

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1997

SESSION LAW 1998-131  
HOUSE BILL 1477

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE LEGISLATIVE COMMISSION ON PUBLIC SCHOOLS TO MAKE CHANGES IN LAWS, POLICIES, AND ADMINISTRATION TO IMPROVE THE QUALITY OF EDUCATION AND SAFETY IN THE STATE RESIDENTIAL SCHOOLS, TO IMPLEMENT THE ABC'S PROGRAM IN THE RESIDENTIAL SCHOOLS, TO AUTHORIZE STUDIES OF ISSUES OF CONCERN TO BLIND AND DEAF STUDENTS, TO REQUIRE AN AUDIT OF THE DIVISION OF SERVICES FOR THE DEAF AND HARD OF HEARING, AND TO REQUIRE THE DEVELOPMENT OF A THREE-YEAR PLAN TO ADDRESS THE CAPITAL NEEDS OF THE GOVERNOR MOREHEAD SCHOOL AND THE THREE STATE SCHOOLS FOR THE DEAF.

The General Assembly of North Carolina enacts:

Section 1. The Secretary of Health and Human Services shall make changes in the structure and functions of the State residential schools with a view to improving student performance, increasing flexibility and control, and promoting economy and efficiency. The Secretary shall begin with the Governor Morehead School and the three schools for the deaf. The Secretary may, in his discretion, make changes in the structure and functions of the other residential schools. In carrying out the changes, the Secretary shall consider ways to reorder priorities and place greater emphasis on the basics - reading, communication skills, and mathematics - in the areas of staff development, the State testing program, program accreditation, the use of instructional funds, the instructional program, and other components of the education program offered at the residential schools. The Secretary also shall consider the impact the changes will have on the mission of the State's residential schools and the mission of the Department of Health and Human Services as it pertains to the residential schools.

The Secretary shall make a preliminary report to the Legislative Commission on Public Schools and to the cochairs of the Appropriations Subcommittee on Health and Human Services of the Senate and the House of Representatives by November 1, 1998, and a final report by November 1, 1999, on the results of these changes. The reports shall include any proposed legislation necessary to implement the additional changes.

Section 2. Effective March 1, 1998, the Secretary of Health and Human Services also shall make changes in the administrative organization of the Department of Health and Human Services and of the Governor Morehead School and the three

schools for the deaf with a view to (i) improving student academic performance in the residential schools, (ii) promoting economy and efficiency in government in the interest of producing cost savings that can be used to redirect funds to the residential schools for teaching, textbooks, school supplies, technology, equipment, and staff development, and (iii) increasing school-based decision making and parental involvement. The Secretary may, in his discretion, extend this section to additional residential programs. The Secretary shall make necessary changes in the mission of the residential schools and of the Department of Health and Human Services as it pertains to the residential schools. The Secretary shall develop a plan for reducing, eliminating, and/or reorganizing the Department of Health and Human Services and each residential school. A reorganization may include the assignment or reassignment of the Department's duties and functions among divisions and other units, division heads, officers, and employees.

The proposed reduction, elimination, and/or reorganization of the Department shall have a goal of resulting in a decrease of at least fifty percent (50%) in the number of employee positions currently assigned to the Division of Services for the Blind and the Division of Services for the Deaf and Hard of Hearing for the purpose of providing assistance to, management of, or education programs in the residential schools, and a redirection to the instructional programs in the residential schools by January 1, 1999, of at least fifty percent (50%) in the Department's budget that currently is maintained by the Department to administer the residential schools and their programs. The proposed reduction, elimination, and/or reorganization of the residential schools shall have a goal of resulting in a decrease of at least fifty percent (50%) in the number of employee positions currently filled by administrators or supervisors.

The Secretary shall report to the Legislative Commission on Public Schools and to the cochairs of the Appropriations Subcommittee on Health and Human Services of the Senate and the House of Representatives by December 15, 1998, on the reduction, elimination, and/or reorganization plan it develops.

Section 3. The Secretary of Health and Human Services shall consult with the State Board of Education in its implementation of this act as it pertains to improving the educational programs at the residential schools. The Secretary also shall fully inform and consult with the chairs of the Appropriations Subcommittees on Education and Health and Human Services of the Senate and the House of Representatives on a regular basis as the Secretary carries out his duties under this act.

Section 4. If funds are appropriated to the Department of Health and Human Services in the Current Operations and Capital Improvements Appropriations Act of 1998 to implement this act, then of these funds the sum of three hundred thousand dollars (\$300,000) for the 1998-99 fiscal year shall be used to contract for outside consultants and assistance to assist the Secretary in carrying out his duties under this act. The Office of State Budget and Management, the State Auditor, and other appropriate State agencies also shall provide consultation as requested by the Secretary as needed to develop the plans set out in this act.

Section 5. Article 3 of Chapter 143B of the General Statutes is amended by adding the following new Part to read:

"Part 3A. Education Programs in Residential Schools.

**"§ 143B-146.1. Mission of schools; definitions.**

(a) It is the intent of the General Assembly that the mission of the residential school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential.

(b) The following definitions apply in this Part:

- (1) ABC's Program or Program. – The School-Based Management and Accountability Program developed by the State Board.
- (2) Department. – The Department of Health and Human Services.
- (3) Instructional personnel. – Principals, assistant principals, teachers, instructional personnel, instructional support personnel, and teacher assistants employed in a residential school.
- (4) Participating school. – A residential school that is required to participate in the ABC's Program.
- (5) Residential school personnel. – The individuals included in G.S. 143B-146.16(a)(2).
- (6) Schools. – The residential schools under the control of the Secretary.
- (7) Secretary. – The Secretary of Health and Human Services.
- (8) State Board. – The State Board of Education.
- (9) Superintendent. – The individual designated by the Secretary to administer a residential school.

**"§ 143B-146.2. ABC's Program in residential schools.**

(a) The Governor Morehead School and the three schools for the deaf shall participate in the ABC's Program. The Secretary, in consultation with the General Assembly and the State Board, may designate other residential schools that must participate in the ABC's Program. The primary goal of the ABC's Program is to improve student performance. The Program is based upon an accountability, recognition, assistance, and intervention process in order to hold each participating school, its superintendent, and the instructional personnel accountable for improved student performance in that school.

(b) In order to support the participating schools in the implementation of this Program, the State Board, in consultation with the Secretary, shall adopt guidelines, including guidelines to:

- (1) Assist the Secretary and the participating schools in the development and implementation of the ABC's Program.
- (2) Recognize the participating schools that meet or exceed their goals.
- (3) Identify participating schools that are low-performing and assign assistance teams to those schools. The assistance teams should include individuals with expertise in residential schools, individuals with experience in the education of children with disabilities, and others the State Board, in consultation with the Secretary, considers appropriate.
- (4) Enable assistance teams to make appropriate recommendations.

(c) The ABC's Program shall provide increased decision making and parental involvement at the school level with the goal of improving student performance.

(d) Consistent with improving student performance, the Secretary shall provide maximum flexibility to participating schools in the use of funds to enable those schools to accomplish their goals.

**"§ 143B-146.3. Annual performance goals.**

The ABC's Program shall (i) focus on student performance in the basics of reading, mathematics, and communications skills in elementary and middle schools, (ii) focus on student performance in courses required for graduation and on other measures required by the State Board in the high schools, and (iii) hold participating schools accountable for the educational growth of their students. To those ends, the State Board shall design and implement an accountability system that sets annual performance standards for each participating school in order to measure the growth in performance of the students in each individual school.

**"§ 143B-146.4. Performance recognition.**

(a) The superintendent and instructional personnel assigned to participating schools that achieve or exceed a level of expected growth to be determined by the State Board are eligible for financial awards in amounts set by the State Board. Participating schools and personnel shall not be required to apply for these awards.

(b) The State Board shall establish a procedure to allocate the funds for these awards. Funds shall become available for expenditure July 1 of each fiscal year. Funds shall remain available until November 30 of the subsequent fiscal year for expenditure for:

- (1) Awards to the personnel; or
- (2) The purposes authorized in a plan that has been:
  - a. Developed and voted on by the superintendent and instructional personnel in the same manner that a school improvement plan is approved under G.S. 143B-146.12;
  - b. Approved by a majority of the personnel who vote on the plan; and
  - c. Submitted to and approved by the Secretary.

The Secretary shall approve this plan unless the plan involves expenditures of funds that are not for a public purpose or that are otherwise unlawful.

**"§ 143B-146.5. Identification of low-performing schools.**

(a) The State Board shall design and implement a procedure to identify low-performing schools on an annual basis. Low-performing schools are those participating schools in which there is a failure to meet the minimum growth standards, as defined by the State Board, and a majority of students are performing below grade level.

(a1) By July 10 of each year, the Secretary shall do a preliminary analysis of test results to determine which participating schools the State Board may identify as low-performing under this section. The Secretary then shall proceed under G.S. 143B-146.7. In addition, within 30 days of the initial identification of a school as low-performing by the Secretary or the State Board, whichever occurs first, the Secretary shall develop a preliminary plan for addressing the needs of that school. Before the Secretary adopts this plan, the Secretary shall make the plan available to the residential school personnel and the parents and guardians of the students of the school, and shall

allow for written comments. Within five days of adopting the plan, the Secretary shall submit the plan to the State Board. The State Board shall review the plan expeditiously and, if appropriate, may offer recommendations to modify the plan. The Secretary shall consider any recommendations made by the State Board.

(b) Each identified low-performing school shall provide written notification to the parents of students attending that school. The written notification shall include a statement that the State Board of Education has found that the school has 'failed to meet the minimum growth standards, as defined by the State Board, and a majority of students in the school are performing below grade level.' This notification also shall include a description of the steps the school is taking to improve student performance.

**"§ 143B-146.6. Assistance teams; review by State Board.**

(a) The State Board may assign an assistance team to any school identified as low-performing under this Part or to any other school that the State Board determines would benefit from an assistance team. The State Board shall give priority to low-performing schools in which the educational performance of the students is declining. The Department shall, with the approval of the Secretary, provide staff as needed and requested by an assistance team.

(b) When assigned to an identified low-performing school, an assistance team shall:

- (1) Review and investigate all facets of school operations, including instructional and residential, and assist in developing recommendations for improving student performance at that school.
- (2) Evaluate at least semiannually the superintendent and instructional personnel assigned to the school and make findings and recommendations concerning their performance.
- (3) Collaborate with school staff, the Department, and the Secretary in the design, implementation, and monitoring of a plan that, if fully implemented, can reasonably be expected to alleviate problems and improve student performance at that school.
- (4) Make recommendations as the school develops and implements this plan.
- (5) Review the school's progress.
- (6) Report, as appropriate, to the Secretary, the State Board, and the parents on the school's progress. If an assistance team determines that an accepted school improvement plan developed under G.S. 143B-146.12 is impeding student performance at a school, the team may recommend to the Secretary that he vacate the relevant portions of that plan and direct the school to revise those portions.

(c) If a participating school fails to improve student performance after assistance is provided under this section, the assistance team may recommend that the assistance continue or that the Secretary take further action under G.S. 143B-146.7.

(d) The Secretary, in consultation with the State Board, shall annually review the progress made in identified low-performing schools.

**"§ 143B-146.7. Consequences for personnel at low-performing schools.**

(a) Within 30 days of the initial identification of a school as low-performing, whether by the Secretary under G.S. 143B-146.5(a1) or by the State Board under G.S. 143B-146.5(a), the Secretary shall take one of the following actions concerning the school's superintendent: (i) decide whether the superintendent should be retained in the same position, (ii) decide whether the superintendent should be retained in the same position and a plan of remediation should be developed, (iii) decide whether the superintendent should be transferred, or (iv) proceed under the State Personnel Act to dismiss or demote the superintendent. The superintendent may be retained in the same position without a plan for remediation only if the superintendent was in that position for no more than two years before the school is identified as low-performing. The superintendent shall not be transferred to another position unless (i) it is in a superintendent position in which the superintendent previously demonstrated at least two years of success, (ii) there is a plan to evaluate and provide remediation to the superintendent for at least one year following the transfer to assure the superintendent does not impede student performance at the school to which the superintendent is being transferred; and (iii) the parents of the students at the school to which the superintendent is being transferred are notified. The superintendent shall not be transferred to another low-performing school. The Secretary may, at any time, proceed under the State Personnel Act for the dismissal of any superintendent who is assigned to a low-performing school to which an assistance team has been assigned. The Secretary shall proceed under the State Personnel Act for the dismissal of any superintendent when the Secretary receives from the assistance team assigned to that school two consecutive evaluations that include written findings and recommendations regarding the superintendent's inadequate performance. The Secretary shall order the dismissal of the superintendent if the Secretary determines from available information, including the findings of the assistance team, that the low performance of the school is due to the superintendent's inadequate performance. The Secretary may order the dismissal of the superintendent if (i) the Secretary determines that the school has not made satisfactory improvement after the State Board assigned an assistance team to that school; and (ii) the assistance team makes the recommendation to dismiss the superintendent. The Secretary may order the dismissal of a superintendent before the assistance team assigned to the superintendent's school has evaluated that superintendent if the Secretary determines from other available information that the low performance of the school is due to the superintendent's inadequate performance. The burden of proof is on the superintendent to establish that the factors leading to the school's low performance were not due to the superintendent's inadequate performance. The burden of proof is on the Secretary to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school. Two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the superintendent. Within 15 days of the Secretary's decision concerning the superintendent, but no later than September 30, the Secretary shall submit to the State Board a written notice of the action taken and the basis for that action.

(b) At any time after the State Board identifies a school as low-performing under this Part, the Secretary shall proceed under G.S. 115C-325(p1) for the dismissal of certificated instructional personnel assigned to that school.

(c) At any time after the State Board identifies a school as low-performing under this Part, the Secretary shall proceed under the State Personnel Act for the dismissal of instructional personnel who are not certificated when the Secretary receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the instructional personnel. The Secretary may proceed under the State Personnel Act for the dismissal of instructional personnel who are not certificated when: (i) the Secretary determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school; and (ii) that the assistance team makes the recommendation to dismiss that person for a reason that constitutes just cause for dismissal under the State Personnel Act.

(d) The certificated instructional personnel working in a participating school at the time the school is identified by the State Board as low-performing are subject to G.S. 115C-105.38A.

(e) The Secretary may terminate the contract of a school administrator dismissed under this section. Nothing in this section shall prevent the Secretary from refusing to renew the contract of any person employed in a school identified as low-performing under this Part.

**"§ 143B-146.8. Evaluation of certificated personnel and superintendents; action plans; State Board notification.**

(a) Annual Evaluations; Low-Performing Schools. – The superintendent shall evaluate at least once each year all certificated personnel assigned to a participating school that has been identified as low-performing but has not received an assistance team. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of an action plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under G.S. 115C-325(a)(6), either the principal or an assessment team assigned under G.S. 143B-146.9 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), the superintendent shall conduct the evaluation.

Notwithstanding this subsection or any other law, the principal shall observe at least three times annually, a teacher shall observe at least once annually, and the principal shall evaluate at least once annually, all teachers who have not attained career status. All other employees defined as teachers under G.S. 115C-325(a)(6) who are assigned to participating schools that are not designated as low-performing shall be evaluated annually unless the Secretary adopts rules that allow specified categories of teachers with career status to be evaluated more or less frequently. The Secretary also may adopt rules requiring the annual evaluation of noncertificated personnel. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school.

The Secretary shall use the State Board's performance standards and criteria unless the Secretary develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board. All other provisions of this section shall apply if an evaluation is used other than one adopted by the State Board.

(b) Action Plans. – If a certificated employee receives an unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties, the individual or team that conducted the evaluation shall recommend to the superintendent that: (i) the employee receive an action plan designed to improve the employee's performance; or (ii) the superintendent recommend to the Secretary that the employee be dismissed or demoted. The superintendent shall determine whether to develop an action plan or to recommend a dismissal proceeding. The person who evaluated the employee or the employee's supervisor shall develop the action plan unless an assistance team or assessment team conducted the evaluation. If an assistance team or assessment team conducted the evaluation, that team shall develop the action plan in collaboration with the employee's supervisor. Action plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board, in consultation with the Secretary, shall develop guidelines that include strategies to assist in evaluating certificated personnel and developing effective action plans within the time allotted under this section. The Secretary may adopt policies for the development and implementation of action plans or professional development plans for personnel who do not require action plans under this section.

(c) Reevaluation. – Upon completion of an action plan under subsection (b) of this section, the superintendent or the assessment team shall evaluate the employee a second time. If on the second evaluation the employee receives one unsatisfactory or more than one below standard rating on any function that is related to the employee's instructional duties, the superintendent shall recommend that the employee be dismissed or demoted under G.S. 115C-325. The results of the second evaluation shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. – If the Secretary dismisses an employee for any reason except a reduction in force under G.S. 115C-325(e)(1)l., the Secretary shall notify the State Board of the action, and the State Board annually shall provide to all local boards of education the names of those individuals. If a local board hires one of these individuals, that local board shall proceed under G.S. 115C-333(d).

(e) Civil Immunity. – There shall be no liability for negligence on the part of the Secretary or the State Board, or their employees, arising from any action taken or omission by any of them in carrying out this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection is waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.



(f) Evaluation of Superintendents. – Each year the Secretary or the Secretary's designee shall evaluate the superintendents.

**"§ 143B-146.9. Assessment teams.**

The State Board shall develop guidelines for the Secretary to use to create assessment teams. The Secretary shall assign an assessment team to every low-performing school that has not received an assistance team. The Secretary shall ensure that assessment team members are trained in the proper administration of the employee evaluation used in the participating schools. If service on an assessment team is an additional duty for an employee of a local school administrative unit or an employee of a residential school, the Secretary may pay the employee for that additional work.

Assessment teams shall:

- (1) Conduct evaluations of certificated personnel in low-performing schools;
- (2) Provide technical assistance and training to principals and superintendents who conduct evaluations of certificated personnel;
- (3) Develop action plans for certificated personnel; and
- (4) Assist principals and superintendents in the development and implementation of action plans.

**"§ 143B-146.10. Development of performance standards and criteria for certificated personnel.**

The State Board, in consultation with the Secretary, shall revise and develop uniform performance standards and criteria to be used in evaluating certificated personnel, including school administrators. These standards and criteria shall include improving student achievement, employee skills, and employee knowledge. The standards and criteria for school administrators also shall include building-level gains in student learning and effectiveness in providing for school safety and enforcing student discipline. The Secretary shall develop guidelines for evaluating superintendents. The guidelines shall include criteria for evaluating a superintendent's effectiveness in providing safe schools and enforcing student discipline.

**"§ 143B-146.11. School calendar.**

Each school shall adopt a school calendar that includes a minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. In the development of its school calendar, each school shall consult with parents, the residential school personnel, and the local school administrative unit in which that school is located.

**"§ 143B-146.12. Development and approval of school improvement plans.**

(a) In order to improve student performance, each participating school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 143B-146.3. The superintendent, instructional personnel, and residential life personnel assigned to that school, and a minimum of five parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance.

(b) Parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none

exists, by the largest organization of parents formed for this purpose. To the extent possible, parents serving on school improvement teams shall reflect the composition of the students enrolled in that school. No more than two parents may be employees of the school. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation. Parents who are elected to serve on school improvement teams and who are not employees of the school shall receive travel and subsistence expenses in accordance with G.S. 138-5 and, if appropriate, may receive a stipend.

(c) The strategies for improving student performance shall include the following:

- (1) A plan for the use of funds that may be made available to the school by the Secretary to meet the goals for that school under the ABC's Program and to implement the school improvement plan.
- (2) A comprehensive plan to encourage parent involvement.
- (3) A safe school plan designed to provide that the school is safe, secure, and orderly, that there is a climate of respect in the school, and that appropriate personal conduct is a priority for all students and all residential school personnel. This plan shall include components similar to those listed in G.S. 115C-105.47(b).

(d) Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The superintendent of the school shall present the proposed school improvement plan to all of the instructional personnel assigned to the school for their review and vote. The vote shall be by secret ballot. The superintendent shall submit the school improvement plan to the Secretary only if the proposed school improvement plan has the approval of a majority of the instructional personnel who voted on the plan.

(e) The Secretary shall accept or reject the school improvement plan. The Secretary shall not make any substantive changes in any school improvement plan that the Secretary accepts. If the Secretary rejects a school improvement plan, the Secretary shall state with specificity the reasons for rejecting the plan; the school improvement team may then prepare another plan, present it to the instructional personnel assigned to the school for a vote, and submit it to the Secretary to accept or reject. Within 60 days after the initial submission of the school improvement plan to the Secretary, the Secretary shall accept the plan or shall designate a person to work with the school improvement team to resolve the disagreements. If there is no resolution within 30 days, then the Secretary may develop a school improvement plan for the school; however, the General Assembly urges the Secretary to utilize the school's proposed school improvement plan to the maximum extent possible when developing this plan.

(f) A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the Secretary finds that a school improvement plan is impeding

student performance at a school, the Secretary may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this section shall apply to amendments and revisions to school improvement plans.

(g) Any funds the Secretary makes available to a school to meet the goals for that school under the ABC's Program and to implement the school improvement plan at that school shall be used in accordance with those goals and the school improvement plan.

(h) The Secretary, in consultation with the State Board, shall develop a list of recommended strategies that it determines to be effective which building-level committees may use to establish parent involvement programs designed to meet the specific needs of their schools.

(i) Once developed, the Secretary shall ensure the plan is available and accessible to parents and the school community.

**"§ 143B-146.13. School technology plan.**

(a) No later than December 15, 1998, the Secretary shall develop a school technology plan for the residential schools that meets the requirements of the State school technology plan. In developing a school technology plan, the Secretary is encouraged to coordinate its planning with other agencies of State and local government, including local school administrative units.

The Information Resources Management Commission shall assist the Secretary in developing the parts of the plan related to its technological aspects, to the extent that resources are available to do so. The Department of Public Instruction shall assist the Secretary in developing the instructional and technological aspects of the plan.

The Secretary shall submit the plan that is developed to the Information Resources Management Commission for its evaluation of the parts of the plan related to its technological aspects and to the Department of Public Instruction for its evaluation of the instructional aspects of the plan. The State Board of Education, after consideration of the evaluations of the Information Resources Management Commission and the Department of Public Instruction, shall approve all plans that comply with the requirements of the State school technology plan.

(b) After a plan is approved by the State Board of Education, all funds spent for technology in the residential schools shall be used to implement the school technology plan.

**"§ 143B-146.14. Dispute resolution; appeals to Secretary.**

The Secretary shall establish a procedure for the resolution of disputes between the residential schools and the parents or guardians of students who attend the schools.

An appeal shall lie from the decision of all residential school personnel to the Secretary or the Secretary's designee. In all of these appeals it is the duty of the Secretary to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records.

**"§ 143B-146.15. Duty to report certain acts to law enforcement.**

When the superintendent has personal knowledge or actual notice from residential school personnel or other reliable source that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon,

possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the superintendent shall immediately report the act to the appropriate local law enforcement agency. Failure to report under this section is a Class 3 misdemeanor. For purposes of this section, 'school property' shall include any building, bus, campus, grounds, recreational area, or athletic field, in the charge of the superintendent or while the student is under the supervision of school personnel. It is the intent of the General Assembly that the superintendent notify the Secretary or the Secretary's designee of any report made to law enforcement under this section.

**"§ 143B-146.16. Residential school personnel criminal history checks.**

(a) As used in this section:

(1) 'Criminal history' means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) 'Residential school personnel' means any:

a. Employee of a residential school whether full time or part time,  
or

b. Independent contractor or employee of an independent contractor of a residential school, if the independent contractor carries out duties customarily performed by residential school personnel,

whether paid with federal, State, local, or other funds, who has significant access to students in a residential school. Residential school personnel includes substitute teachers, driver training teachers, bus drivers, clerical staff, houseparents, and custodians.

(b) The Secretary shall require an applicant for a residential school personnel position to be checked for a criminal history before the applicant is offered an unconditional job. A residential school may employ an applicant conditionally while the Secretary is checking the person's criminal history and making a decision based on the results of the check.

The Secretary shall not require an applicant to pay for the criminal history check authorized under this subsection.

(c) The Department of Justice shall provide to the Secretary the criminal history from the State and National Repositories of Criminal Histories of any applicant for a residential school personnel position in a residential school. The Secretary shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the Secretary, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The Secretary shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

The Secretary shall not require an applicant to pay for being fingerprinted.

(d) The Secretary shall review the criminal history it receives on a person. The Secretary shall determine whether the results of the review indicate that the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as residential school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The Secretary shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors.

(e) The Secretary shall provide to the State Board of Education the criminal history received on a person who is certificated, certified, or licensed by the State Board. The State Board shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.

(f) All the information received by the Secretary through the checking of the criminal history or by the State Board in accordance with subsection (d) of this section is privileged information and is not a public record but is for the exclusive use of the Secretary or the State Board of Education. The Secretary or the State Board of

Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of the Secretary, the Department of Health and Human Services or its employees, a residential school or its employees, or the State Board of Education or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

Section 6. G.S. 115C-325 is amended by adding the following new subsection to read:

"(p1) Procedure for Dismissal of School Administrators and Teachers Employed in Low-Performing Residential Schools. –

(1) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of teachers, principals, assistant principals, directors, supervisors, and other certificated personnel assigned to a residential school that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Part 3A of Article 3 of Chapter 143B of the General Statutes. The Secretary shall dismiss a teacher, principal, assistant principal, director, supervisor, or other certificated personnel when the Secretary receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

The Secretary may dismiss a teacher, principal, assistant principal, director, supervisor, or other certificated personnel when:

- a. The Secretary determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under Part 3A of Article 3 of Chapter 143B of the General Statutes; and
- b. That assistance team makes the recommendation to dismiss the teacher, principal, assistant principal, director, supervisor, or other certificated personnel for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career employee.

Within 30 days of any dismissal under this subdivision, a teacher, principal, assistant principal, director, supervisor, or other certificated personnel may request a hearing before a panel of three members

designated by the Secretary. The Secretary shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

- (2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of certificated staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the certified staff member.

Within 30 days of any dismissal under this subdivision, a certificated staff member may request a hearing before a panel of three members designated by the Secretary of Health and Human Services. The Secretary shall adopt procedures to ensure that due process rights are afforded to certificated staff members recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

- (3) The Secretary of Health and Human Services or the superintendent of a residential school may terminate the contract of a school administrator dismissed under this subsection. Nothing in this subsection shall prevent the Secretary from refusing to renew the contract of any person employed in a school identified as low-performing under Part 3A of Article 3 of Chapter 143B of the General Statutes.
- (4) Neither party to a school administrator contract is entitled to damages under this subsection.
- (5) The Secretary of Health and Human Services shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection."

Section 7. G.S. 115C-102.5(b) reads as rewritten:

"(b) The Commission shall consist of the following ~~18~~19 members:

- (1) The State Superintendent of Public Instruction or a designee;
- (2) One representative of The University of North Carolina, appointed by the President of The University of North Carolina;
- (3) One representative of the North Carolina Community College System, appointed by the President of the North Carolina Community College System;
- (4) A person with management responsibility concerning information technology related State Government functions, designated by the Secretary of Commerce;

- (5) Four members appointed by the Governor;
- (6) Six members appointed by the President Pro Tempore of the Senate two of whom shall be members of the Senate. One of these six members shall be appointed by the President of the Senate to serve as cochair; ~~and~~
- (7) Six members appointed by the Speaker of the House of Representatives two of whom shall be members of the House of Representatives. One of these six members shall be appointed by the Speaker of the House of Representatives to serve as ~~cochair~~. cochair; and
- (8) The Secretary of Health and Human Services or a designee.

In appointing members pursuant to subdivisions (5), (6), and (7) of this subsection, the appointing persons shall select individuals with technical or applied knowledge or experience in learning and instructional management technologies or individuals with expertise in curriculum or instruction who have successfully used learning and instructional management technologies.

No producers, vendors, or consultants to producers or vendors of learning or instructional management technologies shall serve on the Commission.

Members shall serve for two-year terms. Vacancies in terms of members shall be filled by the appointing officer. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms."

Section 8. G.S. 115C-296(d) reads as rewritten:

"(d) The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of certificates. The State Board shall revoke the certificate of a teacher or school administrator if the State Board receives notification from a local board or the Secretary of Health and Human Services that a teacher or school administrator has received an unsatisfactory or below standard rating under G.S. 115C-333(d). In addition, the State Board may revoke or refuse to renew a teacher's certificate when:

- (1) The Board identifies the school in which the teacher is employed as low-performing under ~~G.S. 115C-105.37~~; G.S. 115C-105.37 or G.S. 143B-146.5; and
- (2) The assistance team assigned to that school ~~under G.S. 115C-105.38~~ makes the recommendation to revoke or refuse to renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation.

The State Board may issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke certificates."

Section 9. G.S. 115C-105.31 reads as rewritten:

**"§ 115C-105.31. Creation of the Task Force on School-Based Management.**

(a) There is created the Task Force on School-Based Management under the State Board of Education.

The Task Force shall be composed of ~~20~~21 members appointed as follows:



- (1) The Superintendent of Public Instruction;
- (2) One member of the State Board of Education, one parent of a public school child, and two at-large members appointed by the State Board of Education;
- (3) Two members of the Senate appointed by the President Pro Tempore of the Senate;
- (4) Two members of the House of Representatives appointed by the Speaker of the House of Representatives;
- (5) One member of a local board of education appointed by the President Pro Tempore of the Senate after receiving recommendations from The North Carolina State School Boards Association, Inc.;
- (6) One member of a local board of education appointed by the Speaker of the House of Representatives after receiving recommendations from The North Carolina State School Boards Association, Inc.;
- (7) One local school superintendent appointed by the President Pro Tempore of the Senate after receiving recommendations from the North Carolina Association of School Administrators;
- (8) One local school superintendent appointed by the Speaker of the House of Representatives after receiving recommendations from the North Carolina Association of School Administrators;
- (9) One school principal appointed by the President Pro Tempore of the Senate after receiving recommendations from the Tar Heel Association of Principals/Assistant Principals and the Division of Administrators of the North Carolina Association of Educators;
- (10) One school principal appointed by the Speaker of the House of Representatives after receiving recommendations from the Tar Heel Association of Principals/Assistant Principals and the Division of Administrators of the North Carolina Association of Educators;
- (11) One school teacher appointed by the President Pro Tempore of the Senate after receiving recommendations from the North Carolina Association of Educators, Inc., the North Carolina Federation of Teachers, and the Professional Educators of North Carolina, Inc.;
- (12) One school teacher appointed by the Speaker of the House of Representatives after receiving recommendations from the North Carolina Association of Educators, Inc., the North Carolina Federation of Teachers, and the Professional Educators of North Carolina, Inc.;
- (13) One representative of business and industry appointed by the Governor;
- (14) One representative of institutions of higher education appointed by the Board of Governors of The University of North Carolina; ~~and~~
- (15) One county commissioner appointed by the State Board of Education after receiving recommendations from the North Carolina Association of County Commissioners. ~~Commissioners.~~ Commissioners; and

(16) The Secretary of Health and Human Services or the Secretary's designee.

Members of the Task Force shall serve for two-year terms.

All members of the Task Force shall be voting members. Vacancies in the appointed membership shall be filled by the officer who made the initial appointment. The Task Force on School-Based Management shall select a member of the Task Force to serve as chair of the Task Force.

Members of the Task Force shall receive travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, G.S. 138-5, and G.S. 138-6.

(b) The Task Force shall:

- (1) Advise the State Board of Education and Secretary of Health and Human Services on the development of guidelines for local boards of education and schools to implement school-based management as part of the School-Based Management and Accountability Program;
- (2) Advise the State Board of Education and the Secretary of Health and Human Services on how to assist the public schools and residential schools so as to facilitate the implementation of school-based management;
- (3) Advise the State Board of Education and Secretary of Health and Human Services about publications to be produced by the Department of Public Instruction on the development and implementation of school improvement plans;
- (4) Report annually to the State Board of Education on the implementation of school-based management in the public schools on the first Friday in December. This report may contain a summary of recommendations for changes to any law, rule, and policy that would improve school-based management.

(c) The Department of Public Instruction shall, with the approval of the State Board of Education, provide staff to the Task Force at the request of the Task Force.

(d) The State Board of Education shall appoint a Director of the Task Force on School-Based Management."

Section 10. (a) The Secretary of Health and Human Services shall adopt policies and offer training opportunities to ensure that personnel who provide direct services to children in the three State schools for the deaf become proficient in sign language within two years of their initial date of employment or within two years of the effective date of this act, whichever occurs later. This subsection shall not apply to preschool personnel in any oral, auditory, or cued speech preschool.

(b) The Department of Public Instruction, the Board of Governors of The University of North Carolina, and the State Board of Community Colleges shall offer and communicate the availability of professional development opportunities, including those to improve sign language skills, to the personnel assigned to the State's residential schools, particularly the Governor Morehead School and the three schools for the deaf.

(c) The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall study methods to assure that faculty members

teaching American Sign Language are highly qualified and competent. The Board of Governors and the State Board of Community Colleges shall report their findings and recommendations prior to March 1, 1999, to the Appropriations Subcommittees on Education and on Health and Human Services of the House of Representatives and Senate.

Section 11. The Board of Governors of The University of North Carolina shall assess the accessibility of the programs of the constituent institutions for deaf and blind students. The Board of Governors shall report to the General Assembly by December 1, 1998, on this assessment.

Section 12. The Secretary of Health and Human Services shall contract for the design of a longitudinal study of deaf and hard-of-hearing children to assess communication methods used and student performance.

Section 13. The Commission for Health Services shall adopt temporary and permanent rules to include newborn hearing screening in the Newborn Screening Program established under G.S. 130A-125.

Section 14. The State Board of Education, in consultation with the Secretary of Health and Human Services, shall evaluate the certification requirements for teachers at the State schools for the deaf and the Governor Morehead School in light of the specific educational needs of those schools. In particular, the State Board shall determine whether these teachers should hold (i) certificates to authorize them to teach students with specific disabilities, (ii) certificates authorizing them to teach a specific grade level or subject matter, or (iii) dual certificates, particularly at the high school level. The State Board shall revise any policies, rules, or regulations if considered appropriate and shall report to the Legislative Commission on Public Schools by December 15, 1998, on the results of its evaluation under this section and any changes it proposes.

Section 15. The State Auditor shall conduct a fiscal audit of the Division of Services for the Deaf and Hard of Hearing, Department of Health and Human Services, and the use of current operations funds appropriated to that Division beginning with the 1996-97 fiscal year and the use of capital funds appropriated to that Division beginning with the 1995-96 fiscal year. The Auditor shall report to the General Assembly by March 1, 1999, on the results of this audit.

Section 16. The Governor Morehead School and the three schools for the deaf shall each prioritize its capital needs in a three-year plan. These schools shall give first priority to bringing their facilities up to code and to supporting instructional programs so as to improve student academic performance. The schools shall submit their three-year plans to the Secretary. The Secretary shall prioritize the needs of these four schools and shall submit to the General Assembly a three-year plan to address those needs.

Section 17. The Secretary of Health and Human Services shall adopt policies to ensure that students of the residential schools are given priority to residing in the independent living facilities on each school's campus.

Section 18. If funds are appropriated to the Department of Health and Human Services in the Current Operations and Capital Improvements Appropriations Act of

1998 to implement this act, then of these funds the Secretary may spend up to nine hundred thousand dollars (\$900,000) for the 1998-99 fiscal year to provide funds for assistance teams to be assigned to the Governor Morehead School and to the three schools for the deaf.

Section 19. This act becomes effective July 1, 1998, but becomes effective only if funds are appropriated for the 1998-99 fiscal year to implement this act. Part 3A of Article 3 of Chapter 143B of the General Statutes, as established in Section 5 of this act, applies to kindergarten through eighth grade in the three schools for the deaf and in the Governor Morehead School beginning with the 1999-2000 school year. The Secretary of Health and Human Services, in consultation with the General Assembly and the State Board of Education, shall recommend beginning dates of applicability for the remaining grades in those four schools and for the other residential schools, particularly those operated by the Division of Youth Services. School improvement plans required under Section 5 of this act shall be developed during the 1998-99 school year and shall be implemented by the beginning of the 1999-2000 school year.

In the General Assembly read three times and ratified this the 2nd day of September, 1998.

s/ Dennis A. Wicker  
President of the Senate

s/ Harold J. Brubaker  
Speaker of the House of Representatives

s/ James B. Hunt, Jr.  
Governor

Approved 9:17 a.m. this 9th day of September, 1998