

Changes Affecting Employment in the Public Schools

Robert P. Joyce

THE 2001 GENERAL ASSEMBLY passed legislation affecting employment in North Carolina's public schools in the areas of licensure and professional development, recruiting and hiring, leave and pay, and grievances and appeals. The potentially most intriguing change involves the right of at-will employees to a statement of the reasons for dismissal, a hearing before the board of education, and the right to appeal to the superior court.

Licensure and Professional Development

Superintendents from Fields outside Education

G.S. 115C-271 gives each local board of education the discretion to select the superintendent for that school system, but it directs the State Board of Education to adopt rules establishing qualifications for the selection. Until the enactment of SL 2001-174 (S 378), the statute further provided that at a minimum a candidate, in order to be qualified, must have served as a principal in a North Carolina public school or "have equivalent experience." As now amended, the statute provides that the candidate must have been a principal or "have other leadership, management, and administrative experience."

Further, the statute now directs the State Board to adopt qualifications "that would qualify a person to serve as a superintendent without having direct experience or certification as an educator."¹

Standards Board for Public School Administration Abolished

Under the requirements of Article 19A of G.S. Chapter 115C, to be licensed as a public school superintendent, deputy superintendent, associate superintendent, assistant superintendent, principal, or assistant principal, an individual must meet certain educational requirements and must pass the North Carolina Public School Administrator Exam. Prior to enactment of Section 28.25 of SL 2001-424 (S 1005), the exam was prepared by the North Carolina Standards Board for Public School Administration (subject to approval by the State Board). The Standards Board administered the exam to all applicants and reviewed the educational qualifications of all applicants. The Standards Board then recommended to the State Board that those who qualified be licensed. As now amended, all references to the Standards Board are removed from the statute. The State Board is now directly responsible for preparing and administering the exam and for passing on the qualifications of all applicants for licensure.

The author is an Institute of Government faculty member and editor of *School Law Bulletin*.

1. SL 2001-174 (S 378).

Teacher Licensure Exam in the Second Year of Teaching

G.S. 115C-296(a) directs the State Board to require applicants for teachers' licenses to achieve a prescribed minimum score on a standard examination. SL 2001-129 (H 1285) directs the board to permit an applicant to fulfill this requirement before or during the applicant's second year of teaching, provided that the applicant take the exam at least once during the first year of teaching.

Health Certificate Exams by Non-Physicians and Out-of-State Practitioners

G.S. 115C-323 requires that every new employee in a public school system (or returning employee after at least a year's absence) present a certificate certifying that the employee has no mental or physical disease that would impair his or her ability to perform the duties of the job. The statute formerly required that the certificate be prepared by a physician licensed to practice medicine in North Carolina. SL 2001-118 (H 608) amends the statute so that it now also permits the certificate to be prepared by a nurse practitioner or physician's assistant licensed in North Carolina or by a physician, nurse practitioner, or physician's assistant licensed in another state if evidence of that licensure appears on the certificate.

Use of Teacher Mentor Funds

Section 28.31 of SL 2001-424 (S 1005) specifies that state funds appropriated to provide mentors for teachers during the second year of teaching may be used to provide mentors for teachers whose first year of teaching was in a public school in North Carolina, a public school in another state, or a charter school.

Pilot Program for Full-Time Mentors

Section 28.18 of SL 2001-424 (S 1005) directs the State Board to establish a pilot program to permit the Charlotte-Mecklenburg, Winston-Salem/Forsyth, and Wake County school units to use funds allocated for mentors to employ full-time mentors. A teacher or instructional-support employee working solely as a mentor under this program is to receive a payment for each individual, up to fifteen individuals, to whom the mentor is assigned, with the amount of each payment to be the same as the amount received as a salary supplement by a teacher or instructional-support person serving as a mentor.

Leave to Work on Licensure

Section 28.19 of SL 2001-424 (S 1005) directs the State Board to permit initially licensed teachers to receive up to three days of paid leave during the second year of teaching to work on their performance-based licensure required products or to consult with their mentors. If teachers have not successfully completed the performance-based requirements by their third year, they are to receive up to three days of paid leave to complete all requirements. Teachers may take the paid leave only with the approval of their supervisors. Section 28.19 also directs the State Board to study the teacher mentor program and the performance-based licensure program to determine whether adjustments are needed in either.

Funds for Noninstructional Support May Be Used for Staff Development

G.S. 115C-105.25(b) provides some flexibility to school administrative units in transferring funds among allotment categories. Section 28.22 of SL 2001-424 (S 1005) adds a new G.S. 115C-105.25(b)(2a) permitting up to 3 percent of state funds allocated for noninstructional support personnel to be transferred for use in staff development.

Teacher Academy Development Programs

G.S. 116-30.01(a) directs the North Carolina Teacher Academy Board of Trustees to establish a statewide network of high-quality, integrated, comprehensive, collaborative, and substantial professional development for teachers. Section 28.28 of SL 2001-424 (S 1005) adds a requirement that the network include professional development programs that focus on teaching strategies for teachers assigned to at-risk schools. The new provisions also direct the Teacher Academy to use at least 10 percent of its budget for the 2001–2002 fiscal year to deliver programs for teachers assigned to small classes in kindergarten through fifth grade.

Recruiting, Hiring, and Leave

Criminal Records Checks

G.S. 115C-322 permits local boards of education to have access to computerized criminal record histories maintained by the State Bureau of Investigation and the Federal Bureau of Investigation for checking on the

criminal histories of employees or applicants for employment. SL 2001-376 (S 778) amends the statute to make three changes. First, it adds a provision that an applicant for employment who gives false information on an application that is used for a computerized criminal history check is guilty of a Class A1 misdemeanor. Second, it specifies that the requirement that the local board of education make written findings with respect to how it used the computerized criminal information in a particular circumstance may be delegated to the superintendent. Third, it provides that workdays worked by a probationary teacher while the computerized criminal history check is being conducted count toward the 120 days a teacher must work in a year for the year to count as one of the four years that must be worked before the teacher may gain tenure, even though the statute says that an employee who works before the criminal record check is complete is employed only “conditionally.”

Hiring Retired Teachers

G.S. 135-3(8)c permits retired teachers and state employees to return to employment without losing the right to payment of their retirement pay; but it subjects them to an earnings cap of 50 percent of the salary of the position and provides that if the person receives more than 50 percent pay, retirement benefits are suspended. A special provision of the statute provides that retired teachers who return to teaching are not subject to the 50 percent limit but may be paid in full and still receive their retirement benefits. The statute had formerly required that the retired teacher be retired for at least twelve months before returning. Section 32.25 of SL 2001-424 (S 1005) amends the statute to reduce the waiting time to six months. This provision expires June 30, 2003.

Programs to Increase Supply of Teachers

Four initiatives found together in Section 29.2 of SL 2001-424 (S 1005) are designed to increase the supply of teachers. The first makes \$1 million available each year of the 2001–2003 biennium for scholarship funds for teacher assistants taking courses that are prerequisites for teacher certification programs. The second makes \$1.5 million available each year of the biennium to provide annual bonuses of \$1,800 to teachers certified in and teaching mathematics, science, or special education in middle or high schools in which 80 percent of students are eligible for free or reduced-price lunch or in which 50 percent or more are performing below grade level in algebra and biology. (A provision makes clear that the loss of the bonus because the teacher is re-

assigned to another school or to another field does not constitute a demotion within the meaning of the Teacher Tenure Act.) The third initiative directs the Joint Legislative Education Oversight Committee to study the effectiveness of providing benefits to part-time teachers as a means to recruit certified teachers. The fourth directs that committee to study the potential effectiveness of increasing the size of the Teaching Fellows Program to improve the supply of qualified teachers. A separate initiative, found in Section 28.43, authorizes the State Board to use up to \$200,000 each year of the biennium to enable teachers who have received national teacher certification or other special recognition to advise the State Board on teacher recruitment and other strategic priorities.

Leaves to Teach in Charter Schools

G.S. 115C-238.29F(e)(3) requires school administrative units to grant extended leaves to teachers who wish to teach in a charter school. The statute previously required the school administrative unit to grant a leave for any number of years requested and to extend a leave at the teacher’s request for any number of years requested. SL 2001-462 (S 139) amends the statute to provide that the initial request of a teacher is to be granted for one year only and that the administrative unit is not required to grant a request for a leave or an extension to any teacher who has already received such a leave from the unit.

Teaching Opportunities for Military Personnel

SL 2001-146 (S 803) directs the UNC Board of Governors, the State Board of Community Colleges, and the Department of Public Instruction to work cooperatively to expand opportunities for military personnel to enroll in and complete teacher education programs prior to their discharge from the military.

Salaries

SL 2001-424 (S 1005) sets schedules for the salaries of teachers, school-based administrators, central office administrators, teacher assistants, and other noncertified personnel.

For teachers, the act sets a salary schedule for 2001–2002 that ranges from \$25,250 for a ten-month year for new teachers holding an “A” certificate to \$55,910 for teachers with twenty-nine or more years of

experience, an “M” certificate, and national certification. For school-based administrators (meaning principals and assistant principals), the ten-month pay range is from \$32,226 for a beginning assistant principal to \$74,920 for a principal with more than forty years of experience who serves in the largest category of schools. Of course, many school-based administrators are employed not for ten but for eleven or twelve months, which adds a proportionate amount to their salaries. For central office administrators (meaning assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers), the ten-month range is from \$29,320 to \$70,020; again, many are employed for more than ten months. Teacher assistants and other noncertified personnel receive an annual salary increase of \$625.00 per individual.

Instructional Support Personnel

Section 28.11(g) of SL 2001-424 (S 1005) amends G.S. 115C-325(a)(6), which contains the definition of “teacher” for the purpose of determining who is covered by the Teacher Tenure Act. Before the amendment, the statute provided that a “teacher” was anyone who holds a current Class A license, is employed in a permanent full-time position, and (1) teaches or directly supervises teaching, (2) is classified by the State Board as a teacher, or (3) is paid as a classroom teacher. The amendment changes the last element to read “is paid either as a classroom teacher or instructional support personnel.”² This change makes it clear that school psychologists, guidance counselors, social workers, speech-language pathologists, and media coordinators are eligible for teacher tenure. Section 28.37 directs the Joint Legislative Education Oversight Committee to study salary differentials for instructional support personnel, considering salary differentials based on degrees and other educational credentials, licensure, and other factors.

Overtime for Teacher Assistant/Bus Drivers

Section 28.42 of SL 2001-424 (S 1005) contains a provision specifying that a school employee working as both a teacher assistant and a bus driver (a common combination) who works for a combined total of more than forty hours in a week is to receive overtime compensation at a rate of time-and-a-half. The appropriate compensation is to be paid from the teacher assistant and transportation allotments. If the employee and the

school system agree, the employee may use compensatory time off rather than receive overtime pay.

Substitute Teacher Unemployment Insurance

Section 28.42 of SL 2001-424 (S 1005) adds new G.S. 96-8(10) providing that no substitute teacher or other substitute school personnel is to be considered unemployed for days or weeks when not called to work unless the individual is a permanent school employee regularly employed as a full-time substitute during the period of time for which the individual requests benefits.

Salaries of Food Service Workers and Custodians

Section 28.34 of SL 2001-424 (S 1005) directs the Joint Legislative Education Oversight Committee to study the salaries of food service workers and custodians employed in the public schools and report to the 2002 session of the General Assembly.

Grievances and Appeals

Grievances, Appeals, and the At-Will Status of Employees

Former G.S. 115C-45(c) allowed just about anyone to appeal to the local board of education just about any action taken by any school employee. With respect to students, an appeal could be taken, for example, because a student was cut from the basketball team or because a student got a C on a paper. With respect to employees, an appeal could be taken, for example, because a custodian was transferred to a different school or because a teacher assistant was required to drive a school bus on a fill-in basis. Some school boards wanted to limit such appeals in order to reduce the scope of actions that are automatically appealable. SL 2001-260 (S 532) responds to that desire, amending G.S. 115C-45(c) to limit the kinds of matters that an individual has an automatic right to appeal to the board of education.

With respect to students, matters that are now automatically appealable under amended G.S. 115C-45(c) are discussed in Laurie Mesibov’s article, “Changes Affecting Elementary and Secondary Education,” in this issue.

With respect to employees, the statute as now amended provides that an appeal to the board of education is automatically available from “any final administrative decision” related to the “terms or conditions of

2. SL 2001-424 (S 1005), sec. 28.11(g).

employment or employment status of a school employee.”³ Does the amended statute in fact limit the kinds of appeals that an employee may automatically take to the board of education? On the one hand, the answer appears to be no, because under the amendment all actions that “*relate to the terms or conditions of employment or employment status*” are automatically appealable—a very broad definition. On the other hand, the answer may to some extent be yes, because the only actions automatically appealable are “final administrative actions.” That is, the decision by a principal to change a custodian’s work hours is not automatically appealable to the board of education, as it was under the old provisions of G.S. 115C-45(c) in districts where the policies of the board of education permitted the custodian to take the appeal first to the superintendent (or other administrative official). Under the amended statute the appeal to the board is available only after the custodian has exercised all avenues for redress in the administrative chain.

The new provisions of the amended statute go on to say that in the case of employment decisions concerning dismissal, demotion, or suspension without pay, a noncertified employee may appeal the decision of the school board to the superior court. In such an appeal, the dismissed, demoted, or suspended employee may allege that the board’s decision to uphold the dismissal, demotion, or suspension is

- in violation of constitutional provisions,
- in excess of the authority of the board,
- made upon an unlawful procedure,
- affected by other error of law,
- unsupported by substantial evidence in light of the entire record, or
- arbitrary or capricious.

Further, a noncertified employee who is to be dismissed (or demoted, or suspended without pay) may, under the new statutory provisions, request (and is then entitled to receive) written notice as to the reasons for the dismissal. This notice is to be provided prior to any hearing before the board.

The combined effect of these provisions is not completely clear. Noncertified school employees—custodians, maintenance workers, bus drivers, teacher assistants, food service workers, secretaries, and others—are at-will employees. Until now that has meant that they are subject to dismissal, demotion, or suspension

for any reason or for no reason at all—as are employees at-will in public and private employment generally—as long as there is no illegal reason involved, such as race or sex discrimination. Now, however, new G.S. 115C-45(c) provides that an employee at will who is to be dismissed, demoted, or suspended without pay is entitled to (1) a statement of the reasons, (2) a hearing before the board of education, and (3) the right to appeal the decision of the board of education to the superior court on the grounds, among others, that the decision of the board was not supported by substantial evidence or was arbitrary or capricious.

Putting those rights together, the statute could be read as ending employment-at-will for noncertified public school employees. Whether the courts will read the statute in that way remains to be seen. Two factors argue against such a reading. First, the amended statute itself provides, in its final sentence, that “[t]his subsection shall not alter the employment status of a noncertified employee.”⁴ The apparent meaning is that such employees are still employees-at-will. Second, the entire appeals procedure called for by the amended statute, with first an appeal to the board of education and then on to the superior court, is premised on the fact that there is a “final administrative action” to be appealed from. Suppose a board of education by policy reserves to itself the authority to make the initial decisions to dismiss, demote, or suspend without pay noncertified employees. In such a case, neither the principal nor the superintendent would have the authority to dismiss a custodian but could only recommend such action to the board of education. This procedure would be cumbersome, but with such a procedure in place it could be said that the superintendent’s recommendation of dismissal to the board is not a “final administrative action” and that the ultimate action of the board itself in voting to dismiss the custodian is not an action that the custodian can appeal to the board or on to the superior court. In that case, the custodian would have no right at all to a hearing. It is not clear if the General Assembly meant to allow such differential treatment of noncertified employees to depend on whether the local board of education delegates dismissal authority to the superintendent or principal. It will be left to the courts to interpret the statute or to the General Assembly to clarify it.

3. SL 2001-260 (S 532).

4. SL 2001-260 (S 532).

Sexual Harassment Policy

G.S. 115C-333.5 provides that a school employee may not be disciplined for filing a complaint of sexual harassment unless the employee knew or had reason to believe that the report was false. SL 2001-173 amends the statute to add a provision authorizing local boards

of education to adopt policies addressing the sexual harassment of employees by students, other employees, or board members. Such policies may set out the consequences of sexually harassing school employees and the procedures for reporting incidents of sexual harassment. ■

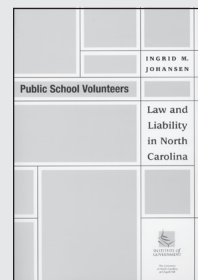
Public School Volunteers: Law and Liability in North Carolina

1999, by Ingrid M. Johansen

An aid to public schools and their volunteers

Volunteer involvement in North Carolina public schools is steadily increasing, yet few local school boards have official procedures governing the use of volunteers in their schools. Now is the time for school boards and administrators to adopt a plan for screening, training, and supervising volunteers. This publication provides guidelines for developing a policy, addresses liability issues for both schools and volunteers, and discusses the benefits of implementing a school volunteer program. This book is the ideal tool for school volunteers, school boards, and administrators.

[99.09] ISBN 1-56011-358-8. \$16.00



ORDERING INFORMATION ON PAGE 49