

# Changes Affecting Elementary and Secondary Education

By Robert P. Joyce and Laurie L. Mesibov

The General Assembly enacted no major school law changes during the 2008 legislative session. It continued to support efforts to help all students learn and achieve.

## Appropriations

The appropriations act, S.L. 2008-107 (H 2436), added \$93.7 million to the appropriation adopted for the Department of Public Instruction (DPI) in S.L. 2007-323, for a total of \$7.55 billion for 2008-9. Section 5.1 of the act allocates \$18 million to the School Technology Fund and \$114,038,000 to the State Public School Fund from the Civil Penalty and Forfeiture Fund. Section 5.2 allocates funds from the Education Lottery Fund, with approximately \$128 million allocated for class size reduction, just under \$85 million for the prekindergarten program, \$38.5 million for scholarships for needy students, and \$154.2 million for the Public School Building Capital Fund. Section 2.1 of S.L. 2008-118 (H 2438), the budget technical corrections act, amends Section 7.11 of the appropriations act to specify how moneys appropriated to the Public School Building Capital Fund will be allocated. The method of allocation will depend on whether the moneys total more or less than \$154.2 million.

## Student Issues

### CHILDREN WITH DISABILITIES

S.L. 2008-90 (H 12) makes several modest changes to the special education statutes. These statutes were rewritten in 2006 (S.L. 2006-69) in part for the purpose of aligning state law with the federal Individuals with Disabilities Education Act (IDEA). To further that alignment, S.L. 2008-90 amends the definition of “educational services”

in G.S. 115C-106.3 to require behavior intervention services for students only to the extent required by federal law.

Students with disabilities are entitled to receive their educational services in the least restrictive appropriate placement. As a result, students are placed in a wide variety of settings, ranging from regular classrooms to residential institutions. S.L. 2008-90 amends G.S. 115C-107.7, which deals with those students assigned to homebound instruction. As before, the appropriateness of homebound instruction for each student assigned to it must be evaluated monthly. However, the evaluation must now be conducted by the designee or designees of the student’s individualized education program (IEP) rather than by the head of the student’s IEP team.

School boards must provide a free appropriate education (FAPE) for students with disabilities, even if these students are suspended for more than ten days or expelled. In addition, school administrators and boards must follow different procedures when imposing long-term suspensions or expulsions on students with disabilities than when imposing them on other students. These responsibilities make identifying which students are students with disabilities for disciplinary purposes a significant decision. The special protections of the law not only cover students formally identified as disabled before the time of their misconduct, but also extend to any student for whom the local educational agency has a “basis of knowledge” that the student is a child with a disability. New G.S. 115C-107.7(c) provides that a school has this basis of knowledge if the child’s behavior and performance clearly and convincingly establish the need for special education *before* the behavior that precipitated the disciplinary action. Prior disciplinary actions, standing alone, do not constitute clear and convincing evidence. This new subsection is effective January 1, 2009, and expires March 1, 2011.

It is clear that the state must offer all students with disabilities special education and related services, but occasionally it is not clear which public agency is responsible for providing them. S.L. 2008-174 (H 2306) requires the State Board of Education (State Board) and the Department of

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Health and Human Services to jointly determine which agency is responsible for services to children with disabilities who are placed in a private psychiatric residential treatment facility by a public agency other than the local educational agency. This determination and any recommendations must be reported to various General Assembly committees.

### CHILDREN OF MILITARY FAMILIES

Moving from place to place and school to school often creates challenges for children. Children of military families may change schools because of a parent's or guardian's military assignment or deployment. When they enroll in a new (receiving) school, these students often encounter barriers to educational success and full participation in school activities.

The Interstate Compact on Educational Opportunity for Military Children is designed to minimize the barriers. Its goal is to offer these students the same opportunities as other students by avoiding penalties and unnecessary delays in school enrollment and by facilitating participation in school activities and progress toward graduation.

Membership in the compact is optional for states, and states that join may later withdraw. A minimum of ten states must choose to participate in order for the compact to become effective, and that minimum has been met. With the enactment of S.L. 2008-185 (S 1541), new Article 29B of G.S. Chapter 115C, North Carolina becomes a member of the compact. As a result, state laws that conflict with the compact are superseded to the extent of the conflict.

The member states constitute the Interstate Commission on Educational Opportunity for Military Children (commission). The commission has the authority to adopt rules that have the force and effect of rules promulgated under G.S. Chapter 150B, the Administrative Procedure Act. North Carolina will have one voting representative, called the compact commissioner, who is responsible for the administration and management of the state's part in the compact. The governor appoints the commissioner, who must be an attorney licensed in North Carolina and represent at least one local board of education.

S.L. 2008-185 also requires the State Board to establish the State Council, its membership to include, at a minimum, the superintendent of public instruction; a superintendent of a local education agency that serves a high concentration of military children; one representative each from a military installation, the executive branch of government, the North Carolina School Boards Association, and the North Carolina Association of School Administrators; and two members appointed by the General Assembly. The council must name a military family education liaison to

assist military families and the state in implementing the compact.

The compact protects school-aged children enrolled in kindergarten through twelfth grade who are part of the household of a member of full-time duty status in the uniformed services of the United States. In addition to children of these active duty members, the compact also covers, for a period of one year, children of certain injured members or veterans of the uniformed services and children of certain deceased members or veterans.

Key strategies for achieving the compact's goals involve

- facilitating qualification and eligibility for enrollment, educational programs, and participation in extracurricular activities;
- facilitating on-time graduation;
- providing for information sharing between and among states, schools, and military families; and
- promoting flexibility and cooperation between the educational system, parents, and the student.

### *Enrollment, Placement, and Attendance*

Several provisions of S.L. 2008-185 make it easier for students to enroll in receiving schools. Some of these provisions are particularly significant when a student from another state is enrolling in a North Carolina school, or when a student is leaving North Carolina to enroll in a school in another state, because fewer potential barriers exist when a student is staying within the state.

G.S. 115C-366 sets out eligibility requirements for students who are entitled to enroll without payment of tuition in North Carolina public schools. G.S. 115C-366(a3) provides that children of military families not domiciled in North Carolina have a right to enroll as long as the statutory conditions related to suspension or expulsion and to filing affidavits are met. This exception to the domicile requirement is amended by S.L. 2008-185 to apply if the parent or legal guardian is on active military duty and is deployed outside the local school unit in which the student resides. The exception also applies, for a period of one year after the parent's or guardian's medical discharge or retirement, if the parent or guardian is a member or veteran of the uniformed services who is severely injured and medically discharged or retired. Finally, the exception applies, for a period of one year after the parent's or guardian's death, if the parent or guardian is a member of the uniformed services who died while on active duty or as a result of injuries sustained on active duty. Active duty does not include periods of active duty for training for less than thirty days.

S.L. 2008-185 says, "Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should

be paramount when considering placement.” In light of these goals, the act grants local school administrative officials flexibility in waiving course or program prerequisites or other preconditions for placement in the courses and programs offered by the school system. (In North Carolina, G.S. 115C-288 grants school principals the authority to grade and classify students.)

When a student enrolls, the receiving school must initially honor placement in educational courses based on the student’s prior enrollment and/or prior educational assessments, as long as those courses are available. The new school may conduct its own evaluations to ensure a student’s appropriate placement and continued enrollment in a course or courses. These requirements apply also to programs such as academically gifted, English as a second language, advanced placement, the International Baccalaureate, and to career pathways courses.

When a student with a disability enrolls, the receiving school must comply with the IDEA by providing special education services according to the student’s IEP and with Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act by making reasonable accommodations for students covered by these federal statutes. A receiving school may conduct its own evaluation to ensure proper placement.

States must give these students thirty days—or a length of time set by the commission—from enrollment to get any required immunizations. G.S. 130A-152 and 130A-155 address the required immunizations and filing of an immunization certificate.

States do not have one uniform date for determining eligibility for enrollment in kindergarten or first grade. Receiving states must allow students to enroll at their grade level in the former school regardless of age or date of entry into the new school. G.S. 115C-364 addresses the age requirements for initial entry into North Carolina’s public schools.

State and local educational agencies must facilitate military children’s inclusion in all extracurricular activities to the extent the students wish to participate and are otherwise qualified, regardless of any application deadlines.

The superintendent is authorized to grant a student excused absences to allow the student time to visit a parent or guardian who has been called for, is on leave from, or has just returned from deployment to a combat zone or combat support posting.

### ***On-Time Graduation***

Entering a new school during high school may create obstacles to timely graduation because course work and testing requirements vary across the country. The compact requires school officials to make special efforts to facilitate on-time graduation. Local education officials must waive specific

courses required for graduation if similar course work has been satisfactorily completed in another local educational agency. If an official denies a waiver, the official must provide a reasonable justification for that decision. If a waiver is not granted to a student who would qualify to graduate from his or her former school, the receiving local educational agency must provide an alternative means for the student to acquire the course work required for an on-time graduation.

A receiving local educational agency must accept exit or end-of-course exams required for graduation in the sending state, national norm-referenced achievement tests, or alternative testing from the sending state in lieu of testing required for graduation in the receiving state.

Enrolling in a new school as a high school senior may make it especially difficult to graduate on time, so special provisions apply to any student transferring at the start of or during his or her senior year. If a senior would be ineligible to graduate from the receiving local educational agency after all alternatives have been considered, the sending and receiving local educational agencies must ensure that the student receives a diploma from the sending local educational agency if the student meets that local educational agency’s graduation requirements. If either the sending or the receiving state is not a member of the compact and thus not bound by these provisions, the state that is a member must use its best efforts to facilitate the student’s on-time graduation in accordance with the provisions described above related to course work and testing.

### ***Information Sharing***

Both an enrolling student and a receiving school benefit when the school has the student’s education records. The compact’s provisions are thus designed to help schools more easily and quickly get relevant information about transferring students. If official education records cannot be released to the parent for conveyance to the new school, the custodian of the records of the sending state must provide the parent with a complete set of “unofficial education records.” The receiving school must enroll and place the student based on the information in those records, pending validation by official records as quickly as possible. The receiving school must request the student’s official records from the former school. Once a request has been made, the sending state must furnish the records within ten days or within a length of time set by the commission.

## **Safety at Schools**

### **SEXUAL OFFENDERS AND SCHOOLS**

In February 2005, nine-year-old Jessica Lunsford was kidnapped, raped, and killed. Since her death, Jessica’s father

and others have pushed states to pass “Jessica’s Law,” legislation designed to help prevent similar crimes. In 2008, North Carolina enacted its version of Jessica’s Law.

S.L. 2008-117 (H 933) has many provisions related to individuals who are convicted of certain sexual offenses and required to register as sex offenders. Many of the amendments are to G.S. Chapter 14, and some of them are described in Chapter 6, “Criminal Law and Procedure,” of *North Carolina Legislation 2008* (available at [www.sog.unc.edu/pubs/nclegis/nclegis2008](http://www.sog.unc.edu/pubs/nclegis/nclegis2008)). The new law, effective December 1, 2008, applies to offenses committed on or after that date.

Other provisions of S.L. 2008-17 are important to school boards and administrators and school contractual personnel as well as to any parents, guardians, and students who themselves are registered sex offenders. The most significant of these provisions (1) make it unlawful for registered sex offenders to be on certain premises, (2) address the education of juveniles who themselves are registered, and (3) require sex offender registry checks of school contractual personnel before allowing them to have direct interaction with students.

#### ***Presence on or Near School Property***

New G.S. 14-208.18 makes it unlawful for offenders who are registered for offenses specified in Article 7A of G.S. Chapter 14 to knowingly be on the premises of any place intended primarily for the use, care, or supervision of minors, including schools, child care centers, and playgrounds. It is unlawful also for these registered offenders to be within three hundred feet of any location intended primarily for the use, care, or supervision of minors when that place is located on premises that are not intended primarily for such use. This limitation applies to schools, child care centers, nurseries, and playgrounds located in malls, shopping centers, or other property open to the general public. The restriction also applies to any place where minors gather for regularly scheduled educational, recreational, or social programs. A violation of G.S. 14-208.18(a) is a Class H felony.

#### ***Parents and Guardians***

An easing of these restrictions is available to a person who is the parent or guardian of a child enrolled in school. The parent or guardian may be present on school property if he or she is there to attend a conference with school personnel to discuss the academic or social progress of the child or if the principal or designee has requested the presence of the parent or guardian for any other reason relating to the child’s welfare or transportation.

If a parent or guardian is entering school property for one of these reasons, he or she must notify the principal of his or her registration as a sex offender and of his or her presence

at the school unless the superintendent, local school board, or school principal has granted written ongoing permission for regular visits of a routine nature. If the superintendent or school board grants this permission, the superintendent or board chair must notify the principal. Notification must include the nature of the visits and hours when the parent or guardian will be at the school. The parent or guardian must notify the principal’s office upon his or her arrival and departure at each visit.

In all of these situations, school personnel must directly supervise the parent or guardian at all times that he or she is on school property. If no one is reasonably available for this supervision, then the parent or guardian is not allowed to be on school property, whether or not ongoing permission for regular visits of a routine nature has been granted.

#### ***Young Offenders***

If a registrant is eligible to attend public school under G.S. 115C-378, he or she may be present on school property if the local board of education allows it. Before Jessica’s Law, G.S. 115C-391(d) authorized a school board to expel a student if specified conditions were met, including that the student was at least fourteen years old. An amendment to that subsection now allows a board to expel any student who is subject to G.S. 14-208.18, based on clear and convincing evidence. This new provision has no age limitation. Before ordering expulsion, the board must consider whether there is an alternative program that may be offered by the local school unit to provide educational services. If the board decides that a student will be provided services on school property, school personnel must supervise the student at all times.

#### ***Medical Care***

A juvenile may be present at a restricted location if the juvenile is there to receive medical treatment or mental health services and remains under the direct supervision of an employee of the treating institution at all times.

#### ***Voting***

If a school is used as a voting place, a person subject to the restrictions may be present only to vote and may not be outside the voting enclosure except to enter and exit the voting place. The person must notify the principal of the school that he or she is a registered offender.

#### ***Registration Information***

Information regarding a juvenile required to register is not a public record. However, the sheriff must forward registration information of a juvenile who has been adjudicated delinquent and is required to register to the local board of education. Every school principal must register with the

North Carolina Sex Offender and Public Protection Registry to receive e-mail notification when a registered sex offender moves within a one-mile radius of the school.

### **School Contractual Personnel**

New G.S. 115C-332.1 applies to *contractual personnel*, defined as any individual or entity under contract with the local board of education whose contractual job involves direct interaction with students. It does not apply to any person covered by G.S. 115C-332 (school personnel criminal history checks).

Any contract with the board of education must require the contractual personnel's employer to conduct an annual check of that person on the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. The contract also must require the board of education to prohibit direct interaction with students for any contractual personnel listed on any of these registries.

### **Gangs**

Gangs are likely to create disciplinary and safety problems at school as well as in the community. The North Carolina Street Gang Prevention and Intervention Act, S.L. 2008-56 (S 1358), is designed to develop community-based gang prevention strategies and programs. One provision requires DPI and the Department of Juvenile Justice and Delinquency Prevention to report to General Assembly committees on a number of topics. These topics include the prevalence of school violence and gang activity, programs designed to educate school personnel and parents on signs that a student may be involved or associated with a gang, and effective practices for reducing school violence and gang activity that have been successfully implemented in other states. The act also amends several sections of G.S. Chapter 143B. Those changes are discussed in Chapter 6, "Criminal Law and Procedure," of *North Carolina Legislation 2008*, referred to above.

### **Miscellaneous**

#### **CHILD NUTRITION**

Schools have an important role to play in efforts to improve students' health and wellness. As one step, the State Board recently adopted new standards for the Child Nutrition Program. Section 7.25 of S.L. 2008-107 (H 2436) amends G.S. 115C-264.3 to give elementary schools an additional year to implement the new nutrition standards. All elementary schools must now achieve a basic level by the end of the 2009-10 school year.

#### **MORE AT FOUR PROGRAM**

Section 7.17 of S.L. 2008-107 and Section 49.1 of S.L. 2008-181 (H 2431) direct DPI to continue to implement the More at Four prekindergarten program for at-risk four-year-olds who are at risk of failure in kindergarten.

#### **DROPOUT PREVENTION COMMITTEE**

Section 7.14 of S.L. 2008-107 reestablishes the Committee on Dropout Prevention, which was created in Section 7.32 of S.L. 2007-323. The committee determines which schools or other entities will receive dropout prevention grants and the use of those grants and evaluates the impact of the grants. The committee will disband on December 31, 2010.

#### **BUS INSPECTIONS**

G.S. 115C-248(a) requires safety inspections of all school buses owned or operated by the local school unit every thirty days during the school year. S.L. 2008-172 (H 2265) amends G.S. 20-183.2(a1) to exempt school buses from the section's required safety inspection if the buses are titled to a local board of education and subject to the school bus inspection requirements specified by the State Board and G.S. 115C-248(a).

### **School Employment**

#### **SALARIES**

S.L. 2008-107 sets provisions for the salaries of teachers and school administrators. For teachers, the act sets a salary schedule for 2008-9 that ranges from \$30,430 for a ten-month year for new teachers holding an "A" certificate to \$64,750 for teachers with thirty-one or more years of experience holding an "M" certificate and national certification. For school-based administrators (principals and assistant principals), the ten-month pay range is from \$37,810 for a beginning assistant principal to \$83,400 for a principal in the largest category of schools with more than forty years of experience. Of course, many school-based administrators are employed not for ten, but for eleven or twelve months, adding the proportionate amount to their salaries.

For central office administrators (assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers), the ten-month range is \$33,090 to \$83,360, and many are employed for more than ten months. For superintendents, the twelve-month range is \$56,640 to \$134,352.

Noncertified public school employees paid with state funds receive an increase of 2.75 percent or \$1,100, whichever is higher.

Funds are provided in the act so that payments may be made under the ABCs of Public Education program up to the following amounts: \$1,500 per teacher and \$500

per teacher assistant in schools that achieve higher than expected improvements and \$750 per teacher and \$375 per teacher assistant in schools that meet expectations.

#### **TEACHERS USING PERSONAL LEAVE**

G.S. 115C-302.1(d) provides for teachers to earn up to two days of personal leave per year and to accumulate personal leave up to a maximum of five days. It further permits teachers to use the personal leave upon giving five days of notice, except that personal leave may not be used on certain days, such as the first day of school and days scheduled for state testing. The statute formerly provided that teachers using personal leave received full pay less the required substitute deduction (\$50 per day). Both S.L. 2008-107 and S.L. 2008-209 (H 15) amend the statute. The acts put into place a temporary rule for the 2008-9 school year providing that teachers using up to one day of personal leave a year will receive their full salary and those using more than one day will receive full pay minus the substitute deduction; teachers using personal leave on specified teacher workdays (days when students are not in school) also receive their full salary. After June 30, 2009, only teachers using personal leave on specified teacher workdays will receive full salary without the substitute deduction.

#### **NATIONALLY CERTIFIED TEACHERS AS MENTORS**

G.S. 115C-296.2 provides for a salary differential for teachers who have achieved certification through the National Board for Professional Teaching Standards. The statute formerly required that certified teachers, to be eligible to continue to receive the differential, must spend at least 70 percent of their time in classroom instruction (or in work related to the certification if the certification does not relate to classroom instruction). S.L. 2008-86 (H 2360) amends the statute to provide that certified teachers may also be assigned as full-time mentors after having served at least two years as a classroom teacher following certification. The mentoring assignment may be for a maximum of three years (after which the teacher must return to the classroom for at least three years to be eligible again) and must involve the mentoring of at least fifteen newly hired teachers. A school system may assign no more than 5 percent of its certified teachers as mentors (with a minimum of five).

#### **SCHOOL PERSONNEL RECORDS**

S.L. 2008-194 (H 545) amends G.S. 115C-321 to provide that the Retirement Systems Division of the Department of State Treasurer may disclose the names and mailing addresses of former public school employees to North Carolina nonprofit organizations representing 10,000 or more retired state government, local government, or public school employees.

#### **SCHOOL ADMINISTRATOR CERTIFICATION**

G.S. 115C-290.7(b) previously set out the qualifications that an individual had to meet in order to attain certification as a school administrator. That statute was repealed as part of the general repeal in 2006 of Article 19A of G.S. Chapter 115C, the article that established and governed the former Standards Board for Public School Administrators. S.L. 2008-187 (S 1632) restores the provisions of former G.S. 115C-290.7(b), codifying them at G.S. 115C-284(b1).

#### **Studies**

##### **STUDENTS WITH DISABILITIES**

Section 7.12 of S.L. 2008-107 (H 2436), the appropriations act, and Section 16.1 of S.L. 2008-181 (H 2431), the studies act, direct DPI to analyze the participation of students with disabilities in Learn and Earn Early College High Schools, Redesigned High Schools, the North Carolina Virtual Public School, and North Carolina public high schools on block schedules. DPI must consider enrollment, graduation, and dropout rates for students with disabilities in these programs.

##### **GEOGRAPHY EDUCATION**

Section 23.1 of S.L. 2008-181 directs DPI to study the effectiveness of geography education in middle and high schools.

##### **PHYSICAL EDUCATION**

Section 25.1 of S.L. 2008-181 directs the State Board to study the current status of K-12 physical education. Each school administrative unit must submit baseline data at the school level and report it to DPI for analysis. Baseline data includes body mass index (BMI) for a statistically valid random sample of students of various ages from all one hundred counties. This data must be collected by a trained professional, such as a school nurse or physical education teacher.

##### **PRINCIPAL AND ASSISTANT PRINCIPAL PROGRAM**

Section 24.1 of S.L. 2008-181 directs the State Board, in cooperation with the University of North Carolina Board of Governors, to conduct a study to develop a framework for a North Carolina certified principal and assistant principal program.

##### **FUNDING**

Section 37.1 of S.L. 2008-181 directs the Joint Legislative Study Committee on Public School Funding to extend its review of public school funding and evaluation of modifications to public school funding formulas.

**HIGHER EDUCATION CIVIC EDUCATION**

Section 48.1 of S.L. 2008-181 establishes the Higher Education Civic Education Study Commission. The commission is to advise the state on the role of higher education in helping strengthen and enhance the ability of colleges and universities to participate in civic engagement activities with K–12 educational institutions, faith-based programs, or other service programs affecting the social development and literacy of school-age children. One of the commission’s responsibilities is to develop recommendations for monitoring and evaluating the impact of civic engagement programs on the performance of students from K–12 and higher education.

**ADDITIONAL STUDIES**

The studies act (S.L. 2008-181) also authorizes the Joint Legislative Education Oversight Committee to study the following:

- The dismissal, demotion, or suspension without pay of noncertified school employees, including considering whether such employees should be dismissed, demoted, or suspended without pay only for just cause, which would in essence grant them tenure (sec. 5.2).
- The impact of raising the public school compulsory attendance age from sixteen to seventeen or eighteen, in coordination with DPI (sec. 5.4).
- The roles that regional education service centers created within DPI could play in the delivery of professional development throughout the state (sec. 33.1). ■