting requirements and recodifies in Chapter 143B those sections of Chapter 115C that establish the state schools for hearing- and sight-impaired students.

Graduation requirements. Section 8.27 of Chapter 443 directs the State Board of Education to study the feasibility of requiring two high school courses in United States history and two high school courses in Economic, Legal, and Political Systems in Action, as a condition of graduation.

Other studies. Chapter 483 authorizes the Joint Legislative Education Oversight Committee to study several topics, including the gap in student achievement between racial and socioeconomic groups, pupil assignment options, salary schedules for noncertified school employees, additional paid days for teachers, teachers' noninstructional duties, student discipline, and the impact of charter schools on small school systems.

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