

1998 Legislation Affecting Public Education in North Carolina

Every year—1998 was no exception—the General Assembly devotes an enormous amount of time and energy to issues surrounding public education in North Carolina. In the process the legislature appropriates large amounts of money for the public schools, the community colleges, and the sixteen constituent institutions of The University of North Carolina. The \$1.25 billion in new spending authorized for 1998–99 (that is, spending for the year above what had already been appropriated for the year by the 1997 General Assembly) includes, for example, \$236 million in recurring spending for compensation increases for teachers (an average 6.5 percent salary increase); \$98 million for pay bonuses for teachers under the ABCs Program; \$10 million for supplemental funding for schools in poorer districts; \$28.5 million for technology infrastructure in the state’s community college system and the university; \$12.9 million for distance learning and off-campus courses offered through the university; \$8 million for support of graduate teaching and research assistants; \$42.5 million in additional funding for the Smart Start program; and \$112.5 million for capital improvements to constituent campuses of the UNC System.

The following five articles summarize legislation enacted in 1998 that bears directly on the administration, funding, and oversight of the state’s public schools, community colleges, and university system. These articles are substantively similar to chapters written by the same authors that appear in the recently published North Carolina Legislation 1998, the Institute of Government’s annual book-length summary of legislative actions of the General Assembly of interest to public officials in the state.

— Editor’s Note



North Carolina Legislation 1998

Edited by John L. Saxon

This annual summary of legislation is designed to help public officials sort through major legislation passed during the last session of the General Assembly. Each chapter has been written by the Institute faculty member or members who specialize in the particular subject matter. An act may be analyzed in more than one chapter and from different points of view.

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Changes Affecting Elementary and Secondary Education

by Laurie L. Mesibov

THE 1990S HAVE SEEN ENORMOUS CHANGES in public school law. The General Assembly has acted on a wide range of issues, including a statewide school accountability program, administrator contracts, teacher tenure and dismissal, student discipline, funds for facilities and technology, authority and flexibility for local school units and individual schools, and charter schools.

In 1998, instead of adopting any major new reform efforts, the General Assembly seemed to catch its breath and focus on amending programs already in place. The legislature modified the existing accountability program and the discipline statutes, as well as other programs, including the state's testing program. Some of the legislation that had a significant impact on local school boards was in areas not directly tied to school personnel, curriculum, or student issues. Examples include eligibility for sales tax refunds for school administrative units, changes in the driving while impaired (DWI) and purchasing statutes, and recodification of the Juvenile Code. This article presents an overview of 1998 legislation affecting elementary and secondary education in North Carolina.

Accountability

Basic Principles

The School-Based Management and Accountability Program, set out in Chapter 115C, Article 8B, of the North Carolina General Statutes (hereinafter G.S.), seeks

to improve student learning and achievement. Although the ABCs Program of Public Education (the ABCs) is not specifically named in the act, its basic principles of accountability, focus on basic subjects, and local control are laid out in it. The ABCs focus on individual schools and on the growth in each school's student performance as measured by annual standardized tests. The State Board of Education (the State Board) sets annual performance standards for each school and then annually classifies every school based on how well it meets the state-defined expected growth in school performance. The staff of schools in which students perform well enough above expectations to meet a level of high performance set by the State Board receive bonuses. Schools in which student performance is well below expectations may receive special assistance and intervention.

ABCs Bonuses

The State Board was authorized under the ABCs to provide incentive funding for schools that meet or exceed projected levels of improvement in student performance. Section 9.2 of Session Law (SL) 1998-212 (S 1366) requires the State Board to provide incentive funding and removes from the law a specific amount of money for bonuses.

Aid to Low-Performing and At-Risk Schools

As part of its school improvement and accountability efforts, the State Board identifies certain schools as "low-performing" and others as "at-risk." Section 9.4 of SL 1998-212 specifies that funds appropriated for such schools must be used for services to elementary and middle schools at which 48 percent or more of the

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students were below grade level during the 1996–97 and 1997–98 school years or during the 1997–98 school year; to the 5 percent of high schools that have the lowest composite scores using the ABCs accountability measures; and to high schools identified by the State Board as low-performing under the ABCs Program. After consulting with the faculty and the school's site-based management team, the principal of a school eligible for these funds must develop a plan for implementing the services for which they were provided. The plan must be consistent with the local school board's spending plan (G.S. 115C-105.37) and must include whole-staff training. The local board must approve the plan before it is submitted to the State Board of Education, which must then approve or reject the plan or delegate this responsibility to the state superintendent of public instruction. If a plan is approved, the local school board will receive funds for both salary-related and nonsalary items.

High School Accountability

Setting standards for student performance in high schools is more complicated than setting such standards in elementary schools. All high school students do not take the same courses, and all educators do not agree on the specific areas in which to test student performance. Section 9.5 of SL 1998-212 directs the State Board to continue refining the high school standards. The State Board should consider including a measurement of improvement in individual student performance; of a school's dropout rates; and of student enrollment and achievement in courses required for graduation, advanced placement courses, or other upper-level courses.

Accountability in DHHS Schools

SL 1998-131 (H 1477) applies ABCs principles to the four residential schools operated by the Department of Health and Human Services (DHHS) for students who are sight-impaired or hearing-impaired. Under new Part 3A of Article 3 of G.S. Chapter 143B, the State Board of Education will establish performance standards for these schools, identify low-performing schools, and assign assistance teams to low-performing schools. The superintendent and instructional personnel in schools that achieve or meet a level of expected growth set by the State Board are eligible for financial awards. The secretary of Health and Human Resources must assign assessment teams to every low-performing school that has not received an assistance team.

Test Development

An important element of the state's ongoing efforts to improve student learning is the use and development of appropriate tests to measure that learning. Section 9.15 of SL 1998-212 appropriates \$2 million for the 1998–99 fiscal year to cover cost increases caused by enrollment and for the reestablishment and development of high school end-of-course tests and the development of alternative assessments for children with special needs.

Second-Grade Testing

The time to begin giving students standardized tests is a subject of ongoing discussion and research. Section 9.12 of SL 1998-212 amends G.S. 115C-174.11(c)(1) to direct the State Board of Education to study whether a test in or at the end of second grade is more reliable than a test given at the start of third grade in order to set a baseline to measure academic growth at the end of third grade. The State Board may allow selected volunteer local school units to give a standardized test to second-graders in May, which is twelve months before the third grade end-of-grade test is given. If the State Board determines that a test at the end of second grade is more reliable, it may change the test date for additional school units. Baseline measurements of second-graders are not public records.

High School Competency Test

High school students have been required to participate in the Competency Testing Program beginning in the tenth grade. SL 1998-220 (S 1125) amends G.S. 115C-174.11(b) to provide that these tests must be given annually to ninth graders. Remedial efforts for students who do not meet the minimum standard for graduation will now begin in the ninth grade.

Annual Testing Program

SL 1998-220 amends G.S. 115C-174.11(c) to provide that students who do not pass tests adopted for eighth grade must be given remedial instruction in the ninth grade. This assistance must be designed to prepare the students to pass the competency test administered in the ninth grade.

Students

Discipline

Everyone agrees that schools should be safe and orderly. To achieve this goal the General Assembly in recent years has made many significant changes to the statutes governing student suspension and expulsion. SL 1998-220 makes the following new changes to the suspension statutes:

- An amendment to G.S. 115C-391(d) permits the local school superintendent and the local board of education to suspend for 365 days a student who brings a weapon onto school property.
- G.S. 115C-391(d2) now makes the superintendent—not the local board of education—responsible for suspending or removing to an alternative educational setting a student who commits an assault under circumstances covered by this statute.
- G.S. 115C-391(e) now provides that a superintendent's decision under G.S. 115C-391(c) (suspension for longer than ten days), 115C-391(d1) (suspension for bringing a weapon to school), or 115C-391(d2) (suspension or removal to an alternative educational setting for certain assaults) may be appealed to the local board of education. Expulsion [G.S. 115C-391(d)] remains a decision of the local board of education.
- Superintendents had been required to keep data on all students who were expelled or suspended. G.S. 115C-276(r) provides that superintendents must now keep data only on students *who are expelled or suspended for more than ten days*.

Students with Limited English Proficiency

Children with limited proficiency in English are enrolling in public schools in record numbers across the state. School boards vary greatly in their levels of experience in serving these students and in the number of these students enrolled in their schools. Section 9.20 of SL 1998-212 directs the State Board of Education to develop guidelines for identifying and serving these students. It also enacts provisions to assist school boards, including requiring a review of certification require-

ments for English as a Second Language (ESL) teachers, consideration of new programs for in-service, non-certificate training for instructional personnel, and additional funding. The State Board must allocate funds to school units and charter schools that enroll at least twenty students with limited English proficiency or to schools in which these students constitute at least 2.5 percent of the average daily membership of the school unit or charter school. These funds may not be used for other purposes.

Student Records

Every year many students transfer from one school system to another. To appropriately place entering students, the new school needs to have the child's records from his or her former school. Unfortunately, student records have been withheld for a variety of reasons, including attempts to recover small amounts of money owed the former school. For several years G.S. 115C-403(b) has made the new school responsible for obtaining the child's record from the former school, but there was no corresponding obligation on the part of the former school. SL 1998-220 deals with this problem by amending G.S. 115C-288 to provide that the former school's principal may not withhold the transfer of student records except as authorized by the federal Family Educational Rights and Privacy Act (FERPA).

Driving Eligibility Certificate

In 1997 the General Assembly amended G.S. 20-11 by adding a new 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. Section 9.21 of SL 1998-212 amends G.S. 115C-566 to require the secretary of administration to issue rules describing how a person who is or was enrolled in an educational program found by a court, before July 1, 1998, to comply with the compulsory attendance law may obtain a driving eligibility certificate. These rules must state the requirements for the eligibility certificate. An amendment to G.S. 20-11(n), which sets out conditions that a driving eligibility certificate must meet, incorporates this change.

Juvenile Law

Rewrite of Juvenile Code

The Juvenile Justice Reform Act, SL 1998-202 (S 1260), is a complete rewrite of the Juvenile Code, which is now codified as G.S. Chapter 7B and which becomes effective July 1, 1999. Several provisions that affect schools directly are discussed below.

Information Sharing among Agencies

New G.S. 7B-3100 permits the Office of Juvenile Justice, after consultation with the Conference of Chief District Court Judges, to adopt rules designating certain local agencies that are authorized to share information about juveniles. Upon request these agencies must share with one another information they possess that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent. This sharing of information must continue until the juvenile is no longer subject to the jurisdiction of juvenile court. Local school administrative units are among the agencies authorized to share information.

Agencies may use this shared information only for the protection of the juvenile or others or to improve the educational opportunities of the juvenile and may release the information only in accordance with FERPA. G.S. 115C-404 provides that information obtained by the school in accordance with G.S. 7B-3100 may not be the sole basis for a decision to suspend or expel a student.

Notification to Schools of Juvenile Crimes

New G.S. 7B-3101, which requires that school principals be notified in certain circumstances involving juveniles, does not change the law specifying when schools must receive notice. It simply recodifies former law (G.S. 7A-675.2) and directs principals to handle any notification in accordance with G.S. 115C-404, as amended by SL 1998-202. The principal must destroy documents received in accordance with G.S. 7B-3101 after he or she receives notification that a court has dismissed a petition, transferred jurisdiction over a student to superior court, or granted the student's petition for expunction of the records. The principal must destroy all information gained from examining juvenile records in accordance with G.S. 7B-3101 when he or she finds that the school no longer needs the information to protect the safety of or improve educational opportunities

for the student or others. If the student graduates, withdraws from school, is suspended for the remainder of the school year, is expelled, or transfers to another school, the principal must return all remaining documents to a juvenile court counselor.

Program on Prevention of Abuse and Neglect

G.S. 7B-1301 requires the State Board of Education, through the Department of Public Instruction, to implement the Program on Prevention of Abuse and Neglect. The board must contract with public or private nonprofit organizations, agencies, schools, or individuals to operate community-based educational and service programs designed to prevent abuse and neglect. These service programs should reach juveniles and families before any substantiated incident of abuse or neglect has occurred. Examples include community-based educational programs on prenatal care, perinatal bonding, child development, basic child care, care of children with special needs, coping with family stress, and crisis care as well as support groups for families experiencing stress. Funding for the prevention programs will come from the Children's Trust Fund in the Department of State Treasurer. In addition the State Board must develop a state plan for the prevention of abuse and neglect for submission to the governor, president of the Senate, and Speaker of the House of Representatives.

Start of the School Day

SL 1998-202 requires the State Board of Education to study the feasibility and advisability of delaying the start of the school day. If the State Board recommends starting school later in the morning, it must consider whether schools should then provide early morning supervision for students whose parents work and for whom child care is not available.

Alternative Educational Programs

The Juvenile Justice Reform Act also requires the State Board, through the Department of Public Instruction, to study ways to provide an alternative educational program for any student who is suspended or expelled from school. The study must include the following:

- a review of safe school plans and alternative educational programs;
- an analysis of data on suspension and expulsions;
- an assessment of federal, state, local, and private resources available for alternative programs;

- research on other educational programs offered by other state agencies;
- a review of the law relating to suspension and expulsion and the right to a public education;
- a recommended plan for offering all suspended and expelled students alternative programs; and
- a review of policies and procedures on transporting aggressive or assaultive students with other students and development of a plan to ensure the protection of all students from physical harm caused by aggressive or assaultive students.

The State Board of Education must report the results of its study to the Joint Legislative Education Oversight Committee by May 1, 1999.

Local School Boards

Alternative Learning Programs

All children need an education, but all children do not learn in the same way. Some students who have problems learning in traditional public school classrooms might fare better in alternative learning programs. Students who are disruptive in regular classes interfere with the learning opportunities of other students and may pose a threat to safety at school. Merely moving the problem from the school to the street by suspending or expelling disruptive students does not serve students or the state's interest.

In recent years more and more school boards have developed alternative learning programs and alternative schools. Section 12 of SL 1998-202 amends G.S. 115C-47 to encourage local boards of education to establish these programs. A board that does so must also adopt guidelines for assigning students to these programs. The guidelines must include a description of the programs and services; a process for ensuring that an assignment is appropriate for a particular student and that the student's parents are involved in the decision; and strategies for providing alternative learning programs, when feasible and appropriate, for students subject to long-term suspension or expulsion. Local boards are also encouraged to consider guidelines developed by the State Board of Education. Once a local board has adopted guidelines, it is encouraged to incorporate them in their safe schools plans.

Activity Buses

G.S. 66-58, known as the Umstead Act, is designed to prohibit government from competing with private businesses. It specifically prohibits any unit of government, including a local board of education, from providing transportation services in competition with private enterprise. Section 9.9 of SL 1998-212 amends G.S. 66-58(c) to allow "a nonprofit corporation or a unit of local government to use a public school activity bus to transport school-aged and preschool-aged children, their caretakers, and their instructors to or from activities being held on the property of a nonprofit corporation or a unit of local government." For example, a school board is authorized to lease an activity bus to the local YMCA to operate a vacation program for children at the Y. As the owner of the bus, the school board must ensure that the lessee has adequate liability insurance to cover the use and operation of the leased bus and that anyone who drives the bus is licensed to operate it.

Quick Take

Cities and counties have long had the authority to use "quick take" in condemnation actions. Quick take allows a governmental entity to take immediate possession of property being condemned once the entity has placed in escrow an amount that is estimated to be just compensation for the property. School boards now have that same option. Section 9.10 of SL 1998-212 amends G.S. 40A-42(a) to provide that when a local board of education is condemning property for any purpose in G.S. 115C-517, title to the property and the right to immediate possession of the property are vested in the local board after it files the complaint and makes a deposit in accordance with G.S. 115C-40A-41, unless the property owner has initiated an action for injunctive relief.

Responsibility for Seized Vehicles

In 1997 major changes in driving while impaired (DWI) laws required local school boards to take responsibility for the storage and sale of vehicles that were seized because of a driver's impaired driving. School boards found this responsibility to be costly and burdensome. The General Assembly addressed these problems by enacting SL 1998-182 (S 1336), as amended by SL 1998-217 (S 1279). The article "Public Schools and Vehicles Forfeited for Drunk Driving," also in this issue of *School Law Bulletin*, explains these changes in detail; the most significant allows the Department of Public Instruction to administer statewide or regional con-

tracts for the towing, storage, and sale of seized vehicles. Changes that relate to contracting by local school administrative units in connection with the storage and sale of seized vehicles are discussed in the article “New Procedures for School and College Construction, Purchasing, and Sales,” also in this issue.

Purchasing and Contracting Options

Several acts amend the purchasing and contracting statutes affecting local school boards. The new laws offer new options for awarding school construction contracts and increase school flexibility in purchasing supplies and equipment. They too are discussed, in detail, in this issue’s legislative summary article on school and college construction, purchasing, and sales.

State Board of Education

Uniform Education Reporting System

G.S. 115C-12(18) requires the State Board of Education to develop and implement a Uniform Education Reporting System for local school administrative units. Section 9.23 of SL 1998-212 requires the State Board to modify the current system to provide clear, accurate, and standard information on the use of funds at the unit and school level. Any new system must allow for the tracking of expenditures for personnel, textbooks, educational supplies and equipment, capital outlay, at-risk students, and other purposes. The revised system must be implemented in the 1999–2000 school year.

Student Information Management System

Schools collect an enormous amount of information about students. Because of new recording and reporting requirements and new technology, this is an appropriate time to reexamine the way schools collect and store information. Section 9.26 of SL 1998-212 directs the State Board of Education to begin developing a replacement for the existing Student Information System. The board must give priority to developing applications that maintain student records, maintain ABCs accountability data, allow the transfer of student records between local school units, and facilitate the transfer of transcripts to institutions of higher education.

Funding

Appropriations

The 1998 Appropriations Act, SL 1998-212, appropriates to the Department of Public Instruction \$139,465,944 for 1998–99 in addition to the \$4,493,184,418 appropriated in 1997 for 1998–99. Section 8.1 of SL 1998-212 establishes the Juvenile Justice Reserve Fund of over \$17 million, \$700,000 of which is allocated to the Department of Public Instruction for the Communities in Schools Program, a public-private partnership working with at-risk students. Section 9 of the 1998 Appropriations Act allocates funds from unexpended 1997–98 General Fund appropriations as follows: \$17.1 million for school employees who qualified for performance bonuses for the 1997–98 school year under the ABCs Program; \$9.0 million for longevity payments; \$24.2 million for school buses; and \$4.7 million for the State School Technology Fund.

Small School System Supplemental Funding

Section 9.27 of SL 1998-212 directs the State Board of Education to allocate funds appropriated for small school system supplemental funding according to the formula in this section. These funds must be used to supplement local current expense funds.

Civil Penalty and Forfeiture Fund

Section 7 of Article IX of the North Carolina Constitution provides that the “clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal 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.”

In *Craven County Board of Education v. Boyles*,¹ the North Carolina Supreme Court made it clear that this provision covers penalties paid to a state agency. In response the General Assembly created the Civil Penalty and Forfeiture Fund, G.S. 115C-457.1 through 115C-457.3, in 1997. This fund consists of the clear proceeds of civil penalties and civil forfeitures that are collected by state agencies and are subject to Section 7, Article IX, of the state constitution and allocates these proceeds to local school units on the basis of average daily membership. SL 1998-215 (S 882) amends many civil penalty statutes to require named state agencies to deposit the

1. 343 N.C. 87, 468 S.E.2d 50 (1996).

clear proceeds of civil penalties and civil forfeitures into the fund. Apparently this act covers only those penalties that the state agrees are subject to Section 7 of Article IX; the disposition of some remaining penalties is still under discussion.

Local Sales Tax Earmarking for School Capital Outlay

Counties receive the proceeds of three separate local sales and use taxes: a one percent tax dating from the early 1970s; a one-half percent tax authorized in 1983; and a one-half percent tax authorized in 1986. Since the inception of these taxes, counties have been required to earmark some of the proceeds for school capital outlay. SL 1998-186 (S 1150) extends that earmarking. At least 30 percent of a county's proceeds from the 1983 tax must now be used for school capital outlay for twenty-eight years after the tax was first enacted in that county. At least 60 percent of the 1986 tax must be used for school capital outlay for twenty-five years after that tax was first enacted in the county. Thus the earmarking on these two taxes extends until at least 2011.

Sales Tax Refunds for Schools

In the past counties have been eligible for refunds of sales taxes paid by their contractors on county construction projects; school units have not been eligible for these refunds. School boards and counties had cooperated in order to take advantage of the county's eligibility. If the county was listed in G.S. 153A-158.1, a school unit in that county could convey property to the county, and the county would then construct the school building. Under these circumstances the Department of Revenue was willing to refund the sales taxes paid as part of the project.

This year the General Assembly eliminated the need for this indirect route to the sales tax refund. Section 29A.4 of SL 1998-212 amends G.S. 105-164.14 to include school administrative units among the entities eligible for sales tax refunds, and they will receive refunds on all their purchases—not just on those associated with construction projects. G.S. 153A-158.1 also allows named counties to finance school construction projects through installment financing. This statute must still be used for that purpose.

Transportation

Bus Routes and Assignments

For many years individual school principals have been required to design school bus routes, assign students to those routes, and identify employees who may ride the bus. Principals also were to coordinate bus routes when a bus was assigned to two or more schools.

SL 1998-220 amends G.S. 115C-244 to transfer that responsibility to the superintendent or his or her designee. The superintendent or the superintendent's designee—not the principal—is now responsible for assigning bus drivers and appointing bus monitors. Monitors serve at the pleasure of the superintendent or the superintendent's designee.

Tort Claims

G.S. 143-300.1(a) authorizes the North Carolina Industrial Commission to hear tort claims against local school boards stemming from accidents involving school buses or other school transportation service vehicles. This statute has long allowed claims based on allegations of negligence on the part of maintenance personnel or bus drivers paid from the State Public School Fund.

Section 9.17 of SL 1998-212 amends the statute to provide that a tort claim may be made when a driver is a school board employee and is paid or authorized to be paid by that board. Section 9.17 also allows claims alleging negligence by transportation safety assistants employed under and acting in accordance with G.S. 115C-245(e) or bus monitors appointed under and acting in accordance with G.S. 115C-245(d).

The state attorney general has the authority to defend civil actions brought against drivers, transportation safety assistants, monitors, or mechanics in conformity with G.S. 143-400.1(a). When a student is injured or killed while riding on, boarding, or alighting from a school bus operated by a local school unit, any claim for medical expenses is limited by G.S. 115C-257. Section 9.17 of SL 1998-212 amends G.S. 143-400.1(d) to raise from \$600 to \$3,000 the maximum amount of medical expenses that the attorney general may pay in response to a claim.

Other School-Related Legislation

Year-round Schools

SL 1998-133 (H 1478) directs the Department of Public Instruction to form a task force to identify barriers that prevent school systems from offering year-round schools for all grade levels and ways that local boards or the State Board of Education could minimize or remove those barriers.

Tax-Exempt Financing for Private School Facilities

Private postsecondary institutions have been able to enjoy tax-exempt financing for facilities under G.S. Chapter 115E. SL 1998-124 (S 1556) extends the possibility of tax-exempt financing for facilities to private institutions for elementary and secondary education. To be eligible a school must be “a nonprofit institution within North Carolina authorized by law and engaged or to be engaged in the providing of kindergarten, elementary, or secondary education, or any combination thereof.” ■

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