

# Modifications to Laws Affecting Employment in the Public Schools

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by Robert P. Joyce

IN 1997 THE GENERAL ASSEMBLY, in passing the Excellent Schools Act, made significant changes in all aspects of public school employment: teacher preparation and certification, performance evaluation, acquisition of tenure, employee demotions and suspensions, dismissal procedures, and salaries. In 1998, through a hodgepodge of session laws and special provisions in the Appropriations Act, the General Assembly modified some of its 1997 innovations, such as the requirement of a general knowledge test for some teachers. It also added some new elements—provisions for the employment of uncertified teachers, for example. This article outlines those modifications and additions as they relate to public school employment.

## General Knowledge Tests for Teachers

### How the 1997 Provisions Were to Be Applied

The School-Based Management and Accountability Program, enacted in 1996 and commonly known as the ABCs Program, called for the classification of schools based on certain measures tied to student performance on particular standardized tests. Some schools, as a result of these measures, are classified as *low-performing*. The State Board of Education (the State Board) assigns outside help in the form of *assistance teams* to some of these low-performing schools.

The 1997 Excellent Schools Act added new Section 115C-105.38A of the North Carolina General Statutes (hereinafter G.S.) requiring that, at the end of the 1997–98 school year, all certified staff members employed in low-performing schools to which assistance teams had been assigned take a general knowledge test to be designed by the State Board. (Some exemptions were made for teachers who had been tested previously.) A certified staff member who failed the test would be offered remediation (including, perhaps, leave with pay) and a chance to take the test again. Should the staff member fail the test a second time, he or she would be offered further remediation and another chance to take the test. After a third failure, the staff member would be dismissed. The first administration of the general knowledge test was to take place at the end of the 1997–98 school year.

### Changes in the 1998 Session

As the time for administration of the test approached, legislators began to hear complaints that it was unfair to test the employees of low-performing schools whose general knowledge had never been questioned. Responding to that criticism, the General Assembly, early in the 1998 session, passed SL 1998-5 (S 1126), requiring the various assistance teams to review the evaluations of all certified staff members whom the teams had designated as “category 3 teachers” (those who had received certain low scores on their performance evaluations) and determine in each case whether a lack of general knowledge contributed to that person’s category 3 designation. If it did, he or she was required to take the test administered at the end of the 1997–98 school year.

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SL 1998-5 provided a different procedure for the 1998-99 and subsequent school years. Either the principal of a low-performing school or the assistance team assigned to that school may now make the determination that a certified staff member's performance (whether category 3 or not) is impaired by a lack of general knowledge and may recommend to the State Board that the staff member be tested. The State Board must then administer the general knowledge test to all staff members so identified before the end of the fiscal year.

In two further changes, SL 1998-5 removed the exemptions for previously tested teachers and limited the offer of remediation to only the first failure of the test; dismissal would follow the second. Staff members would not be allowed to take the test a third time.

## Performance Evaluations

In SL 1998-5 the General Assembly rewrote the statutes governing performance evaluations for certified employees in the public schools, repealing old G.S. 115C-326 (which was the chief performance evaluation statute) and replacing it with new G.S. 115C-333 through -335.

### Teachers in Low-Performing Schools

The replacement statutes include new provisions relating to performance evaluations of teachers in schools classified as low-performing.

#### *Annual Evaluations of All Certified Employees*

New G.S. 115C-333(a) requires that local boards of education provide for the annual evaluation of all certified employees (not just teachers) in schools that have been classified as low-performing and for which no assistance team has been assigned by the state. In the case of teachers, the evaluation is to be performed by the school principal, the assistant principal who supervises the teacher, or the *assessment team* assigned to the school by the school board (see below).

#### *Action Plans or Dismissal*

If a certified employee in a low-performing school receives a rating of "unsatisfactory" or "below standard" on any function of the evaluation that is related to the employee's instructional duties, the person or assessment team that conducted the evaluation must recommend to the superintendent either (1) that the employee be required to follow an action plan designed to

improve his or her performance or (2) that the superintendent recommend to the school board that the employee be dismissed or demoted. The superintendent chooses which.

If the decision is to develop an action plan, it is to be done by the person who conducted the evaluation or the employee's supervisor, unless the evaluation was conducted by an assessment team, in which case the team is to develop the plan in cooperation with the supervisor. Action plans must be designed to be completed within ninety instructional days or by the beginning of the next school year.

Once the employee has completed the action plan, he or she is to be evaluated a second time, by the superintendent, the superintendent's designee, or the assessment team. If on the second evaluation the employee receives one "unsatisfactory" or two "below standard" ratings on any function related to his or her instructional duties, the superintendent must recommend dismissal or demotion. The results of the second evaluation will constitute substantial evidence of the employee's inadequate performance within the meaning of the Teacher Tenure Act (G.S. 115C-325).

#### *Creation of Assessment Teams*

As discussed above, a school classified as low-performing may be assigned an assistance team by the state. The potential consequences resulting from the assignment of an assistance team were laid out in 1996 in the legislation putting the ABCs Program into place. One such consequence is that a teacher who receives unsatisfactory performance evaluations can be dismissed from employment by the State Board of Education.

But what about low-performing schools that are not assigned *assistance teams*? New G.S. 115C-334 directs local school boards to assign to such schools *assessment teams* to be made up of members trained in the proper administration of employee evaluations. (If service on the assessment team is an additional duty for an employee of a local school board, the board may pay the employee for the additional work.) The assessment team then conducts the evaluations (described above) of the certified employees in the low-performing schools and develops action plans as needed.

### Teachers Not in Low-Performing Schools

Old G.S. 115C-326 required probationary teachers (teachers who have not acquired tenure or "career status") to be evaluated at least four times annually. Three

of the evaluations were to be conducted by a qualified school administrator or his or her designee (with at least one of the three conducted by the administrator), and one was to be conducted by a teacher. Tenured (“career status”) teachers were to be evaluated at least once annually, unless the local school board adopted a policy calling for evaluations more or less frequently.

New G.S. 115C-333(a) continues these performance evaluation provisions for teachers not in low-performing schools with one change: Whereas the old act specified a *school administrator*, the new act specifies that the three evaluations of a probationary teacher are to be performed by a *principal* or designee (with at least one done by the principal).

### **Action Plans**

The new statute also requires that local school boards adopt the policy that action plans be required for certified employees not employed in low-performing schools who receive “unsatisfactory” or “below standard” ratings on a performance evaluation (unless, of course, the superintendent is recommending dismissal, demotion, or nonrenewal of the employee). The statute does not provide guidance regarding the contents of such a policy. For example, it does not specify a ninety-day completion provision like that contained in the statute for teachers in low-performing schools, nor does it require second evaluations, as mandated for teachers in low-performing schools. On the other hand, the new statute does not prohibit such provisions.

### **Immunity from Liability for Negligence**

New G.S. 115C-333(c) provides that no board of education or employee of a board may be held liable for negligence arising out of any action taken or any omission in connection with performance evaluations of employees. The immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing, and it may be waived by the purchase of liability insurance.

### **Evaluations of Some Superintendents**

New G.S. 115C-333(f) requires a local board of education to conduct an evaluation of its superintendent if during a year the State Board has designated as low-performing one or more schools in a unit with ten or fewer schools, two or more schools in a unit with up to twenty schools, or three or more schools in a unit with more than twenty schools.

## **Hiring Teachers Fired by Other Boards of Education**

SL 1998-5 adds a new statute, G.S. 115C-333(d), providing that if a board of education dismisses *any* employee (though the statute is apparently intended to apply only to employees with instructional duties) for any reason other than a reduction in force, it must so notify the State Board of Education and the State Board must annually provide the names of those individuals to all local boards. If another local board hires one of these individuals, the superintendent (or designee) in the new system must, within sixty days, observe the employee, develop an action plan for the employee, and submit the plan to the State Board. The State Board must then review the plan and may provide comments and suggestions to the superintendent.

If on the next evaluation the employee receives at least a “satisfactory” rating on all functions related to his or her instructional duties, the local board must notify the State Board that the employee is in good standing. After this notification, the State Board will stop sending the individual’s name to local boards.

If on that next evaluation, however, the employee receives an “unsatisfactory” or “below standard” rating on any function that is related to his or her instructional duties, the local board must notify the State Board and the State Board must revoke the employee’s certificate [under newly added G.S. 115C-296(d)].

## **Employment of Administrators**

The General Assembly in 1998 made several changes related to the employment of public school administrators, the most significant concerning the employment consequences to principals whose schools are classified as low-performing.

### **Dismissal of Principals from Low-Performing Schools**

As part of the ABCs Program established in 1996, the General Assembly enacted G.S. 115C-105.39(a) and -325(q)(1) providing for the dismissal of principals from low-performing schools. Under these provisions, as soon as a school was identified as low-performing and an assistance team was assigned by the state, the State Board of Education was required to suspend the school’s principal if he or she had been principal at the school for as long as two years (the State Board was

permitted but not required to suspend a principal who had been at his or her school a shorter time). The statute then required that within sixty days a hearing be held before a panel composed of three members of the State Board to determine whether the principal should be dismissed. Unless the principal could establish at the hearing that the factors leading to the school's identification as low-performing did not include his or her inadequate performance, the panel was required to order the dismissal of the principal.

SL 1998-59 (S 1129) amends both G.S. 115C-105.39(a) and -325(q)(1) to make several changes in the procedure for dismissing principals from low-performing schools.

### *Identification of Low-Performing Schools*

The 1996 provisions covered only schools that were both (1) identified by the state as low-performing and (2) assigned an assistance team by the state. As amended in 1998, G.S. 115C-105.39(a)—and a new G.S. 115C-105.37(a1)—requires local boards of education to identify low-performing schools; it also makes the new principal dismissal procedure (outlined above) applicable to schools identified as low-performing by either the state or a local school board.

### *Options for the Superintendent*

Under amended G.S. 115C-105.39(a), once a school is identified as low-performing, the local superintendent has four options regarding the principal of that school:

1. The superintendent may recommend that the principal keep his or her position without remediation. This option is available only if the principal has held the post for no more than two years at the time the school is identified as low-performing.
2. The superintendent may recommend that the principal keep his or her position but work under a plan of remediation.
3. The superintendent may recommend to the school board that the principal be transferred to another position. This option is available only if the transfer is to another principal position at a school of a classification in which the principal previously had demonstrated two years of success; there is a plan to evaluate and provide remediation to the principal for at least a year after the transfer; the parents of the students at the new school are notified of the

principal's status; and the new school is not classified as low-performing.

4. The superintendent may proceed with the dismissal or demotion of the principal, as discussed in the following sections. The superintendent must notify the local board of his or her intention to recommend dismissal or demotion, and the local board must then notify the State Board.

### *Procedure When the Superintendent Recommends Dismissal*

If the superintendent has decided to proceed with the dismissal or demotion of the principal, there is no further State Board involvement (this is the case whether or not the state eventually assigns an assistance team to the school) and the local board takes the action it deems appropriate with respect to the principal's demotion or dismissal. The statute does not specify the procedures that the local board must follow in such a case, but presumably the procedures applicable to the dismissal of a teacher under the Teacher Tenure Act apply—appointment of a case manager, and so forth.

### *Procedure When Dismissal Is Not Recommended and an Assistance Team Is Assigned*

If the superintendent has decided not to recommend the dismissal or demotion of the principal and the state assigns an assistance team to the school, the statute calls for a different procedure. The State Board must review any action taken by the local board and must vote to accept, reject, or modify it. If the State Board rejects or modifies the local board's action but does not recommend dismissal of the principal, the local board may either implement the State Board recommendations or demand a hearing by the State Board, after which the State Board will issue a final decision that is binding on the local board. If, on the other hand, the State Board, in rejecting or modifying the local board's action, determines that dismissal is appropriate, the State Board proceeds directly with dismissal under G.S. 115C-325(q)(1), as amended by SL 1998-59 (discussed in the next section).

### *Dismissal by the State Board*

G.S. 115C-325(q)(1), as amended by SL 1998-59, outlines three circumstances in which the principal of a low-performing school may be dismissed by the State Board of Education:

1. The State Board or its designee may recommend dismissal before an assistance team assigned to the school has conducted an evaluation of the principal. In that case, the principal is to be suspended with pay and within sixty days a panel of three members of the State Board is to conduct a hearing. After that hearing the panel may order the dismissal of the principal if it determines that the low performance of the school is due to the principal's inadequate performance. The burden of proof is on the principal to establish that the factors leading to the school's low performance were not due to his or her inadequate performance.
2. The State Board or its designee must make a recommendation of dismissal if it receives two consecutive evaluations by the assistance team "regarding the principal's inadequate performance." As in the first case, a panel of three members then conducts a hearing. The panel must order dismissal of the principal if it determines that the low performance of the school is due to the principal's inadequate performance. Once again, the burden is on the principal to prove otherwise.
3. A panel may order dismissal if it determines that the school has not made satisfactory improvement after the assignment of the assistance team and after the assistance team has made a recommendation to dismiss the principal for one or more grounds established by the Teacher Tenure Act (G.S. 115C-325) for the dismissal of career employees. In this situation, the burden of proof at the hearing is on the State Board to establish that the school failed to make satisfactory improvement and that one or more of the grounds for dismissal under the Teacher Tenure Act exist.

In all hearings, two consecutive evaluations that include written findings and recommendations regarding the principal's poor performance amount to substantial evidence of inadequate performance under the statute.

### **Timing of Administrator Term Contracts**

G.S. 115C-287.1 provides that principals, assistant principals, supervisors, and directors (other than those who previously achieved tenure) are to be employed under a contract with a duration of between two and four years, ending on June 30 of the contract's final twelve months. SL 1998-220 (S 1125) amends the statute to

provide that in the case of an initial contract, the first contract year may span less than twelve months if the contract becomes effective on or before September 1.

### **Administrator Certification**

SL 1998-220 amends G.S. 115C-290.8, which specifies who is exempt from taking the North Carolina Public School Administrator Exam, to exempt anyone who in the five years preceding January 1, 1998, obtained or renewed a North Carolina administrator/supervisor certificate. The statute also directs the State Board to adopt policies for the certification of individuals who hold administrator certificates issued in other states. SL 1998-16 (H 989) amends G.S. 115C-290.5 and -290.7 to repeal the \$150 fee for taking the administrator exam.

Under Section 9.29 of SL 1998-212 (S 1366), for the 1998-99 school year, a school unit may employ as an assistant principal a person who is not certified for that position if the person is a part-time student in an approved master of school administration program and provided that the employment occurs during the program's required one-year internship period.

### **Employment of Teachers**

The following four provisions relating to the employment of teachers were enacted by the General Assembly in 1998.

#### **Employment of Teachers without Certificates**

SL 1998-226 adds a new G.S. 115C-296.1 permitting local boards of education to make the determination that there is or will be a shortage of qualified teachers holding North Carolina teaching certificates available to teach specified subjects or grade levels and then to employ as teachers individuals who do not meet the qualifications for initial or continuing certification. This provision expires September 1, 2002, but it remains effective with respect to individuals employed under it before then.

Three kinds of individuals (discussed below) may be employed under this provision; all must have at least a bachelor's degree and be eligible for reemployment by their prior employers. For each person so employed, a local board must (1) have a plan to determine the person's competence as a teacher, including a review of the performance of the students taught by the person, (2) provide a mentor teacher if the person does not have a year of classroom teaching experience,

and (3) provide the observations and evaluations required by G.S. 115C-333.

### *Individuals Licensed in Other States*

A person who holds an out-of-state certificate authorizing him or her to teach a certain grade or subject and who has at least one year of classroom teaching experience may be employed under this new provision. If this person is reemployed after one year, he or she is deemed to have satisfied the academic and professional preparation required to receive an initial or continuing North Carolina certificate and need not take the certification exam.

### *Individuals with One Year of College-level Teaching Experience*

A person with one year of classroom teaching experience in a North Carolina community college, college, or university may be employed under this new provision. If such a person passes the certification exam during the first year and is reemployed for a second year, he or she will receive an initial teacher certificate. Otherwise, the person upon reemployment is treated as a lateral entry teacher.

### *Other Individuals*

A person with three years of other experience may be employed under this new provision, provided the local board determines that both the individual's experience and postsecondary education are relevant to the grade and subject to be taught. If such a person passes the certification exam during the first year and is reemployed for a second year, he or she will receive an initial teacher certificate. Otherwise, the person upon reemployment is treated as a lateral entry teacher.

### **Lateral Entry Licensure**

Section 18 of SL 1998-220 directs the State Board of Education and the UNC Board of Governors to develop a proposal for a statewide lateral entry teacher licensure program and to report on the proposal to the Joint Legislative Education Oversight Committee by September 1, 1999.

### **Teacher Certification Fees**

SL 1998-167 (S 1594) enacts a new statute, G.S. 115C-296(a2), setting the following fees for teacher certification and administrative changes:

- application for a duplicate certificate or for copies of documents in the certification files, \$30;
- application for a renewal, extension, addition, upgrade, or variation to a certificate, \$55;
- initial application for a new, in-state, approved program graduate, \$55;
- initial application for an out-of-state certificate, \$85; and
- all other applications, \$85.

### **Employment of Substitute Teachers**

Section 9.16 of SL 1998-212 amends G.S. 115C-12(8) to set the minimum pay for substitute teachers who hold teacher certificates at 65 percent of the daily rate of an entry-level teacher with an "A" certificate and 50 percent for substitutes without such certificates. The new provision also provides (1) that local boards may use state funds allocated for substitute teachers to hire full-time substitute teachers and (2) that in no case may pay for substitutes who do not hold certificates exceed pay for substitutes who do.

### **Drinking and Driving a School Bus**

SL 1998-182 (in Section 27) adds a new G.S. 20-138.2B making it a Class 3 misdemeanor for a person to operate a school bus after having consumed enough alcohol to register a blood-alcohol level of greater than 0.00 percent (that is, after consuming any alcohol at all).

### **ABCs for Residential Schools**

SL 1998-131 applies the principals of the ABCs Program, which since 1996 has applied to North Carolina's public schools, to the four residential schools operated by the Department of Health and Human Services for students who are sight- or hearing-impaired. Under new Part 3A of Article 3 of G.S. Chapter 143B, the State Board of Education is to establish performance standards for these schools, recognize the superintendents and instructional personnel in schools that achieve or exceed expected levels of growth (including financial recognition), identify low-performing schools, and assign assistance teams to low-performing schools. The secretary of Health and Human Resources also will be empowered to identify low-performing schools and to assign assessment teams to low-performing schools without assistance teams.

The new statutory provisions require evaluations of certificated personnel in low-performing residential schools that are very similar to those required for teachers in low-performing public schools. They also impose employment consequences on superintendents of low-performing residential schools that are very similar to those imposed on principals of low-performing public schools as well as employment consequences on certificated residential school personnel that are very similar to those imposed on teachers in low-performing public schools (including the adoption of action plans, as described above).

In addition, the new provisions authorize computerized criminal history checks on applicants for employment in the residential schools in much the same way that such checks are authorized for employees in the public schools.

## Teacher Salaries, Leave, and Benefits

### Salary Increases for Public School Employees

SL 1998-153 enacts a teacher salary schedule for 1998-99. The schedule for "A" certificate teachers ranges from \$23,100 for first-year teachers employed on a ten-month basis to \$41,820 for teachers with twenty-nine years of experience. For "G" certificate teachers, the corresponding figures are \$24,540 and \$44,430. Certification based on the six-year degree level results in a salary that is \$1,260 higher than the compensation for "G" certification, and certification at the doctorate level results in a salary that is \$2,530 higher. The act also sets out salary schedules for principals and assistant principals and salary ranges for other administrators.

In addition, the General Assembly enacted several other salary-related provisions:

- Non-certificated employees received a 3 percent pay raise.
- Some public school employees received a one-time, 1 percent bonus.
- The General Assembly allocated \$17,118,003 to fulfill the state's obligations to public school employees who qualified in 1997-98 for bonuses under the ABCs Program.
- A provision for a maximum payment of \$1,100 for service as a mentor teacher was continued.
- School nurses were placed on the "G" salary schedule.

- An ongoing principals' salary study was revised to include the issues of whether the current relationship between the salary schedules for teachers and principals should be increased to a 3 percent differential and whether assistant principals should be given additional steps for years of experience.
- A provision was added permitting dues deductions from retired employees' retirement benefits for membership in certain employee organizations.
- The State Board of Education was directed to evaluate the provision by local boards of lump-sum, 1 percent payments to principals and assistant principals in schools found by the local boards to meet the goals of local plans for maintaining safe and orderly schools.

### School Calendar and Leave

In Section 9.18 of SL 1998-212, the General Assembly made three changes related to school calendars and leave for school employees.

First, with respect to the 1998-99 school year only, it provides \$4.25 million to pay teachers who have accumulated the maximum vacation leave accumulation for vacation days forfeited because they were required to attend required workdays on days that otherwise would have been vacation days. For 1998-99, these funds are available for days scheduled by local boards and individual schools as follows: two for days scheduled by local boards of education and four for days scheduled by local principals.

Second, an amendment to G.S. 115C-84.2(c) (effective for the 1999-2000 school year) requires that local boards and principals give teachers at least fourteen calendar days notice before requiring them to work on teacher workdays instead of taking vacation leave.

And third, an amendment to G.S. 115C-84.2(b) (effective for the 1999-2000 school year) increases from thirty to forty-two days the consecutive period when, during the traditional summer break, teacher attendance is not required. It also provides that at the request of the local school board or principal, a teacher may elect to work on one of those forty-two days in lieu of working on another scheduled workday.

## **Charter School Employee Retirement and Health Benefits**

The General Assembly, in Section 9.14A of SL 1998-212, has provided that the board of directors of each charter school operated by a private nonprofit corporation must make an irrevocable decision as to whether the charter school will participate in the North Carolina Retirement System for Teachers and State Employees and in the North Carolina Comprehensive

Major Medical Plan (G.S. 135-5.3 and -40.3A). The board of directors must make separate decisions with respect to participation in the retirement system and participation in the medical plan within thirty days of signing its written charter. If a board chooses not to participate, the employees of the charter school will have no claims against the state retirement system or medical plan. ■

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