

# 1998 Licensure Decisions of the North Carolina State Board of Education

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by Ann McColl

THE EXCELLENT SCHOOLS ACT OF 1997 addressed issues related to every phase of employment in North Carolina's public schools, from teacher education to professional development, contract renewals, and dismissals.<sup>1</sup> It mandated major changes in the licensure of teachers—also called certification.<sup>2</sup> In response the North Carolina State Board of Education (the State Board), faced with these legislative mandates, made a number of decisions throughout 1998 relating to licensure standards and procedures. This article discusses those decisions and the rule-making (or policy-making) processes used by the State Board in reaching those decisions.

## Licensure and Rule Making by the State Board

The State Board is unique among the agencies of state government in that it is empowered directly by the North Carolina Constitution (art. IX, § 5) to make rules and regulations for the administration of the state's free public school system:

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, *and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly* (emphasis added).

The Fall 1998 issue of *School Law Bulletin* provided a detailed analysis of the State Board's constitutional authority and the ways in which that authority may be expanded upon or limited by the General Assembly.<sup>3</sup> That analysis focused on the relationship between the State Board's authority to make rules and the requirements of the Administrative Procedure Act (APA).<sup>4</sup> To what extent is the State Board bound by the same APA rule-making requirements as state agencies generally, and to what extent is it free from those requirements? The answer, it was concluded, is just not clear.

The question is nonetheless significant, for two primary reasons. For one, rule making under the APA is tedious, difficult, and, above all, slow. An attorney for the State Board advises that issues to be resolved by APA rule making be brought to the board at least one year before the rule's planned implementation date.<sup>5</sup> For another, the State Board has in place a mixed bag of APA *rules* and board-adopted *policies*; although the two are frequently treated as equivalent in authority, the process for each is different. To change in-place *rules* adopted under APA procedures (and codified, like all state government APA rules, in the North Carolina Administrative Code) presumably requires further APA rule making. Conversely, simply to change board-adopted *policies* (collected in the State Board of Education Policy Manual) does not require APA rule making; rather such

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The author is an attorney in private practice who consults with the Institute of Government and other organizations serving public schools.

1. SL 1997-221.

2. *Licensure* and *certification* are equivalent terms that may be used interchangeably.

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3. Ann McColl, "The North Carolina State Board of Education: Its Constitutional Authority and Rule-Making Procedures," *School Law Bulletin* 29 (Fall 1998): 1-11.

4. N.C. GEN STAT. § 150B (hereinafter G.S.).

5. McColl, *School Law Bulletin*, at 5.

policy changes may be quickly adopted and immediately implemented.

The State Board has four possible processes for adopting binding decisions. One, it may adopt *policy* in accordance with its own procedures and practices. This process seems to be commonly used by the State Board when no statutorily-imposed procedures apply and when the policy to be adopted does not deal with subject matter already covered by a *rule* adopted under the APA. Because many licensure-related matters are covered already by APA rule, however, the State Board faces the difficult issue of how to be responsive in a timely manner to the General Assembly's mandates for changes in the licensure area without running afoul of APA requirements for adopting and amending rules. This issue will be considered later in the article as specific licensure decisions of the State Board are discussed. Two, the State Board may adopt *policy* governed by a special-notice requirement imposed by the General Assembly—discussed below—for decisions related to qualifying scores and other measures related to licensure.<sup>6</sup> Three, the State Board may employ the full, formal APA rule-making process. And four, the State Board may take advantage of the General Assembly's grant of a simplified APA rule-making process available uniquely to the State Board for issues related to the statewide ABCs program.<sup>7</sup>

Licensure decisions are within the State Board's constitutional authority to "supervise and administer the free public school system," as the North Carolina Supreme Court has specifically affirmed in a case concerning regulations requiring the renewal of teacher certificates.<sup>8</sup> In its opinion, the court noted that the constitutional power to make rules and regulations is absolute, except as it is limited by the state or federal constitution or by actions of the General Assembly. If the General Assembly does not enlarge or restrict the power of the State Board to promulgate and administer rules and regulations, then the State Board's authority is that which has been conferred upon it by the constitution.

In the area of licensure, the General Assembly has not expanded the State Board's already broad constitutional authority. Rather it has reiterated that authority by specifically granting to the State Board the power and

duty to certify and regulate the grade and salary of teachers and other school employees<sup>9</sup> by making it "unlawful for any board of education to employ or keep in service any teacher who neither holds nor is qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education"<sup>10</sup> and by granting to the State Board the authority for the "entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina" and for prescribing "the rules and regulations for the renewal and extension of all certificates and [setting] the salary for each grade and type of certificate which it authorizes."<sup>11</sup> The North Carolina Supreme Court, in noting some of these provisions, has stated that the State Board of Education therefore derives its powers from both the state constitution and the General Assembly.<sup>12</sup>

While these statutory provisions appear chiefly to reiterate the State Board's broad constitutional authority, the General Assembly has in other statutory provisions placed some constraints on the board's constitutional authority. These provisions—many (but not all) of which are contained in the Excellent Schools Act of 1997—establish specific standards for licensure decisions, require the State Board to follow certain processes in adopting rules and policies, and even shift authority from the State Board to local boards for certain licensing decisions.

## A Brief Overview of the Licensure Requirement

There are four distinct paths to licensure for teachers in North Carolina.

By the primary path, a student graduates from an approved teacher-preparation program at a college or university. As a newly employed teacher, the teacher receives an *initial* license after passing the required examinations. After three years of teaching and meeting licensure requirements, the teacher receives a *continuing* license that must be renewed every five years. After the fourth consecutive year of teaching with an initial or continuing license, the teacher is eligible to be considered by the local board of education for *tenure*.

6. G.S. 115C-296(a1).

7. *Id.* § 115C-17. The School-Based Management and Accountability Program (G.S. 115C-105.20 through -105.40) is commonly known as the ABCs program.

8. *Guthrie v. Taylor*, 279 N.C. 703, 185 S.E.2d 193 (1971), *cert. denied*, 406 U.S. 920 (1972).

9. G.S. 115C-12(9)a.

10. *Id.* § 115C-295(b).

11. *Id.* § 115C-296(a).

12. *Guthrie*, 279 N.C. at 712, 185 S.E.2d at 200.

Three other licensing paths reflect the need to hire from other states and the desire to bring in experienced professionals from other fields. The second path involves reciprocity agreements between North Carolina and other states, by which a teacher licensed in a cooperating state may seek an initial license in North Carolina after successfully passing the same tests required of in-state teachers.<sup>13</sup>

The third and fourth paths provide a *provisional* license as the beginning license rather than an initial license. Any teacher taking one of these paths must *clear* the provisional license and receive an initial license in order to seek a continuing license. Only four consecutive years with an initial or continuing license count toward tenure. Years taught with a provisional license do not.

The third path is known as *lateral entry*. As provided by State Board policy,<sup>14</sup> lateral entry provisions permit boards of education to employ as teachers individuals who are neither graduates of a teacher-preparation program nor licensed in other states. Lateral entry teachers can clear their provisional licenses by completing a State Board-approved alternative licensure program.

The fourth path was created by the General Assembly in 1998 to ease the current teacher shortage.<sup>15</sup> Under its provisions, a local board of education may determine that there is or will be a shortage of qualified teachers with North Carolina certificates to teach specified subjects or grade levels. Once a board makes that determination, it may hire any individual with a bachelor's degree and one of the three following characteristics: (1) an out-of-state certificate and one year of relevant classroom teaching experience, (2) one year of relevant full-time teaching at a North Carolina college or university, or (3) three years of relevant experience. The individual receives a provisional license in the first year and, if employed for a second year, becomes eligible for an initial license. For teachers who are certified out of state, the initial license comes automatically upon re-employment for the second year. Others entering through this path must pass the standard examination within one year of employment in order to obtain an initial license at the second year; otherwise, upon re-employment, the individual will continue to have a provisional license. The statute authorizing this fourth path is set to expire September 1, 2002.

13. 16 NCAC 6C.0309.

14. STATE OF NORTH CAROLINA, STATE BD. OF EDUC. POL'Y MANUAL (State Board of Education policy 03B113, July 1998) codified as 16 NCAC 6C.0305.

15. SL 1998-226, codified as G.S. 115C-296.1.

## 1998 State Board Licensure Actions

The licensure policy decisions before the State Board in 1998 concerned the elements of the initial certification program, questions related to the passing scores (and other measures) for initial certification, requirements for continuing certification and certificate renewal, and issues related to the lateral entry program.

### Initial Certification Program

The General Assembly first enacted requirements for an initial certification (or initial licensure) program in 1985.<sup>16</sup> The intent was to provide a preliminary period of intensive assistance and scrutiny before a full license was issued. In the Excellent Schools Act of 1997,<sup>17</sup> the General Assembly lengthened the initial license period from two years of teaching experience to three and directed the State Board to review initial certification requirements. (Specific requirements related to examinations are addressed in the next section on passing scores.)

In November 1998 the State Board approved revisions to the initial licensure program. These changes were adopted as board policy.<sup>18</sup> In February 1999 rule-making processes were initiated to delete much of the detail from the corresponding APA rule.<sup>19</sup> The intent appears to move much of the substance of the initial licensure program from APA rules to board policies. If the changes are approved, they likely will take effect July 1.

Three key elements of the initial licensure program were changed. First, only teachers will continue to participate in the initial licensing program; other certified personnel are to be issued continuing licenses. Second, local boards of education are still required to approve the district's initial licensure program plan, but the approved plan does not have to be submitted to the Department of Public Instruction as required in the past. Third, by October 1, 1999, each school district must submit to the State Board the district's Initial Licensure Program Annual Report, which must address specified issues, including justifications for any exceptions to the optimum working conditions for beginning teachers or to the mentor-selection guidelines provided by the State Board.

16. G.S. 115C-296(a).

17. SL 1997-221, § 5.

18. STATE BD. OF EDUC. POL'Y MANUAL (State Board of Education policy 03E111, Nov. 1998).

19. 16 NCAC 6C.0304.

## Passing Scores and Other Measures

The State Board is required by statute to adopt policies that establish the minimum scores for the standard examinations and other measures necessary to assess the qualifications of professional personnel for the purposes of certification and renewal and extension of certificates.<sup>20</sup> In the Excellent Schools Act, the General Assembly mandated further that the State Board meet specific standards: The standard initial certification exams must be "sufficiently rigorous," and the prescribed minimum scores for passing (commonly referred to as the *cut scores*) must be raised "as necessary to ensure that each applicant has adequate academic and professional preparation to teach."<sup>21</sup> In addition, the General Assembly specifically exempted the State Board from the requirements of APA rule making in setting the cut scores and other measures. But in doing so it required the State Board to provide thirty days of written notice, along with a copy of the proposed policy, to local boards of education and all North Carolina schools of education before adopting the policy.<sup>22</sup>

In general cut scores are originally determined through processes intended to arrive at a score that is validly predictive of teaching success. Other considerations can then come into play to modify the cut score, so long as it remains within the range of a valid score. Especially with new tests, there may be an advantage in starting with a lower passing score, since it is difficult to reduce the score later in order to make technical adjustments without sending the message that standards are being lowered. After all, as explicitly provided in the legislation, the cut score can be raised in order to be "sufficiently rigorous" and as necessary to ensure that the applicant has been adequately prepared to teach. The expected pass rate of candidates taking the test also can be considered, a provision that has clear implications for other issues, such as the size of the pool of eligible teachers for teaching positions. It likely was the combination of all these policy considerations that motivated the General Assembly to require the State Board to provide notice to local boards and North Carolina schools of education before it establishes new or revised scores.

In its 1998 actions the State Board approved cut scores in the following areas: the technology test,<sup>23</sup> the

Principles of Learning and Teaching (PLT) test,<sup>24</sup> and tests for the subjects of middle grades mathematics, middle grades language arts, middle school social studies, and exceptional children licensure areas.<sup>25</sup> For these test, the Department of Public Instruction presented score recommendations based on a Licensure Advisory Committee's review of standard-setting studies. In each instance the recommended cut score was on the State Board's agenda for at least two meetings before being approved. Notice of the proposed revised policy was provided through the board's regular mechanism for providing notice and information about its meetings. No additional notice was given regarding cut score policies, despite the thirty-day notice requirement.

In a related matter the State Board also adopted the passing score for the North Carolina General Knowledge Test.<sup>26</sup> Unlike the other tests, the General Knowledge Test is not used as part of the licensure process but rather is a requirement in certain circumstances for certified staff members in low-performing schools.<sup>27</sup> The State Board and the Department of Public Instruction utilized a panel to assist in the design of a standard-setting process and an appropriate cut score for each subtest. The panel then made its recommendations to the State Board. Although this might suggest that the modifications to the APA process established by the General Assembly for ABCs-related rules would apply in adopting the General Knowledge Test cut score,<sup>28</sup> the State Board relied instead on the exemption to APA rule making for adopting cut scores and other measures related to the licensure process.<sup>29</sup> As in the case of the other cut scores adopted in 1998, routine notice of its board meetings was used to provide notice of the proposed policy on the General Knowledge Test cut score.

## Continuing Certification

In the Excellent Schools Act of 1997, the General Assembly required the State Board, in consultation with the Board of Governors of The University of North Carolina, to evaluate the requirements for continuing

20. G.S. 115C-296(a).

21. 1997 SL-221, § 5, codified as G.S. 115C-296(a).

22. G.S. 115C-296(a1).

23. STATE BD. OF EDUC. POL'Y MANUAL (State Board of Education

policy 08A114, Nov. 1998). The agenda summary indicates that rule making is to be initiated; however, the board could use the exemption to rule making in G.S. 115C-296(a1).

24. *Id.* (State Board of Education policy 03A102, Mar. 1998).

25. *Id.* (State Board of Education policies 08A100, 03A102, Dec. 1998).

26. STATE BD. OF EDUC. POL'Y MANUAL (State Board of Education policy 08B115, Nov. 1998).

27. G.S. 115C-105.38A(a)(2).

28. *Id.* § 115C-17.

29. *Id.* § 115C-296(a1).

certification and further to develop enhanced requirements for continuing certification. The act also raised the standards for continuing certification, providing that the new requirements "shall reflect more rigorous standards" and "to the extent possible shall be aligned with quality professional development programs that reflect State priorities for improving student achievement."<sup>30</sup> The State Board was required to adopt new standards for continuing certification by May 15, 1998.<sup>31</sup>

The State Board approved the new standards in May 1998 through the adoption of a State Board policy whereby the new standards were incorporated into a new policy in the North Carolina Certification Manual. The new certification standards were adopted outside the APA rule-making procedures pursuant to the special-exemption process outlined in G.S. 115C-296(a1) (discussed above) for "cut scores and other measures." The board's routine notice procedures were used in lieu of the statutory notice requirements.

The new certification standards are part of a more rigorous continuing certification process. In addition to satisfying the legal requirements mandated by the Excellent Schools Act, the State Board approved recommendations to update the Teacher Performance Appraisal Instrument and to require that the performance instrument address national standards for the knowledge, skills, and dispositions that beginning teachers should possess. The resulting performance-based licensure process is a significant change and is in effect for all beginning teachers hired after January 1, 1998. Since the adoption of the standards by the board, the Department of Public Instruction has made information about the new continuing certification process available through training and documents, including those available on its Web site.<sup>32</sup> Implementation of the new standards and instruments, originally targeted for July 1, 1999, has been delayed until July 1, 2000, in order to allow enough time for field testing and validation.

## Certificate Renewal

The Excellent Schools Act also addressed certificate renewal, requiring the State Board, in consultation with local boards of education and the Board of Governors of The University of North Carolina, to reevaluate and enhance the requirements for renewal of teacher certificates. The General Assembly further directed the State

Board to consider modifications to certificate renewal achievement and to make it a mechanism for teachers to continually develop their knowledge and professional skills.<sup>33</sup> The State Board was required to adopt the new standards for certificate renewal by May 15, 1998, and to apply them to certificates that expire after July 1, 1998.<sup>34</sup>

In July 1998 the State Board approved a Licensure Renewal Policy that incorporates the standards adopted by the board the previous May.<sup>35</sup> The new policy has been included in the board's Licensure Manual and appears to be in use, even though under the APA, rules are not recognized as being in effect until after the APA process has been successfully completed. The APA rule-making process was initiated in February 1999 to modify the existing rule on licensure renewal. At the May meeting of the State Board minor modifications to the proposed rule were approved and are incorporated in the proposed rule submitted to the Rules Review Commission.

Included in this Licensure Renewal Policy are changes that specify more particularly the types of activities for which renewal credit will be given. In addition the policy provides a new option for school districts to develop an alternative licensure renewal plan that is competency based and results oriented. The optional plan may, for example, waive specific hour requirements of training that a licensed employee must meet and focus instead on the knowledge and skill acquired. In order for a school district to take advantage of this option, outcome measures must be approved in advanced of implementation by the Department of Public Instruction's Division of Human Resource Management; the plan must also establish connections between professional development, the school-improvement plan, and the individual's licensure area or job responsibilities.

## Lateral Entry

More than a decade ago the General Assembly required the State Board to develop criteria and procedures to encourage the lateral entry of skilled individuals from the private sector into teaching.<sup>36</sup> The State Board responded with a rule that was adopted under

30. SL 1997-221, § 8, codified as G.S. 115C-296(b).

31. SL 1997-221, § 8 (not codified).

32. <http://www.dpi.state.nc.us>.

33. SL 1997-221, § 14, codified as G.S. 115C-296(b).

34. SL 1997-221, § 14, adoption date codified as G.S. 115C-296(b) (implementation date not codified).

35. STATE BD. OF EDUC. POL'Y MANUAL (State Board of Education policy 03E106, July 1998).

36. G.S. 115C-296(c).

APA procedures and codified in the Administrative Code in 1986.<sup>37</sup> In July 1998 the State Board approved a new policy on lateral entry and authorized the initiation of APA rule making to modify its in-place rule in line with the new policy. This policy also was included in the Licensure Manual and appears to be in use,<sup>38</sup> even though the changes have not been approved through the APA rule-making process. Rule making was initiated in February. If the changes are approved, the rule likely will be in effect by July 1.

The board-approved lateral entry policy provides for significant changes, including increasing the term of the initial lateral entry license from one to two years; strengthening the eligibility criteria; allowing lateral entry teachers to clear their lateral entry licenses by completing a State Board-approved alternative licensure program; and requiring school districts to provide specified working conditions to individuals with lateral entry certificates. In addition the revisions provide a nonrenewable, one-year emergency credential for an individual who holds at least a baccalaureate degree but does not qualify for a lateral entry license. The policy specifies certain requirements that must be met in order for a school district to take advantage of the emergency credentials.

Other lateral entry changes have been made directly by the General Assembly. Although the State Board has constitutional and statutory authority over licensing processes, in the 1998 session of the General Assembly, the legislature shifted some of that authority from the State Board to local boards by allowing them, in certain circumstances, to hire individuals who have not been through the State Board's licensing process (the "fourth path" to licensure, discussed on p. 14). Under a temporary provision, during the 1998-99 fiscal year, a local school administrative unit may employ a

person who is not certified as an assistant principal in an assistant principal position if (1) the person is a part-time student in an approved master's program in school administration and (2) the employment is during the one-year internship under that program.<sup>39</sup> An even broader exemption from the licensing process allows local boards, again in certain circumstances, to hire teachers who do not meet State Board requirements for initial or continuing state certification. If the local board determines that there is or that there will be a shortage of qualified, certified teachers in specified grade levels or subject areas, that board may employ an individual for up to one year under a provisional certificate if that individual has at least a bachelor's degree; is eligible for re-employment by his or her prior employer; and has either (1) an out-of-state certificate and one year of classroom teaching experience, (2) one year of full-time teaching at a North Carolina college or university, or (3) three years of other relevant experience. To take advantage of this lateral entry option, local boards must meet specific requirements for evaluations and mentors.<sup>40</sup> This option expires on September 1, 2002, but remains in effect for any teacher employed by this legislation before that date.

In December the State Board adopted a policy on Alternative Entry Licensing Process to reflect these new provisions.<sup>41</sup> The policy mirrors the law and does not add any requirements.

## Licensure Manual

The State Board adopted and codified the Licensure Manual as board policy in July 1998. This action removes any question of whether the manual has been approved by the State Board and whether it carries the weight of the State Board's authority. ■

37. 16 NCAC 6C.0305.

38. STATE BD. OF EDUC. POL'Y MANUAL (State Board of Education policy 03B113, July 1998).

39. SL 1998-212, § 9.29.

40. S 1124, codified as G.S. 115C-296.1.

41. STATE BD. OF EDUC. POL'Y MANUAL (State Board of Education policy 03B113, Dec. 1998).