

1997 North Carolina Legislation Affecting Employment in the Public Schools

by Robert P. Joyce

Note: This file contains the text of an article that appeared in *School Law Bulletin*, Fall 1997, 17–28. Copyright 1997. Institute of Government. Delineations within the text indicating titles and headings are preserved. No attempt has been made to display graphic images or pagination of the typeset article. Footnote numbers, which appear in brackets at the reference point in the article, are linked to the footnote text. Figures and tables have been omitted. A printed copy of this article may be obtained for a photocopying fee of \$.10 per page with a \$2.00 minimum.

Please e-mail, phone, or fax Katrina Hunt at the numbers below for assistance and information about purchasing specific articles.

- e-mail: khunt@sog.unc.edu
- phone: 919/966-4119
- fax: 919/962-2707

The author is an Institute of Government faculty member who specializes in school law.

The 1997 General Assembly enacted six pieces of legislation that, cumulatively, affect every stage of the employment relationship between a school unit's board of education and its teachers, administrators, and staff. The theme running through all six is the General Assembly's interest in raising the standards of teacher and administrator preparation and performance. The most significant of the six is the Excellent Schools Act (SL 1997-221). That act alone affects teachers' college preparation in schools of education, certification, professional performance and evaluation, acquisition of tenure, demotions and suspensions, dismissal procedures, and salaries. Special provisions in the Current Operations and Capital Budget Act (SL 1997-443) have nearly as broad a scope. The four remaining pieces of legislation focus on three general areas: testing of school administrators (SL 1997-20 and SL 1997-383); procedures to be used in the suspension or revocation of teacher and administrator certificates (SL 1997-325); and charter school employment (SL 1997-430). This article will detail the effects of these new laws on public school employment.

Changes Affecting Schools of Education

The Excellent Schools Act begins its theme of raising the standards of teacher preparation and performance with four provisions in Section 4 affecting college teacher training programs. The first provision amends G.S. 115C-296(b) to direct the State Board of Education, in coordination with the Board of Governors of the University of North Carolina (UNC), to "continue to raise standards for entry into teacher education programs."

The second also amends G.S. 115C-296(b), adding a new requirement that North Carolina institutions of higher education offering teacher education programs (including master's programs) must provide performance reports to the State Board of Education showing the following: (1) grade point averages and entrance test scores for entering students; (2) graduation rates; (3) time-to-graduation rates; (4) average scores of graduates on certification exams; (5) percentage of graduates receiving initial certification; (6) percentage of graduates hired as teachers; (7) percentage of graduates remaining in teaching for four years; and (8) results of a common survey showing graduates' satisfaction and employers' satisfaction.

The third provision directs the State Board of Education to conduct comprehensive studies of supply and demand for teachers and school administrators and to report the findings to the Joint Legislative Education Oversight Committee by November 15, 1998. Section 8.43 of the budget act allocates \$75,000 for the two studies.

The fourth provision directs the UNC Board of Governors to report by March 15, 1998, on (1) efforts to improve teacher preparation through implementation of a requirement that education students have second majors, (2) recommendations for strengthening the requirement, and (3) ways to provide greater consistency for the second major requirement throughout the UNC system.

In addition, Section 17 of the Excellent Schools Act directs the UNC Board of Governors to develop a plan to require education master's degree candidates to take a more rigorous course of study than is currently required, including concentration in the academic areas in which the degree candidate will teach.

And finally, in a related matter, Section 12 of the Excellent Schools Act adds new G.S. 115C-12(26) and G.S. 116-11(12a), directing the State Board of Education to recommend and the UNC Board of Governors to create revised programs for professional development for public school professionals "aligned with State education goals and directed toward improving student academic performance."

Changes Affecting Professional Certification

The Excellent Schools Act continues its theme of raising the standards of teacher preparation and performance with provisions that make it more difficult to achieve teacher or administrator certification and that create a new, advanced level of certification.

Longer initial certification period. Until the passage of the Excellent Schools Act, the certification program administered by the State Board of Education allowed teachers new to the profession to qualify for an initial certification, good for two years, only after successfully completing a teacher education program and passing an examination. At the end of that two-year period, a teacher could qualify for a continuing certificate, good for five years and then renewable. Section 7 of the act amends G.S. 115C-296(b) to extend the initial certification period to three years. This change applies to teachers who have not received continuing certification before January 1, 1998.

Changes in the initial certification exam. G.S. 115C-296(a) requires that a teacher pass a standard examination before achieving initial certification. Section 5 of the Excellent Schools Act amends that section, adding a provision directing the State Board of Education to "make the standard initial

certification exam sufficiently rigorous and raise the prescribed minimum score as necessary to ensure that each applicant has adequate academic and professional preparation to teach.” SL 1997-383 adds a new G.S. 115C-296(a1) directing the state board to develop minimum score policies and providing that such state board rules are not subject to the rule-making provisions of the Administrative Procedure Act.

Study of changes in granting of continuing certification.Section 14 of the Excellent Schools Act directs the State Board of Education to “reevaluate and enhance” the requirements for renewal of teacher certificates, adopting new standards for renewal by May 15, 1998.

Creation of advanced certificate.Section 17 of the Excellent Schools Act directs the State Board of Education to develop a new category of teacher certification to be known as the “Masters/Advanced Competencies certificate.” An applicant must complete a master’s degree program that includes rigorous academic preparation in the applicant’s teaching subject or otherwise demonstrate the skills and knowledge of a master teacher. Teachers holding a G certificate by September 1, 2000, will qualify for the Masters/Advanced Competencies certificate without additional requirements. After that date, no additional G certificates will be awarded.

Certificate revocation procedures.In 1996 the General Assembly added G.S. 115C-296(d), specifying grounds for revoking or refusing to renew certificates for teachers in schools identified as low-performing where revocation or nonrenewal is based on the recommendation of the assistance team assigned to the school. SL 1997-325 amends that section to direct the State Board of Education to adopt rules to establish the reasons and procedures for suspensions and revocations of certificates in all circumstances and authorizes the state board to issue subpoenas for documents or testimony in connection with suspension or revocation proceedings.

Study lateral entry and out-of-state certification. Section 8.22 of the budget act directs the State Board of Education to establish an advisory committee to study the lateral entry program (a program that encourages entry into the teaching profession by skilled individuals from the private sector). The study will focus on the recruitment, retention, training, and evaluation of lateral entrants, especially on recruiting those with significant post-bachelor’s degree experience for high schools. The same section directs the state board to review the issue of certifying out-of-state teachers to determine how to facilitate the certification in North Carolina of qualified teachers trained elsewhere.

Changes Affecting Teacher Performance and Evaluation

The Excellent Schools Act’s focus on raising the standards of teacher preparation and performance is reflected in provisions concerning the performance of teachers and the evaluation of that performance.

Revised schedule and standards for evaluating teachers. G.S. 115C-326(a) requires the State Board of Education to implement uniform performance standards to evaluate teachers’ performance and directs local boards of education to adopt rules providing for the evaluations. The statute has not set out a schedule for evaluations, leaving that to the discretion of the state board and the local boards. Section 10 of the Excellent Schools Act amends the statute to provide that all nontenured teachers are to be observed at least once annually by a qualified school administrator, once annually by a teacher, and two other times by an administrator or someone else assigned the job. The local board may

provide for fewer evaluations of tenured teachers. As amended, the statute directs the State Board of Education to revise (by May 15, 1998) the evaluation standards to reflect the extent to which the evaluated employee's performance has improved student learning. Section 10 also directs the State Board of Education to develop training programs for school administrators to improve their evaluation skills, leading to evaluations that both relate to improving student performance and contribute to decision making on contract nonrenewal and dismissal for inadequate performance.

Program for mentors for all beginning teachers. Section 9 of the Excellent Schools Act directs the State Board of Education to develop—after conducting a comprehensive study of the needs of new teachers—a mentoring program to “provide ongoing support for teachers entering the profession.” The program is to include guidance on optimum teaching load, extracurricular duties, student assignment, and other working conditions, as well as criteria for selecting the mentors.

Changes Affecting the Acquisition of Tenure

The Excellent Schools Act's focus on raising standards is reflected in the act's changes to the provisions of the teacher tenure act governing how teachers get tenure. In their first years of employment, teachers are in a “probationary” status, and the board of education may end their employment by the simple nonrenewal of the contract at the end of the school year. That nonrenewal may be for any reason the board chooses, so long as it is not arbitrary or capricious, or for personal, political, or discriminatory reasons. Once a teacher gains tenure, however, dismissal from employment at any time (during the school year or at the end of the school year) may be imposed only for one of fifteen grounds specified in the teacher tenure act and only through use of the procedures set out in the act.

G.S. 115C-325(c) specifies how teachers acquire tenure. Until the passage of the Excellent Schools Act, probationary teachers acquired tenure in one of two ways. First, tenure attached automatically, as soon as the board of education voted near the end of the third probationary year to renew the teacher's contract. Or, second, if the board failed to vote one way or the other at the end of the third year, and the teacher began employment for a fourth year, tenure attached automatically on the first day of the fourth year. Section 11 of the Excellent Schools Act works changes in three significant areas: the time to tenure; the method of voting on tenure; and the consequences of a board's failure to follow appropriate procedure. The changes apply only to teachers who have not attained tenure by July 1, 1998.

Time to tenure. The act lengthens the probationary period from three years to four. Teachers who are finishing their third probationary year in the spring of 1998 will still acquire tenure under the old system described above. But for other beginning probationary teachers, the path to tenure will last four years.

Method of voting on the issue of tenure. The act requires that the board of education, at the end of the probationary period, vote directly on the question of whether a probationary teacher is to be granted tenure. Under the old system, the vote was on reemployment, with tenure as an automatic consequence. Under the new system, the superintendent must submit a list of all probationary teachers eligible to achieve tenure to the board at least thirty days before the board vote. The list is a public record. The board then votes and notifies the teacher of the result of the vote by June 15.

Consequences of board's failure to follow procedure. The act changes the consequences of the board's failure to vote. Under the old system, if the board failed to vote and the teacher was reemployed for the following year, tenure automatically attached. Under the new system, if the board fails to vote and notify the teacher by June 15, the board *may not* reemploy the teacher for the following year. As of June 16, the teacher is entitled to one month's pay; thereafter, for every thirty days that the board fails to vote, the teacher is entitled to another month's pay.

Employment of a formerly tenured teacher. G.S. 115C-325(c) also changes the procedure for reemployment of a teacher who was formerly tenured in that same school system and who resigned within the past five years. Under the old law, such a teacher might be granted tenure or required to serve a one-year probationary period. The Excellent Schools Act changes that provision so that such a teacher is hired under the same terms as a teacher who was previously tenured in any other North Carolina school unit: the teacher either may be granted tenure immediately or may be required to serve a one-year or a two-year probationary period.

Changes Regarding Demotions and Suspensions

In Section 13, the Excellent Schools Act makes several changes in the law related to demotions and suspensions of teachers and administrators.

Definition of "demote." The tenure act provides that a board of education may dismiss or demote a teacher only for one of fifteen grounds laid out in the statute and only upon the use of procedures laid out in the statute. G.S. 115C-325(a) has defined "demote" to mean, principally, "to reduce the compensation of" the teacher. "Compensation" could reasonably be interpreted to include regular local supplements, one-time bonuses, and merit-based supplements, so that once awarded none of those could be reduced. The Excellent Schools Act modifies the definition of demote so that it now means "to reduce the salary of" the teacher; it explicitly does not include the elimination or reduction of bonus payments or merit-based supplements or a systemwide modification in the amount of any local supplement. With this change, those payment elements may be reduced without violation of the tenure act.

Changes in suspensions. The tenure act provides for three types of suspensions of teachers. The first is *suspension without pay in contemplation of dismissal*. It is used when the superintendent believes that grounds for dismissal exist but needs a short time to investigate further. Within five days, the superintendent must reinstate the teacher or begin the proceedings for dismissal, demotion, or longer-term disciplinary suspension without pay. The Excellent Schools Act amends the law on suspension without pay in contemplation of dismissal by providing that if the teacher is reinstated in the five-day period all records of the suspension are to be removed from the teacher's personnel file.

The second type of suspension is *suspension with pay in contemplation of dismissal*. It is used when the superintendent believes that grounds for dismissal exist but needs a longer time to investigate further. Within ninety days, the superintendent must reinstate the teacher or begin the proceedings for dismissal or demotion. The Excellent Schools Act amends the law on suspension with pay in contemplation of dismissal by providing (1) that the superintendent must notify the board of education within two days of beginning the suspension and (2) that the teacher and the superintendent may, by agreement, extend the suspension period beyond ninety days.

The third type of suspension is *suspension without pay as a disciplinary matter*. It is used to punish a teacher for inappropriate conduct when it is judged that dismissal or demotion would be too harsh. That is the subject of the next section.

Disciplinary suspension without pay. The Excellent Schools Act amends the statutory provision on disciplinary suspension without pay [G.S. 115C-325(f)] to create two categories of such suspension. In the first category, if the teacher wishes a hearing, the hearing is to be a limited-evidence hearing (as described in the next section). In the second category, if the teacher wishes a hearing, the hearing is to be a full evidence hearing (as described in the next section). The first category consists of disciplinary suspensions of no more than 10 days' duration. The second category consists of two kinds of disciplinary suspensions: (a) those of more than 10 days' duration and (b) those (even if for 10 days or less) that involve "intentional misconduct, such as inappropriate sexual or physical conduct, immorality, insubordination, habitual or excessive alcohol [use] or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes, any cause that constitutes grounds for the revocation of the teacher's or school administrator's certificate, or providing false information."

Full-evidence board hearings vs. limited-evidence board hearings. Before the passage of the Excellent Schools Act, the teacher tenure act provided for hearings in two settings. For a dismissal or demotion, a hearing would be held (if the teacher requested) before a panel of the Professional Review Committee (PRC) and then, if the superintendent remained intent on pursuing the dismissal or demotion, a hearing would be held (if the teacher requested) before the local board of education. For disciplinary suspensions without pay, the only hearing was before the board. In all cases, the hearings were, in practice, full evidentiary hearings. Both the superintendent and the teacher would present evidence by sworn testimony at the PRC panel hearing, and then both would present evidence again at the hearing before the board. The Excellent Schools Act amends the teacher tenure act to change this practice, with the intent that in any dismissal, demotion, or suspension case, there will be only one hearing in which full evidence is taken. To accomplish that, the act provides that for dismissals and demotions, this full-evidence hearing will be conducted by a case manager (replacing the old PRC panel) and then, if the matter comes before the board, the board will conduct a limited-evidence hearing, relying primarily on the record created by the case manager hearing. The Excellent Schools Act amendments to the teacher tenure act provide that for disciplinary suspensions longer than ten days (or for suspensions for certain intentional conduct), the full-evidence hearing is to be afforded to the teacher who requests it. But for shorter suspensions, the limited-evidence hearing is to be used. (Case managers and limited-evidence hearings are discussed below.)

Changes Regarding Procedures for Dismissals of Teachers

Key to the Excellent Schools Act's focus on raising teacher performance standards are its changes in the law of teacher dismissal. The act attempts to streamline and quicken the procedures of the teacher tenure act that a superintendent and a board must follow in the dismissal (or demotion) of a teacher. The procedures outlined below apply to the dismissal of a tenured teacher at any time, to the dismissal of a probationary teacher during the school year (as contrasted with nonrenewal at the end of the year), and to the dismissal of an administrator employed under a term contract during the contract term (as contrasted with nonrenewal at the end of the term). (See [Table 1. Changes Regarding](#)

[Procedures for Dismissals](#).) The statutory term used is *career employee*, covering these three categories of employees. For simplicity, the discussion that follows will employ the term *teacher*.

Initial Steps

New requirement: conference with teacher. The amendments actually add one step at the very beginning of the procedure: a new requirement that the superintendent, before notifying the teacher of an intent to recommend the teacher's dismissal, must meet with the teacher face-to-face and give the teacher an explanation of the charges and an opportunity to respond. The teacher then must decide whether to request a hearing. If the teacher does not request a hearing, the law as amended provides that the superintendent may make the recommendation for dismissal to the board and the board may accept, reject, or modify the recommendation.

Teacher's hearing options. If the teacher desires a hearing on the superintendent's recommendation of dismissal, the teacher has two options. First, the teacher may request a hearing directly before the board. It appears that that hearing would be a limited-evidence hearing, with the board relying primarily on documentary evidence prepared by the superintendent and the teacher (see next section). Second, the teacher may request a hearing before a case manager. That hearing is a full-evidence hearing.

Changes in board hearings streamline the procedure. Under the teacher tenure act's dismissal procedures before the passage of the Excellent Schools Act, the possibility existed for two full evidentiary hearings: one before the panel of the PRC and one before the board of education. The old procedures, in fact, called for a slightly streamlined board hearing procedure when there had already been a PRC panel hearing, but in practice both hearings were typically elaborate, evidence-receiving affairs. In furtherance of its goal of streamlining the procedure, the Excellent Schools Act amends the procedure to eliminate the possibility of two full-evidence hearings. As discussed in the sections that follow, the new procedures call for a full-evidence hearing before a case manager, but provide that a hearing before the board of education (whether it follows a case manager hearing or not) will be a limited-evidence hearing.

New Case Manager Provisions

Case managers replace PRC panels. Under the old procedures, a teacher's first option was a hearing before a panel of the Professional Review Committee. As amended, the tenure act now provides that the first option is for a hearing before a case manager. The Professional Review Committee is eliminated. The State Board of Education is to maintain a list of up to forty-two case managers, who must be qualified superior court mediators or American Arbitration Association arbitrators or have comparable certification in alternative dispute resolution. The state board is to determine case managers' pay and expense reimbursement.

Selection of the case manager. If the teacher chooses to have a hearing before a case manager, the teacher and the superintendent each may eliminate up to one-third of the names on the case manager list. The State Superintendent of Public Instruction then selects the case manager to hear the case. Alternatively, the teacher and the superintendent may agree on a case manager, and in that instance the case manager need not be a person on the state board list.

Full-evidence hearing before the case manager. The rules for a hearing before a case manager are substantially similar to the old rules for a hearing before a PRC panel: As before, the hearing is private, and both the teacher and the superintendent have the right to be present and to be heard, to be represented by counsel, and to present witnesses with any competent relevant testimony. The superintendent and the teacher are to exchange lists of witnesses and other evidence before the hearing. The rules of evidence are not to apply, but the case manager is to rely on evidence of the kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The new statute, G.S. 115C-325(j), adds a couple of provisions, however. It provides that (1) the case manager may subpoena and swear witnesses, (2) the case manager may require witnesses to give testimony and produce records and documents relevant to the grounds for dismissal, (3) the case manager decides all procedural issues (including limiting cumulative evidence), and (4) the superintendent is to provide for making a transcript of the hearing, to be available to the teacher at no cost.

Case manager's report. The case manager is (1) to make all necessary findings of fact, based upon the preponderance of the evidence, "on all issues related to each and every ground for dismissal and on all relevant matters related to the question of whether the superintendent's recommendation is justified," and (2) to make a recommendation as to whether the findings of fact substantiate the superintendent's grounds for dismissal. The case manager delivers the report to the superintendent and the teacher. The superintendent then may accept the recommendation of the case manager or reject it; the superintendent decides whether to continue with the dismissal proceedings. If the decision is not to continue, the matter is at an end. If the decision is to continue, the superintendent prepares a written recommendation and statement of the grounds and notifies the teacher. The teacher then has the option of either accepting that recommendation (and likely dismissal) or requesting a hearing before the board of education.

Hearings before the Board

Two ways the matter may come before the board. Whether a teacher appeals to the board first, or only after a case manager's hearing, the new tenure act provisions anticipate that the hearing before the board will not be a full-evidence hearing but will instead be a limited-evidence hearing.

Limited-evidence hearing before the board after a case manager hearing. At a board hearing that follows a case manager hearing, the board is to limit its consideration to these elements: (1) the whole record from the case manager hearing, including the complete transcript and all records, exhibits, and documentary evidence presented; (2) the case manager's findings of fact and recommendations; (3) the superintendent's recommendation and statement of grounds; (4) a written statement from the superintendent and one from the teacher, if submitted at least three days before the hearing; and (5) an oral argument to the board by the superintendent and by the teacher, "based on the record before the board." No new evidence may be presented at the hearing except upon a finding by the board that new evidence is critical to the matter and that the party making the request could not, with reasonable diligence, have discovered and produced the evidence at the case manager hearing. The board is to accept the case manager's findings of fact unless a majority of the board determines that those findings are not supported by substantial evidence when reviewing the record as a whole. In that case, the board may make alternative findings of fact. If a majority of the board determines that the case manager did not address a critical factual issue, the board may remand the findings of fact to the case manager to complete the report. If the case manager does not respond within seven days, the board

may determine its own findings of fact regarding the omitted issue, based upon a preponderance of the evidence.

Limited-evidence hearing before the board when there has been no case manager hearing. One of the elements of procedural streamlining put in place by the Excellent Schools Act is the elimination of the full-evidence hearing before the board of education, even in those instances in which the teacher has elected to skip the step of a hearing before a case manager first. If the teacher opts to appeal directly to the board first, there will be no full-evidence hearing at any stage in the proceeding. Instead, the board is to limit its consideration to the following: (1) any documentary evidence the superintendent intends to use to support the dismissal recommendation; (2) any documentary evidence the teacher intends to use to rebut the recommendation; (3) the superintendent's recommendation and statement of grounds; (4) a written statement from the superintendent and from the teacher, if submitted at least three days before the hearing; and (5) an oral argument to the board by the superintendent and by the teacher, "based on the record before the board."

The superintendent is to provide to the teacher the documentary evidence the superintendent intends to use seven days before the hearing, and the teacher is to provide his or her documentary evidence to the superintendent three days before. It is apparently the intent of the statute that no evidence is to be presented in the form of testimony of witnesses. The board is not required to provide a transcript of the hearing to the teacher, but the statute provides that, if the board does elect to make a transcript, it is to provide a copy to the teacher at no cost. The teacher may have the hearing transcribed by a court reporter at the teacher's expense.

Full-evidence hearing before the board for reductions in force. In the special case of the dismissal of a teacher as part of a reduction in force, the hearing before the board is a full-evidence hearing. That is because in reductions in force, the teacher facing dismissal is not permitted to request a hearing before a case manager. The only appeal permitted is directly to the board. Since the only hearing will be a board hearing, the statute provides that it will be a full-evidence hearing.

Tight timelines. The new procedures operate on very tight timelines. Once notified of the superintendent's dismissal intention, the teacher has fourteen days (formerly fifteen) to request a hearing. If the request is for a case manager hearing, the superintendent and teacher must report their trimmed list of case manager choices to the state Superintendent of Public Instruction within two days of the request for a hearing, and the state superintendent must designate a case manager within three days of receiving that request. Then the case manager must hold the hearing and prepare his or her report within ten days (expandable to fifteen days if "justice requires") of being designated. The superintendent and the teacher may agree to an extension of this time. Within two days of receiving the case manager's report, the superintendent must decide whether to go forward with the dismissal proceeding. Then, within two days of receiving notification that the proceeding will go forward, the teacher has two days to request a hearing before the board. Within two days of receiving that request, the superintendent must notify the board. The board then has two days to set a time and place for the board hearing, which must be held in no less than seven and no more than ten days. Within two days following the hearing, the board must send written copies of its findings and determination to the teacher and the superintendent.

Limitation on call-back rights after a reduction in force. G.S. 115C-325(e)(2) provides that a

teacher who is dismissed as part of a reduction in force is to have priority on rehiring. Before the Excellent Schools Act, the priority was for all positions for which the teacher is “qualified.” Now, as amended by the act, the priority is for all positions for which the teacher is qualified and in which he or she was tenured.

Expanding the information that maybe used against a teacher in certain dismissals. The Excellent Schools Act works two minor changes in the substantive provisions laying out grounds for dismissals of tenured teachers. The first amends G.S. 115C-325(b) regarding use of preemployment information contained in a teacher’s personnel file. The statute has previously forbidden the use of such information in any hearing on the dismissal or demotion of a teacher. The act amends the provision to say that such information may, in fact, be used where the grounds for dismissal are (1) conviction of a felony or crime involving moral turpitude or (2) providing false information or knowingly omitting a material fact on an employment application or in response to a preemployment inquiry. The second amends G.S. 115C-325(e)(4), which provides that conduct more than three years old cannot be the basis for dismissal of a teacher, except when the ground for dismissal is conviction of a felony or crime involving moral turpitude or immorality involving sexual misconduct. The new amendment allows use of preemployment information in a dismissal hearing where the ground for dismissal is providing false information or knowingly omitting a material fact either on an employment application or in response to a preemployment inquiry.

Change in Appeals by Nonrenewed Probationary Teachers

Reflecting its focus on teacher performance, the Excellent Schools Act appears to amend G.S. 115C-325(n) to eliminate the possibility of a jury trial in an appeal by a probationary teacher challenging his or her nonrenewal. Near the end of the school year, the board of education votes on renewal of a probationary teacher’s contract. It may decide not to renew the contract for any reason it chooses, so long as the decision is not arbitrary or capricious or based on personal, political, or discriminatory grounds. The tenure act has not heretofore explicitly provided a procedure for a probationary teacher to appeal a nonrenewal decision, and the courts have decided that the appeal is to the superior court for a trial before a jury. The new amendment changes G.S. 115C-325(n), adding an explicit provision that the review is to be in superior court. It appears that the intent of the change is to put such a review under the same procedures as the review of the dismissal of a tenured teacher: a review by the judge on the record without the taking of evidence, not a new trial with the full introduction of evidence before a jury. The new amendment is not explicit in its wording, however, and may be open to judicial interpretation.

Changes Specific to School Administrators

Several changes to the teacher tenure act apply specifically to school administrators. Some administrators are tenured in their positions, having attained that status before the passage of the Administrator Term Contract Law (G.S. 115C-287.1). Newer principals, assistant principals, supervisors, and directors are employed under contracts of a specific duration of between two and four years. The dismissal protections enjoyed by teachers under the teacher tenure act—dismissal permitted only for one of fifteen grounds and only by a certain rigorous procedure—apply fully to tenured administrators at all times and to term contract administrators during the term of the contract.

The Excellent Schools Act amends the terminology contained throughout the teacher tenure act, substituting for the term *teacher* the term *career employee*, making clear that *teacher* now includes teachers, tenured administrators, and (during the term of the contract) term administrators.

Demotion of tenured administrator. The Excellent Schools Act amends the tenure act to add a new provision [new G.S. 115C-325(f2)]. Under that provision, when the superintendent decides to demote a tenured administrator, the superintendent must give notice to the administrator in specified ways and the administrator may then request a full-evidence hearing before the board of education. There is no case manager hearing in this proceeding. (See [Table 1. Changes Specific to School Administrators.](#))

New performance evaluation standards. Section 10 of the Excellent Schools Act amends G.S. 115C-326(a) to direct the State Board of Education to revise the uniform performance standards and criteria used in evaluating the performance of school administrators so that they “include building-level gains in student learning and effectiveness in carrying out the responsibility of providing for school safety and enforcing student discipline.”

New training programs in performance evaluation. The amendments to G.S. 115C-326(b) also direct the State Board of Education, in cooperation with the UNC Board of Governors, to develop training programs for practicing school administrators to improve their evaluation of professional school employees “based on the employee’s skills and knowledge and student achievement,” including “evaluative methods to determine whether an employee’s performance has improved student learning.”

Administrator recertification study. Section 15 of the Excellent Schools Act directs the State Board of Education to “study and recommend ways to modify the administrator recertification process to ensure that all schools have well-qualified administrators.”

Administrator exam exemptions. Article 19A of Chapter 115C of the General Statutes sets up the Standards Board for Public School Administration and directs that board to administer a Public School Administrator Exam as part of the administrator certification process. G.S. 115C-290.8 exempts certain categories of administrators from having to take the exam. SL 1997-20 adds to the exemptions list any individual who holds an administrator certificate and who at any time between January 1, 1993, and December 31, 1997, was employed in a North Carolina college or university as an instructor with responsibility for teaching or supervising individuals enrolled in an approved public school administrator program.

Principals’ salary study. Section 8.43 of the Current Operations and Capital Budget Act (SL 1997-443) directs the State Board of Education to use up to \$50,000 to study principals’ salaries, including the relationship of principals’ salaries to the salaries of teachers and other certified personnel.

Changes Specific to Superintendents

Two statutory changes are specific to the employment of superintendents, one adding a new provision regarding “buyouts” of superintendent contracts and one requiring new guidelines for evaluating superintendents’ performance.

No state fund in superintendent buyouts. A superintendent is employed under a contract for a specified term, which may be for any period between one and four years. At the end of the contract term, the board of education may simply choose not to renew the contract, and the superintendent's employment is at an end. In addition, where significant cause for dismissal exists based on the superintendent's conduct, the board may dismiss the superintendent under G.S. 115C-274. Frequently, however, the board finds itself on middle ground. It wants to end the superintendent's employment without waiting for the end of the contract term, but sufficient "cause" does not exist to fire the superintendent. A common solution that boards reach for is to "buy out" the superintendent's contract; that is, the board will pay the superintendent the value of the income to be earned in the remaining time of the contract (or some lesser amount that the superintendent will agree to) and terminate the superintendent's employment.

The Current Operations and Capital Budget Act (SL 1997-443, Sec. 8.7) rewrites G.S. 115C-271, the statute that governs the selection of school superintendents, to add a provision specifying that in such circumstances, no state funds may be used in the buyout; no local funds appropriated for teachers, textbooks, classroom materials, supplies, or equipment may be transferred for the buyout; and no funds acquired through donation or fund-raising may be used, except funds raised specifically for the purpose or funds donated by private, for-profit corporations. The board must publicly state which funds are to be used and must inform the State Board of Education. When the State Board of Education gets the information, it is to conduct a review of the accounts of the school administrative unit to assure compliance with these provisions.

Superintendent performance evaluation guidelines. Section 10 of the Excellent Schools Act directs the State Board of Education to develop guidelines for evaluating superintendents. The guidelines are to include criteria for evaluating superintendent effectiveness in providing safe schools and enforcing student discipline. A report is due to the Joint Legislative Education Oversight Committee by April 15, 1998, with the guidelines to be adopted by July 15, 1998.

Changes Affecting Low-Performing Schools

The School-Based Management and Accountability Program enacted by the General Assembly in 1996 results in the classification of schools based on certain measures tied to student performance on particular standardized tests. Some schools, as a result of those measures, are classified as "low-performing." The State Board of Education assigns to some of the low-performing schools outside help in the form of assistance teams. The Excellent Schools Act adds three provisions to the program affecting low-performing schools to which assistance teams have been assigned: the testing of staff members; the development of remediation plans for those who fail the test; and the dismissal of those who repeatedly fail.

Testing of teachers in low-performing schools with assistance teams. Section 3 of the act adds a new G.S. 115C-105.38A providing that beginning at the end of the 1997-98 school year all staff members employed in a low-performing school to which an assistance team is assigned must take and pass a general knowledge test to be designated by the state board. Three categories of staff members are exempted: (1) those who have taken and passed the PRAXIS I exam as a condition of entry into a school of education; (2) those who have taken and passed the PRAXIS II exam after July 1, 1996; and (3) those who have previously taken and passed the general knowledge exam.

Remediation for those who fail. A staff member who fails the test must participate in a remediation plan (developed by the state board for that individual), consisting of up to one semester's training or coursework in a college, university, or community college. The State Board of Education is to pay the tuition and fees directly to the college. If the remediation plan requires a full-time course of study, "the staff member shall be considered on leave with pay." (The state board is to develop a plan for paying the necessary substitutes on the teacher salary schedule.) At the end of the remediation, the staff member takes the general knowledge exam a second time. If he or she fails then, a second remediation plan is developed and the process repeats.

Dismissal for the third failure. If the staff member then fails the general knowledge exam a third time, the state board is to begin dismissal proceedings under new G.S. 115C-325(q)(2a), added by Section 13 of the Excellent Schools Act. Under that provision, the third failure of the exam is to constitute substantial evidence of inadequate performance by the staff member, a ground for dismissal. The staff member may request a hearing before a panel of three members of the state board.

Salary Changes

Section 16 of the Excellent Schools Act announces the goal of the General Assembly of raising beginning teacher pay by 20 percent (to \$25,000) by the year 2000, with significant increases at the third and fourth years (in recognition of the acquisition of continuing certification and tenure, respectively). To that end, the Excellent Schools Act sets out proposed salary schedules for 1997–98 and each year through 2000–2001. The Current Operations and Capital Budget Act (in Section 8.33) enacts for 1997–98 the teacher salary schedule as set out in the Excellent Schools Act (with a higher schedule for teachers with national certification). The schedule for A certificate teachers ranges from \$22,150 for ten-month employment for first-year teachers to \$40,050 for 29-year teachers for ten months. For G certificate teachers, the corresponding figures are \$23,530 and \$42,550. Certification based on the six-year degree level results in a salary that is \$1,260 higher for 10 months than the G compensation would be, and certification at the doctorate level results in a salary \$2,530 higher for ten months. The budget act also sets out salary schedules for principals and assistant principals and salary ranges for other administrators.

In addition, the budget act provides for several kinds of extra pay for teachers: (1) Each mentor assigned to a beginning teacher is to receive \$100 per month for ten months, plus \$100 for one day before the beginning of the school year. (2) Every newly certified teacher is to receive three days of pay at the daily rate of an entry-level teacher for orientation and classroom preparation. (3) Incentive awards for teachers and teacher assistants under the School-Based Management and Accountability Program are up to \$1,500 per teacher and \$500 per assistant in schools achieving higher than expected improvements in student performance and up to \$750 and \$350, respectively, in schools meeting expected improvements. (Section 8.14 of the budget act amends G.S. 115C-105.36 to make clear that teachers who are assigned to a kindergarten program located within a public school are eligible. And (4) professional development funds are available in connection with the assignment of assistance teams to low-performing schools and for professional development related to certain state board reading and mathematics education plans. Section 8.23 of the budget act also provides that the Department of Public Instruction will pay the participation fee and up to three days of paid leave for a teacher with three years' North Carolina teaching experience to participate in the National Board of

Professional Teaching Standards certification program. If the teacher fails to complete the certification or after completing it fails to teach in North Carolina for at least a year, he or she must repay the participation fee.

Section 8.1 of the budget act directs the State Board of Education to use state funds to ensure that individual employees do not receive less on a monthly basis in salary during 1997–98 than they did in 1994–95, so long as they qualify for bonuses under the local differentiated pay plan.

Finally, Section 8.9 of the budget act authorizes the State Board of Education to continue a pilot program to grant up to four local boards of education additional flexibility in setting pay dates for their ten-month employees.

Changes Affecting Charter School Employment

The 1996 session of the General Assembly authorized the organization of charter schools to begin operation in the 1997–98 school year. These are publicly funded schools run by autonomous boards of directors rather than by the local board of education. The 1997 session passed three provisions amending the charter school legislation as it affects personnel. The most important of the three affects the retirement benefits of charter school employees.

Retirement benefits of charter school employees. While charter school organizers were getting their schools off the ground for a fall 1997 start, the Office of the State Treasurer ruled that a provision in the 1996 legislation permitting charter school employees to participate in the Teachers' and State Employees' Retirement System (TSERS) could not be enforced because of uncertainty regarding the status of charter school employees. Were they governmental employees or not? That ruling was a blow to charter school organizers, and the 1997 General Assembly responded with SL 1997-430. Section 5 amends G.S. 115C-238.29F, adding language noting that the state provides funds to charter schools and in many other ways maintains oversight, and concluding that therefore charter schools are public schools and charter school employees are public school employees and should be eligible for membership in TSERS. Section 11 makes a corresponding change in G.S. 135-8(b), the TSERS statute. Note that Section 12 directs the TSERS board of trustees to request a ruling from the Internal Revenue Service as to whether the status of TSERS as a governmental plan would be adversely affected by the participation of charter school employees. Charter school employees become eligible to participate in TSERS on the first day of the calendar month following the state's receipt of a favorable ruling.

Timing of requests for leave from a public school to teach in a charter school. G.S.

115C-238.29F(e) provides that school boards must approve leaves for their teachers who request leave to teach in a charter school. The statute provides that a school board may require that the request for leave come at least ninety days before the teacher would otherwise have to report for duty. Section 5 of SL 1997-430 amends the statute to limit that requirement to forty-five days for the initial year of a charter school's operation.

Criminal history checks on charter school directors and employees. Local boards of education are authorized to enter agreements with the state and federal justice departments for conducting computerized criminal history record checks for applicants or current employees. Section 2 of SL

1997-430 adds a new G.S. 115C-238.29K, providing for the possibility of computerized criminal history checks on employees of charter schools or members of the boards of directors of the schools. The new statute permits the State Board of Education to adopt a policy for conducting such checks. Under its policy, the state board is to require the employee or board member to be finger printed and to sign a form consenting to the check. The fingerprints are to be forwarded to the State Bureau of Investigation for a statewide computerized check and to the Federal Bureau of Investigation for a nationwide check.

The state board is to review the information that results from the check to determine whether the individual (1) poses a threat to the physical safety of students or employees of the charter school or (2) has demonstrated that he or she does not have the integrity or honesty to fulfill the duties of employee or director. The state board is then to use that determination in deciding whether to grant final approval of an application for a charter school or in making an employment recommendation to the charter school board of directors. The state board is to make written findings with regard to how it used the information, and to make those findings available to the directors. But the state board is not to release or disclose any portion of the actual criminal history report. If the state board recommends dismissal or nonemployment of any person, the board of directors must dismiss or refuse to employ the person. All information received is confidential and not a public record. Both the state board and the charter school board of directors are immune from liability for any act taken or omission made in carrying out the provisions of this new law, except that the immunity does not extend to gross negligence, wanton conduct, or intentional wrongdoing.

Miscellaneous Changes

Three pieces of legislation affecting employment in the public schools do not fit any of the categories above.

Minimum vacation leave for bus drivers. The Current Operations and Capital Budget Act (SL 1997-443, Section 8.6) provides that notwithstanding any other provision of law, all regular school bus drivers who have been employed for at least one academic year, and who are not entitled to more than one day of paid vacation leave, are entitled to one day of paid vacation leave in each subsequent school year. A driver who resigns or is dismissed before taking the leave day is not entitled to compensation for the day.

Special teacher assistant studies. The Current Operations and Capital Budget Act (SL 1997-443, Section 8.12) directs the State Board of Education to collect data on teacher assistants' years of experience in the public schools and in state and local government and the degrees that they hold, and to collect data on locally adopted salary schedules for teacher assistants and the distribution of teacher assistants on those schedules. A report is due to the Joint Legislative Education Oversight Committee by December 15, 1998. Section 8.12 also directs the state board to review existing teacher assistant education programs and recommend whether there should be educational standards, goals, competencies, and certification for teacher assistants. A report is due to the Joint Legislative Education Oversight Committee by March 15, 1998.

Duty to report certain acts. The Current Operations and Capital Budget Act [SL 1997-443, Sec. 8.29(k)] amends G.S. 115C-307(a) to add a requirement that a teacher, student teacher, substitute

teacher, voluntary teacher, or teacher assistant must report to the principal acts of violence in school and students suspended or expelled from school, as required to be reported in accordance with state board policies.

[Return to Changes Regarding Procedures for Dismissal](#)
[Return to Changes Specific to School Administrators](#)

Table 1

Steps in Possible Appeals Routes under the Teacher Tenure Act as Amended in 1997 Teacher Dismissal or Demotion Appealed through Case Manager

1. Notice to teacher of dismissal or demotion.
 - Teacher is given written notice of charges and opportunity to respond.
 - Teacher has 14 days to request hearing.
2. Teacher requests case manager hearing.
 - Within 2 days, superintendent and teacher must submit case manager list to State Superintendent.
 - Within 3 days, State Superintendent must name case manager.
 - Case manager then has maximum of 15 days to hold hearing and prepare report.
 - At least 5 days before hearing, teacher gets superintendent's intended evidence.
 - At least 3 days before hearing, superintendent gets teacher's intended evidence.
3. Case manager holds full-evidence hearing.
 - Within 2 days, superintendent must decide whether to go forward or drop the dismissal.
 - Within 2 days, teacher must decide whether to request a hearing before the board.
4. Teacher requests board hearing.
 - Within 2 days, superintendent must submit dismissal recommendation to the board.
 - Within 2 days, board must set the hearing, to be held between 7 and 10 days from then.
5. Board of education holds limited-evidence hearing.
 - Within 2 days, board must send its determination to the teacher and superintendent.
 - Within 30 days, teacher may appeal for review in superior court.

Teacher Dismissal or Demotion Appealed Directly to the Board

1. Notice to teacher of dismissal or demotion.
 - Teacher is given written notice of charges and opportunity to respond.
 - Teacher has 14 days to request hearing.

2. Teacher requests hearing directly before the board.

- Within 5 days, board must hold the hearing.
- 7 days before hearing, teacher gets superintendent's evidence.
- 3 days before hearing, superintendent gets teacher's evidence.

3. Board of education holds limited-evidence hearing.

- Within 2 days, board must send its determination to the teacher and superintendent.
- Within 30 days, teacher may appeal for review in superior court.

Teacher Big Disciplinary Suspension without Pay

(a suspension for more than 10 days or for certain intentional conduct)

1. Notice to teacher of big disciplinary suspension without pay.

- Teacher has 15 days to request hearing.

2. Teacher requests hearing before the board.

- At least 10 days before hearing, teacher gets superintendent's intended evidence.
- At least 6 days before hearing, superintendent gets teacher's intended evidence.

3. Board of education holds full-evidence hearing.

- Within 30 days of board decision, teacher may appeal for review in superior court.

Teacher Little Disciplinary Suspension without Pay

(a suspension for 10 days or less and not for certain intentional conduct)

1. Notice to teacher of little disciplinary suspension without pay.

- Teacher has 15 days to request hearing.

2. Teacher requests hearing before the board.

- 7 days before hearing, teacher gets superintendent's evidence.
- 3 days before hearing, superintendent gets teacher's evidence.

3. Board of education holds limited-evidence hearing.

- Within 30 days of board decision, teacher may appeal for review in superior court.

Tenured Administrator Demotion

1. Notice to tenured administrator of demotion.

- Administrator has 15 days to request hearing.

2. Administrator requests hearing before the board.

- At least 10 days before hearing, administrator gets superintendent's intended evidence.
- At least 6 days before hearing, superintendent gets administrator's intended evidence.

3. Board of education holds full-evidence hearing.

- No explicit provision for appeal for review in superior court.

Teacher Dismissal in Reduction in Force

1. Notice to teacher of dismissal in reduction in force.

- Teacher has 15 days to request hearing.

2. Teacher requests hearing before the board.

- Within 10 days, board must hold the hearing.
- At least 10 days before hearing, administrator gets superintendent's intended evidence.
- At least 6 days before hearing, superintendent gets administrator's intended evidence.

3. Board of education full-evidence hearing.

- Within 30 days of board decision, teacher may appeal for review in superior court.

This article is copyrighted by the Institute of Government. Any form of copying for other than the individual user's personal reference without express permission of the Institute of Government is prohibited. Further distribution of this material is strictly forbidden, including but not limited to, posting, e-mailing, faxing, archiving in a public database, redistributing via a computer network or in a printed form.

[Return to SLB Table of Contents of Latest Volumes](#)

[Return to the Publications main page](#)

[Go to the Institute of Government Home Page](#)

Last Updated: 20-Apr-1998 by Lisa L. Wright