

SUPREME COURT OF NORTH CAROLINA

DUSTIN MICHAEL MCKINNEY,)	
JEREMY MCKINNEY, and JAMES)	
ROBERT TATE,)	
)	
Plaintiffs-Appellees,)	
)	
STATE OF NORTH CAROLINA,)	
)	
Intervenor-Appellee,)	<u>From Wake County</u>
)	COA 22-261
)	No. 21 CVS 7438
v.)	
)	
THE GASTON COUNTY BOARD)	
OF EDUCATION,)	
)	
Defendant-Appellant.)	

BRIEF OF *AMICUS CURIAE*
NORTH CAROLINA SCHOOL BOARDS ASSOCIATION

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NO. 109PA22-2

TENTH JUDICIAL DISTRICT

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THE GASTON COUNTY BOARD)
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Defendant-Appellant.)

From Wake County
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No. 21 CVS 7438

BRIEF OF *AMICUS CURIAE*
NORTH CAROLINA SCHOOL BOARDS ASSOCIATION

Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure,
the North Carolina School Boards Association (“Association”) respectfully submits

this *amicus curiae* brief in support of Defendant-Appellee Gaston County Board of Education.¹

IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Association is a nonprofit organization formed to support local boards of education across the State of North Carolina. Founded in 1937, its mission is to “provide advocacy, leadership, and services that enable school boards to govern at the highest level.” Although participation is voluntary, all 115 local boards of education in North Carolina, as well as the school board of the Eastern Band of the Cherokee Nation, are members. The Association advocates for the concerns of local school boards in the state and federal courts and legislatures. There is no other entity that represents the interests of local boards of education in North Carolina or that has the same understanding of matters affecting them. The Court’s decision in this case will have a significant impact on the Association’s member school boards and their local communities.

SUMMARY OF ARGUMENT

The SAFE Child Act (“Act”) opened a two-year period (“revival window”) for potential plaintiffs to bring previously time-barred claims for child sexual abuse. S.L. 2019-245, § 4.2(b). This provision has led to a flood of litigation against local

¹ No person or entity other than *amicus curiae*, its members, or its counsel, directly or indirectly, either wrote the brief or contributed money for its preparation.

boards of education (and other youth-serving organizations) based on often decades-old allegations of criminal misconduct by their employees.² Current school boards, as well as current administrators, teachers, and students, are thus forced to bear the wide-ranging burdens of unanticipated litigation for long-ago harms they did not cause and over which they had no control. In sum, the revival window upends school boards' justified reliance on settled law and does little to accomplish the Act's stated purpose of protecting children from sexual abuse. This Court need not look any further than its own well-established precedent in order to conclude that the General Assembly cannot revive previously time-barred claims.

ARGUMENT

THE REVIVAL OF TIME-BARRED CLAIMS UPENDS SCHOOL BOARDS' SETTLED EXPECTATIONS ESTABLISHED BY THE LEGISLATURE.

Without question, the aims of the SAFE Child Act are admirable. Who would dispute that horrific abuse against children should be prevented, or that the perpetrators of such abuse should be held accountable? Yet there are compelling reasons for enforcing legal limits on historical claims, and this Court has long recognized that statutes of limitation and repose serve a vital purpose without regard to sympathy for or worthiness of a party's claim. Indeed, "statutes of limitation operate inexorably without reference to the merits of a cause of action, thereby

² The Association is aware of at least 51 separate lawsuits that have been filed against 30 North Carolina school boards under the "revival window" of the SAFE Child Act.

‘preventing surprises through the revival of claims that have been allowed to slumber.’” *Christenbury Eye Ctr., P.A. v. Medflow, Inc.*, 370 N.C. 1, 9, 802 S.E.2d 888, 893-94 (2017) (quoting *Order of R.R. Telegraphers v. Ry. Express Agency, Inc.*, 321 U.S. 342, 348-49 (1944)). Likewise, statutes of repose protect “against the possibility of open-ended exposure to suits for damages.” *Christie v. Hartley Constr., Inc.*, 367 N.C. 534, 540, 766 S.E.2d 283, 287 (2014). This Court’s recognition of a vested right to rely on these limits is an essential element of fairness under the law.

Complaints filed against local boards of education under the revival window allege abuse that occurred as long ago as the mid-1960s – in most cases, years before current board members were elected or current administrators began serving, and in some cases before they were even born. The revival window upends the settled expectations of these school boards and forces them to spend limited public resources to defend against newly revived claims long after “evidence has been lost, memories have faded, and witnesses have disappeared.” *Christie*, 367 N.C. at 538, 766 S.E.2d at 286 (quoting *Order of R.R. Telegraphers*, 321 U.S. at 349).

Indeed, this impact is especially felt by local boards of education, which exercise their authorities and responsibilities wholly within the statutory framework enacted by the General Assembly. *See* N.C. Const. Art. I, § 15; Art. IX, § 2; N.C. Gen. Stat. §§ 115C-36, -40, -47 (2021); *see generally* N.C. Gen. Stat. ch. 115C. It is

“the duty of local boards of education to provide students with the opportunity to receive a sound basic education and to make all policy decisions with that objective in mind, including employment decisions, budget development, and other administrative actions, within their respective local school administrative units, as directed by law.” N.C. Gen. Stat. § 115C-47(1) (2021) (emphasis added). Local boards of education are guided and bound by numerous statutes, regulations and policies that govern nearly every aspect of a public school system’s operation, and thus, they are particularly affected by new legislation that fundamentally alters the consequences of decisions made and actions taken in compliance with (and reliance on) then-existing law.

A. The Revival Window Exposes School Boards to Claims Which Cannot Be Fairly or Adequately Investigated or Defended.

1. Important Testimonial Evidence Is Unobtainable Because Key Witnesses, and Even the Alleged Perpetrators, Have Died or Cannot Be Located.

This Court, in reflecting on the competing policies of statutes of limitations (in particular, the discovery provisions of G.S. § 1-15(c)), has noted the “delicate balance between the rights of the diligent plaintiff who should not be barred from pursuing a meritorious claim and the defendant who deserves protection from stale claims after a viable defense may be weakened because of dead witnesses or forgotten facts.” *Black v. Littlejohn*, 312 N.C. 626, 635, 325 S.E.2d 469, 476 (1985).

Given the age of claims brought under the revival window, the Act swings that balance heavily against local boards of education named as defendants in these lawsuits. School boards will find it challenging even to *identify* potential witnesses, much less to locate former employees who have left the school district, retired, or even passed away in the years since the abuse is alleged to have occurred. The same is true of the perpetrators, many of whom are not named as defendants³ or adequately identified in the complaints. In fact, a substantial number of the cases filed against school boards under the SAFE Act identify the alleged perpetrator only by their last name, and many do not even give that much information. For example, one plaintiff alleges that she does not remember the name of the abuser, but he was “an older man, with hair thinning on top, chubby, with black rimmed glasses.” Another plaintiff asserts that the alleged abuser was a teacher’s assistant who was “a black woman in her twenties or early thirties, of average build, with black hair.”

Through no fault of their own, school boards would find it next to impossible to substantively respond to these complaints. That idea is central to this Court’s jurisprudence regarding statutes of limitation and vested rights.

2. Important Documentary Evidence Has Likely Been Lost Because Local Boards of Education Rely on North

³ Of the 51 lawsuits filed against local boards of education of which the Association is aware, 34 are brought only against the institutional defendants, and the individual perpetrators have not been sued.

Carolina's Records Retention and Disposition Schedule to
Determine How Long to Keep Records.

The North Carolina Department of Natural and Cultural Resources promulgates rules that establish minimum retention schedules for local government records. N.C. Gen. Stat. § 132-8.1 (2021); *see also* State Archives of North Carolina, <https://archives.ncdcr.gov/government>. Prior to a major revision in 2019, local boards of education were required to adhere to the Records Retention and Disposition Schedule for Local Education Agencies (“Schedule”) last updated in July 1999. (App. pp 1, 22; *see also* R S pp 305-72) In addition to requiring school boards to maintain certain records, the Schedule provides authority for the destruction of records, which “normally should be disposed of at the end of the stated retention period.” (App. p 5) Therefore, local boards of education – in full compliance with the law and the Schedule’s directives – may well have destroyed the very evidence necessary to defend themselves against newly-revived claims for which the statute of limitations had long since passed.

School boards create and maintain many types of records that could be relevant, and perhaps critical, to their defense against claims of child sexual abuse – from the obvious (*e.g.*, personnel records, student records) to the obscure and mundane (*e.g.*, classroom schedules, bus routes, sign-in and sign-out logs). With the passage of time, however, many of these documents will have been routinely destroyed in accordance with North Carolina’s records retention law.

Finally, and significantly, in the majority of these revived cases, there is no record of any insurance policy from which potential defense costs or judgments might be paid. Under the July 1999 amendment to the Schedule, school boards are directed to destroy insurance policies “6 years after termination or expiration if no claim, audit, or other official action involving the record has been initiated.” (App. pp 23, ¶ 21; 25, ¶ 8). Where the existence of insurance coverage cannot be confirmed, the tremendous financial burden of investigating and litigating these revived claims against local boards of education will be borne by taxpayers and local communities.

B. The Revival Window Holds Past School Boards to Standards and Expectations That Have Only Been Developed and Implemented in Recent Years.

1. Historically, Local Boards of Education Have Had Limited Tools to Recognize and Prevent Child Sexual Abuse.

The challenges faced by local boards of education in defending against revived claims of child sexual abuse are not only that memories have faded and that records have been lost over the decades. School boards today operate under a wholly different set of statutes, rules, and policies that have evolved to incorporate the greater knowledge and understanding of child sexual abuse gained in recent years. Awareness of the prevalence of child sexual abuse – and of effective preventive strategies – is far greater in 2023 than it was in 1973 or 1993. Even as recently as

2004, the U.S. Department of Education noted the “limited research” available on the topic of sexual abuse by school employees. Eugene W. Hickock, Deputy Secretary, *Preface to Charol Shakeshaft, Educator Sexual Misconduct: A Synthesis of Existing Literature*, Washington, D.C.: U.S. Department of Education, Office of the Under Secretary (2004). As Dr. Shakeshaft recognized, “[e]ducator sexual misconduct is woefully under-studied. We have scant data on incidence and even less on descriptions of predators and targets. There are many questions that call for answers.” *Id.* at 51. Her report “summarizes the research (or lack of research)” and “recommends a series of studies to deepen the understanding of educator sexual misconduct and strategies to prevent the abuse of students.” *Id.*

Meanwhile, as another arm of the federal government recognized in 2007, “[t]he same dynamics that create a nurturing environment, and may ultimately protect against child sexual abuse, can also open the doors to sexually abusive behaviors. . . . By promoting close and caring relationships between youth and adults, organizations can help youth feel supported and loved and thus reduce their risk of child sexual abuse. But that same closeness between a youth and an adult can also provide the opportunity for abuse to occur.” Janet Saul and Natalie C. Audage, *Preventing Child Sexual Abuse Within Youth-serving Organizations: Getting Started on Policies and Procedures*, Atlanta, GA: Centers for Disease Control and Prevention, National Center for Injury Prevention and Control (2007), at 2.

Likewise, in 2010, a task force commissioned by the North Carolina State Board of Education recognized that “school districts often have difficulty targeting the perpetrators and counseling the student victims” of sexual abuse. *Raising the Bar for North Carolina Teachers*, Task Force on Teacher Ethics and Licensure (25 February 2010) (App. p 49) “Numerous difficulties arise in the area of educator sexual misconduct. First, the acts of a classroom predator are often conducted under the guise of acceptable educator duties, such as counseling, tutoring, or coaching. A teacher predator is also often the ‘best teacher,’ ‘best coach,’ or a pillar of the community.” *Id.*; see also *Educator Sexual Misconduct*, at 22 (“The limited available data indicate that teachers who sexually abuse belie the stereotype of an abuser as an easily identifiable danger to children.”).

It is not an exaggeration to say that student and adult interactions that would not have engendered concern or suspicion in the past are far more likely to be recognized as red flags when viewed through today’s lenses. Simply put, local boards of education in years past were no less concerned than today’s school boards about protecting students, but their understanding of the danger of child sexual abuse and the tools available to address it were much more limited. See, e.g., *Child USA’s Gold Standard: Policy Recommendations for Preventing Child Sexual Abuse*, CHILDUSA.org (25 June 2021), at 5 (recognizing that “[t]o date, few comprehensive efforts have been made to establish the best evidence-based policies

for [youth-serving organizations]” and seeking to “establish[] a baseline for . . . clear and effective child protection policies”).

2. The Assumptions, Expectations and Legal Framework for Screening, Training, and Supervising Teachers and Other School Personnel Have Undergone Significant Change Over the Years.

Some of the specific difficulties faced by local boards of education in North Carolina were highlighted in the *Raising the Bar* report, which reviewed historical and then-existing shortcomings in the State’s teacher licensing system and recommended multiple areas for improvement. (App. pp 32-35) For example, the task force noted that only since 1993 have administrators and local boards of education been required to report sexual misconduct and other crimes to the State Board. (App. p 33; *see also* App. pp 26-28) However, since “adoption of this mandatory reporting rule, the number of teacher misconduct cases reported to the State has increased significantly, resulting in many more revocations of teacher licenses” and preventing unfit teachers from resigning and quietly moving on to another school system. (App. p 33) Still, this policy requires reporting of certified educators only, and the State Board has no authority to license and monitor other school personnel who have daily, unsupervised contact with students. (App. p 41) Nor is there a “standardized method of communication between and among school systems” that would permit identification of school employees who engage in unethical or criminal misconduct. *Id.*

Likewise, there has not been a uniform, statewide approach to ensuring that individuals hired by local boards of education have not been charged with or convicted of criminal offenses that could pose a danger to students. Only in 1991 did the General Assembly first authorize the Department of Justice to provide school boards with a criminal record check of a public school applicant or employee, with the person's consent. *See* N.C. Sess. L. 1991-705, *codified as* N.C. Gen. Stat. § 114-19.2. Then, starting in 1995, local boards of education were required to begin considering criminal background checks for school personnel. *See* N.C. Sess. L. 1995-373, § 1, *codified as* N.C. Gen. Stat. § 115C-332(b) (requiring local boards to adopt a policy on "whether and under what circumstances" to check an applicant's criminal history). Soon after enactment of this statute, the Association developed a model policy recommending that criminal records checks be conducted on "all final candidates for licensed positions and classified positions that would place the candidates in the schools or other environments where they would be expected to interact regularly with students. Such positions include substitute teachers, driver training teachers, bus drivers, clerical staff, custodians, teachers, teacher assistants, assistant principals and principals." (App. p 76) Thus, while current literature and guidance uniformly recommend thorough screening of employees as the first bulwark against child sexual abuse, many of the claims revived by the SAFE Child Act occurred long before the General Assembly provided even a limited framework

for local boards of education to conduct criminal background checks of public school personnel.⁴

Today's school administrators and school boards also understand that "[c]lear policies on the boundaries for interpersonal contact protects both students and staff members." *A Training Guide for Administrators and Educators on Addressing Adult Sexual Misconduct in the School Setting*, Washington, D.C.: U.S. Department of Education, Office of Safe and Healthy Students (2017), at 2. However, such policies were not a mainstay for local boards of education until the mid-1990s. For example, the Association first produced a model policy prohibiting all school employees "from dating, courting or entering into a romantic or sexual relationship with any student enrolled in the school district regardless of the student's age" after November 1995. (App. p 78) The State Board of Education did not promulgate a code of ethics for licensed educators that addressed appropriate relationships with students until 1997.⁵ (App. pp 91-95); 16 NCAC 06C .0602 (eff. May 1, 1998).

⁴ State law *still* does not mandate background checks on prospective public school employees, N.C. Gen. Stat. § 115C-332 (2021), and as recently as two years ago, the General Assembly failed to pass proposed legislation that would do so. *See* HB 240v2, Sess. 2021, N.C. Gen. Assembly (App. pp 87-88) Thus, "[w]hile many, if not all, local school systems do their own background checks on [employees who work closely with children], nevertheless there is no uniformity with regard to those background checks." (App. p 41) And, astonishingly, state law also does not require state or federal sex offender registries checks for public school employees. *Cf.* N.C. Gen. Stat. § 115C-332.1 (2021) (requiring sex offender registries checks for certain contractual personnel).

⁵ The General Assembly did not enact criminal laws specifically addressing sexual activity between school personnel and students until 1999. *See* S.L. 1999-300, *codified as* N.C. Gen. Stat. §§ 14-202.4, 14-27.7.

Focused staff training is yet another tool that has only more recently come to the forefront as a way for school boards to identify and prevent child sexual abuse. As of 2014, North Carolina, like most states “[did] not have a requirement for school personnel to receive awareness and prevention training on child sexual abuse or [adult sexual misconduct].” *Training Guide for Administrators and Educators*, p 2. Now, child sexual abuse and sex trafficking training is required for school personnel, as a result of a separate provision in the SAFE Child Act. *See, e.g.*, S.L. 2019-245, § 4.4(f), *codified as* N.C. Gen. Stat. § 115C-375.20. In 2020, additional new legislation was enacted requiring each local board of education to adopt a school-based mental health plan and training program to address, among other topics, sexual abuse prevention. *See* S.L. 2020-7, *codified as* N.C. Gen. Stat. § 115C-376.5. These two mandates were fleshed out by the State Board of Education, which specifically mandates school personnel who work with K-12 students to receive awareness training related to:

- i. best practices from the field of prevention
- ii. the grooming process of sexual predators
- iii. the warning signs of sexual abuse and sex trafficking
- iv. how to intervene when sexual abuse or sex trafficking is suspected or disclosed [and]
- v. legal responsibilities for reporting sexual abuse or sex trafficking, and available resources for assistance.

(App. p 101)

The scourge of child sexual abuse has appropriately been put in the spotlight in recent years, and local boards of education now have access to better information and tools to address the problem. However, historically, school boards and administrators were ill-equipped to combat this often unrecognized danger, and local boards of education have justifiably relied on the assurance provided by statutes of limitation and repose that they will not be confronted by and forced to defend legal claims arising from harms inflicted decades ago. *See Order of Railroad Telegraphers*, 321 U.S. at 348-49 (“Statutes of limitation . . . are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber[.]”).

The Association is aware that its arguments are largely policy-based, in a case about a constitutional question. But this Court’s precedent over the last 90 years has been clear that revival of time-barred claims interferes with a vested right and is unconstitutional, as argued in the dissent below and in other briefing to this Court. The Association offers this additional analysis as a means to illustrate *why* the vested rights doctrine is so important in a situation like this. As Judge Carpenter wrote below, “the effects of [overruling the vested rights doctrine as applied to statutes of limitations] would extend far beyond this case and would carry unintended consequences and undermine a hallmark of our justice system—stability in our

jurisprudence.” School boards have relied on that stability, and ask the Court to maintain it.

CONCLUSION

The Association and its member boards of education do not condone the reprehensible conduct of any teacher or other trusted adult who sexually abuses children. Nor do they dispute the serious harm that can be caused by such abuse. However, the SAFE Child Act’s revival window violates long-standing and controlling precedent of this Court that a defendant has a constitutionally protected “vested right in a statute of limitations defense,” (R p 100 (citing *Wilkes Cty. v. Forester*, 204 N.C. 163, 167 S.E. 691 (1933))). The revival legislation places the burden of remedying past harm on current institutions, but it does little to identify perpetrators or protect children from future abuse. The argument that the revival window will hold perpetrators and “enablers” of child sexual abuse accountable – thereby shifting the burden of abuse away from victims, their communities, and North Carolina’s taxpayers – rings hollow. As noted above, in the majority of lawsuits filed against local boards of education under the revival window, the perpetrator is not even named as a defendant. Further, because local boards of education rely on appropriations from county tax collections to fund current operating expenses, *see* N.C. Gen. Stat. § 115C-426(e) (2021), the costs of defending

these lawsuits (and any judgments not covered by insurance) will be borne directly on the backs of local communities and taxpayers.

For the reasons set forth above and in the briefs of the Gaston County Board of Education, *amicus curiae* North Carolina School Boards Association urges this Court to reverse the decision of the Court of Appeals, adopt the reasoning in the dissent, and restore the decision of the three-judge panel, which concluded that S.L. 2019-245, §4.2(b), is facially unconstitutional.

Respectfully submitted, this the 20th day of November 2023.

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WORD COUNT CERTIFICATION

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, I hereby certify that the foregoing amicus brief, which is prepared using a 14-point proportional font with serifs, is less than 3,750 words (excluding cover, indices, tables of authorities, appendices, certificates of service, counsel's signature block, and this certificate of compliance) as reported by the word-processing software.

This the 20th day of November 2023.

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CERTIFICATE OF SERVICE

I certify that a copy of this **AMICUS CURIAE BRIEF OF THE N.C. SCHOOL BOARDS ASSOCIATION** was served this day upon all parties to this appeal via email to the following:

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RECORDS RETENTION AND DISPOSITION SCHEDULE

LOCAL EDUCATION AGENCIES



Issued By:

North Carolina Department of Cultural Resources
Division of Archives and History
Archives and Records Section
Records Services Branch

February 19, 1999

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LOCAL EDUCATION AGENCIES RECORDS RETENTION AND DISPOSITION SCHEDULE

The records retention and disposition schedule and retention periods governing the records series listed herein are hereby approved. In accordance with the provisions of Chapters 121 and 132 of the *General Statutes of North Carolina*, it is agreed that the records of each

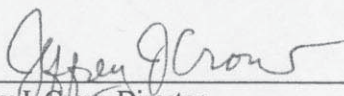
Local Education Agency

do not and will not have further use or value for official business, research, or reference purposes after the respective retention periods specified herein. The North Carolina Department of Cultural Resources consents to the destruction or other disposition of these records in accordance with the retention and disposition instructions specified in this schedule and the

Superintendent of Public Instruction

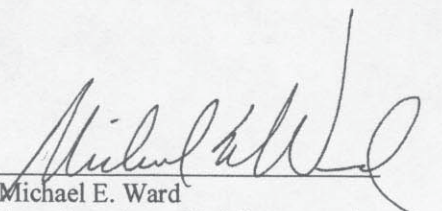
agrees to the provisions of this schedule as stated and endorses its use. This schedule is to remain in effect from the date of approval until it is reviewed and updated.

APPROVAL RECOMMENDED

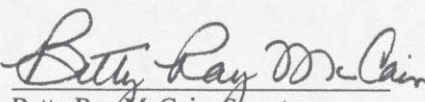


Jeffrey J. Crow, Director
Division of Archives and History

APPROVED



Michael E. Ward
Superintendent of Public Instruction



Betty Ray McCain, Secretary
Department of Cultural Resources

February 19, 1999

ABOUT THIS PUBLIC RECORDS SCHEDULE

This records schedule identifies and provides retention and disposition instructions for many records that are produced and maintained in the offices of the local education agency. These records are defined under Chapter 132 of the *General Statutes of North Carolina* as “public records.” Chapter 121-5 mandates that these public records may be disposed of only in accordance with an official records retention schedule. Such schedules are written by the North Carolina Department of Cultural Resources in cooperation with the agency or governing body and include the official approval of these bodies, as required by law, for records disposition actions.

INTERNET ACCESS TO PUBLIC RECORDS INFORMATION. The Records Services Branch offers valuable information on the Internet at its Web site, which may be accessed at <http://www.ah.dcr.state.nc.us/sections/archives/rec/default.htm>. Local government agencies are encouraged to reference the site and its links to other data. The Web site offers much of the introductory information and many of the forms contained in this schedule, full text of G.S. §121 and §132, and contact information for the Records Services Branch.

WHAT THE SCHEDULE IS. This records retention and disposition schedule supersedes and replaces a similar schedule for offices of the superintendent of schools and board of education issued in 1982, which in turn superseded *The County Records Manual* published in 1970. The schedule contains a listing and brief description of the records maintained in school system offices and identifies the minimum period of time each record series shall be retained. Records normally should be disposed of at the end of the stated retention period. In effect, the schedule provides a comprehensive records disposition plan which, when followed, ensures compliance with G.S. §121 and §132. All provisions of this schedule remain in effect until the schedule is officially amended. Errors and omissions do not invalidate this schedule as a whole or render it obsolete. As long as the schedule remains in effect, destruction or disposal of records in accordance with its provisions shall be deemed to meet the provisions of G.S. §121-5(b) and be evidence of compliance of the law. **However, in the event that a legal requirement, statute, local ordinance, or federal program requires that a record be kept longer than specified in this schedule, the longer retention period shall be applied. All questions concerning the legal requirements for retaining a record should be referred to the county attorney.**

PUBLIC RECORDS DEFINED. Chapter 132-1 of the *General Statutes of North Carolina* states:

“Public record” or “public records” shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction or public business by any agency or North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the state or of any county, unit, special district or other political subdivision of government.

NOT ALL PUBLIC RECORDS ARE OPEN TO THE PUBLIC. Public records belong to the people. However, not all official public records are open to the public. Many records are protected from general access or casual reference by “need to know” restrictions, by federal or state laws, or by legal precedent and can be seen only by court order. Therefore, even though G.S. §132-6 and §132-9 provide for public access to most records, certain records should be considered confidential in order to protect the privacy rights of agency personnel and the public. It is the responsibility of each records custodian to be familiar with G.S. §115C and §153A, agency policy, and all other pertinent state and federal legislation and regulations in order to ensure the proper protection of restricted information. If in doubt, consult the Division of Archives and History or your agency’s attorney.

STANDARD-6. PERSONNEL RECORDS. Records created and accumulated incident to the employment, qualifications, training, and pay status of local education agency employees.

1. **ABOLISHED POSITION FILE.** Records concerning positions that have been abolished. File includes position descriptions for abolished positions and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

2. **ADDRESSES FILE.** Listing of employees' addresses and telephone numbers.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

3. **AFFIRMATIVE ACTION FILE.** Records concerning local education agency compliance with federal affirmative action regulations. File includes plans, outlines, timetables, goals and objectives, compliance reports, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

4. **APPLICATIONS/RESUMES FILE.** Completed application forms for employment. File also includes resumes and other related records. (Comply with applicable provisions of G.S. §153A-98, §115C-319, 320, and 321 regarding confidentiality of personnel records.)

DISPOSITION INSTRUCTIONS:

- a) Transfer applications of individuals hired to appropriate personnel file when individual accepts position.
- b) Destroy in office applications that are unsolicited and for individuals not hired 2 years after date of receipt, if no charge of discrimination has been filed. If charge has been filed, destroy in office 1 year after resolution of charge.

5. **CORRESPONDENCE/MEMORANDUMS FILE.** Correspondence and memorandums concerning personnel related matters.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

6. **DEFERRED COMPENSATION FILE.** Records concerning the deferred compensation program for employees. File includes payroll deduction authorization forms, lists of compensation options, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

7. **DISABILITY SALARY CONTINUATION CLAIMS FILE.** Completed forms submitted by disabled employees applying for salary continuation benefits.

DISPOSITION INSTRUCTIONS:

- a) Transfer original forms to Teachers' and State Employees' Retirement System for action when received.
- b) Destroy in office reference copies after 1 year.

8. **DRUG AND ALCOHOL PROGRAMS RECORDS FILE.** Records concerning a local education agency's drug and alcohol use prevention programs. File includes testing and equipment calibration records, driver evaluations and referrals, collection logbooks, and technician training records. (49 CFR 382.401D)

DISPOSITION INSTRUCTIONS:

- a) Destroy in office positive test results, refusals to take tests, equipment calibration records, driver evaluations and referrals, and annual calendar year summaries after 5 years.
- b) Destroy in office records concerning the drug and alcohol collection process, collection logbooks, and technical training records after 2 years.
- c) Destroy in office negative and canceled test results, and test results with concentrations of less than 0.02 after 1 year.

9. **DUAL EMPLOYMENT FILE.** Records concerning employees engaged in dual employment. File includes summaries of dual employment activities.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

10. **EDUCATIONAL LEAVE/REIMBURSEMENT FILE.** Records concerning educational leave and/or tuition reimbursement. File includes requests for leave/reimbursement, authorizations, and other related records.

DISPOSITION INSTRUCTIONS:

- a) Destroy in office records concerning approved requests when released from all audits.
- b) Destroy in office records concerning disapproved requests 6 months after disapproval.

11. **EMPLOYEE SUGGESTIONS (ES) FILE.** Information concerning suggestions of employees received through the ES System.

DISPOSITION INSTRUCTIONS:

- a) Destroy in office adopted suggestions after 2 years.
- b) Destroy in office non-accepted suggestions after 1 year.

12. **EQUAL EMPLOYMENT OPPORTUNITY FILE.** Records concerning local education agency compliance with federal Equal Employment Opportunity Commission (EEOC) regulations. File includes regulations, guidelines, policies, compliance reports, correspondence, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

13. **FRINGE BENEFITS FILE.** Records concerning fringe benefits available to employees. File includes descriptions of benefits, participation registration forms, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

14. **GRIEVANCE FILE.** Records concerning disputed employee grievances. File includes letters of grievance, hearing records, and other related records. (File is considered part of employee's official personnel file and is considered confidential in accordance with G.S. §153A-98, §115C-319, 320, and 321, and §132-1.1.)

DISPOSITION INSTRUCTIONS: Destroy in office 3 years after resolution of grievance.

15. **HEALTH CERTIFICATES FILE.** Certificate from a licensed physician verifying that the employee does not have any communicable disease or any disease, physical or mental, which would impair the ability of the employee to perform his/her duties effectively. (G.S. §115C.323)

DISPOSITION INSTRUCTIONS: Destroy in office 1 year after employee terminates service.

16. **INITIAL CERTIFICATION PROGRAM FILE.** Records used to observe and evaluate teachers during their initial certification period. File includes classroom observation forms and logs, in-task documentation forms, recommendation forms, and professional development plans. (Comply with applicable provisions of G.S. §115C-319, 320, 321, and G.S. §153A-98 regarding confidentiality of personnel records.)

DISPOSITION INSTRUCTIONS: Destroy in office 5 years from date of initial employment if not made part of employee's permanent personnel file.

17. **INSURANCE DEDUCTIONS PRINTOUTS FILE.** Computer printouts showing insurance payroll deductions for each local education agency employee.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years.

18. **INTERVIEWS FILE.** Interviewers' comments concerning individuals applying for employment. (Comply with applicable provisions of G.S. §153A-98 and §115C-319, 320, and 321 regarding confidentiality of personnel records.)

DISPOSITION INSTRUCTIONS:

- a) Transfer records concerning individuals hired to appropriate personnel file when individual accepts employment.
- b) Destroy in office records concerning individuals not hired 2 years after date of receipt, if

no charge of discrimination has been filed. If charge has been filed, destroy in office 1 year after resolution of charge.

19. **JOB EVALUATION DESCRIPTION FILE.** Completed forms used to evaluate and describe the primary purpose of a job.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

20. **LEAVE FILE.** Records concerning leave by office personnel. File includes leave requests, monthly leave reports, yearly leave recapitulations, correspondence, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

21. **LONGEVITY PAY REQUESTS FILE.** Records concerning employees eligible for longevity pay. File includes longevity pay requests and authorization forms, correspondence, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when released from all audits.

22. **MERIT FILE.** Records used by supervisors to evaluate employees being considered for a merit increase. File includes listings of merit increase criteria, evaluations, and other related records. (Comply with applicable provisions of G.S. §153A-98 and §115C-319, 320, and 321 regarding confidentiality of personnel records.)

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

23. **PERFORMANCE PLANNING AND EVALUATIONS FILE.** Records concerning employees' goals and primary tasks. File includes work plans, performance evaluations, and other related records. (Comply with applicable provisions of G.S. §153A-98 and §115C-319, 320, and 321 regarding confidentiality of personnel records.)

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

24. **PERSONNEL RECORDS FILE.** Personnel file for each local education agency employee. File includes or concerns records relating to individual's aggregate service history, applications, selection or non-selection, promotions, transfers, leave, salary, suspension, disciplinary actions, and termination of employment. (Comply with applicable provisions of G.S. §153A-98 and §115C-319, 320, and 321 regarding confidentiality of personnel records.)

DISPOSITION INSTRUCTIONS: Retain in office permanently.

25. **POLICIES AND PROCEDURES FILE.** Personnel rules, regulations, or guidelines established by the State Personnel Commission, Office of State Personnel, county, or local education agency.

DISPOSITION INSTRUCTIONS:

- a) Retain in office permanently official copy of internal agency personnel policies.
- b) Destroy in office reference copies and external policies and procedures when superseded or obsolete.

26. **POSITION CLASSIFICATION AND POSITION CLASSIFICATION - POSITION HISTORY (PD-118R) FILE.** Classification records and complete histories of salaried positions within the local education agency and board of education.

DISPOSITION INSTRUCTIONS: Retain in office permanently.

27. **POSITION CONTROL FILE.** Index cards or computerized databases concerning personnel actions and position control, status of each established permanent/temporary full-time or part-time position, and other related topics.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

28. **SERVICE AWARDS FILE.** Listings of employees eligible for and receiving service awards.

DISPOSITION INSTRUCTIONS: Destroy in office 5 years from date of award.

29. **TEACHERS' CERTIFICATES FILE.** Certificate issued when the teacher achieves a passing score on the standard examination, which determines his/her academic and professional preparation to teach. (G. S. §115C-296)

DISPOSITION INSTRUCTIONS: Return to teacher upon termination of employment

30. **TRAINING RECORDS FILE.** Records concerning courses taught by the local education agency to improve competency of personnel. File includes schedules, course curricula, attendance rosters, names of instructors, course materials, brochures announcing and describing courses offered, and other related records. (See also **TRAINING RECORDS (PERSONNEL) FILE**).

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

31. **TRAINING RECORDS (PERSONNEL) FILE.** Records documenting the training of local education agency personnel to improve competency in specific areas. File includes teacher resource and computer training center certificates, competency records describing courses taken, completed, and credit earned, and other related records.

DISPOSITION INSTRUCTIONS:

- a) Transfer original records to the central office to be incorporated into official personnel file upon completion of training.
- b) Destroy in office reference copies when administrative value ends.

32. **WORKERS' COMPENSATION PROGRAM ADMINISTRATIVE FILE.** Records concerning the administration of workers' compensation programs or policies. File includes regulations, guidelines, policies, reports, correspondence, reference material, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

33. **WORKERS' COMPENSATION PROGRAM CLAIMS FILE.** Records concerning workers' compensation claims by local education agency employees. File includes accident and medical reports, affidavits, medical bills, photographs, legal briefs, court documents, transcripts, legal opinions, appeals, and other related records. (Portions of file may be considered confidential in accordance with G.S. §97-92(b).)

DISPOSITION INSTRUCTIONS:

- a) Transfer official copies to Industrial Commission in accordance with G.S. §97-92 when claim is filed.
- b) Destroy in office remaining records 5 year after claim is closed.

- b) Destroy in office remaining records when student reaches 18 years of age or obtains a high school diploma or its equivalent, whichever occurs first.

- e) **MONTHLY REPORTS ON DRIVER TRAINING AND SAFETY EDUCATION FILE.** Monthly reports listing numbers of students participating in driver training and safety education programs and other statistical information.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years.

- f) **PERSONAL SERVICE AND GENERAL EXPENSE AND SUMMARY VOUCHER REGISTERS FILE.** Records concerning payment for contract driver education instructors and expenditures made by instructors. File includes general expense and summary voucher registers, payment records for instructors, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

- g) **PROPOSED PLANS OF OPERATION AND BUDGETS FILE.** Proposed operational and budgetary plans for driver education programs.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years.

- h) **STUDENT AND CLASS RECORDS FILE.** Students' class attendance and driving grade records.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years.

- i) **TIME SHEETS FILE.** Records summarizing students' time behind the wheel.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years.

3. **EDUCATIONAL PROGRAMS FOR CHILDREN WITH DISABILITIES.** Records concerning educational programs for children with disabilities.

- a) **CONFIDENTIAL RECORDS OF CHILDREN WITH DISABILITIES FILE.** Records concerning children with disabilities who are in educational programs. File includes achievement results; intelligence, eligibility, and physical test results; medical reports if the student is physically or mentally impaired; individual education plans (IEPs) and forms; multidisciplinary team reports; and screening, placement, referral, and parental consent and notification forms. (Comply with applicable provisions of G.S. §115C-114 and 115C-402 regarding confidentiality and expunction of records of students with special needs.)

DISPOSITION INSTRUCTIONS: Destroy in office 5 years after student leaves the education program for children with disabilities if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

*The parent, guardian, surrogate parent, or eligible student must be notified prior to destruction of personally identifiable information so copies of records can be provided if desired. Information must also be destroyed at the request of the parents if no longer needed to provide educational services to the child. This does not apply to such information as the student's name, address and phone number, grades, attendance records, classes attended, grade level completed, and year

Education Information System, Vocational Competency Tracking System, or similar computer system.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

5. **EXCEPTIONAL CHILDREN HEADCOUNT REPORTS FILE**. Biannual reports listing statistics concerning exceptional children. Reports are used as a basis for federal funding and individualized student funding.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

6. **FIELD TRIP AUTHORIZATIONS FILE**. Records concerning the approval or disapproval for students to leave school on field trips. Authorizations list date of trip, purpose of trip, trip destination, trip itinerary, and other related information. File may also include parental consent forms.

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year.

7. **FIRE DRILL AND INSPECTION REPORTS FILE**. Fire drill and facility inspection reports (G.S. §115C-288(d)) prepared by five marshals or inspectors and sent to the central office.

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year.

8. **GUIDANCE RECORDS FILE**. Records concerning counseling sessions held with students. File includes guidance and counseling records, parental consent forms to release information, scholarship and award information, records concerning student's grades and course selection, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years.

9. **ONCE A YEAR REPORTS ON GRADE, RACE, AND SEX FILE**. Annual reports concerning the race and sex of students in each grade.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

10. **PARENT CONFERENCE RECORDS FILE**. Records concerning conferences between parents, teachers, and/or other school officials. File includes correspondence, parent conference forms outlining reason(s) for conference and actions, if any, taken, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

11. **PRINCIPAL'S MONTHLY REPORTS FILE**. Monthly report prepared by each school's principal and sent to the central office. Monthly reports list total number of student enrollments and withdrawals for given month; date and time report was run; and school's name, address, and phone number.

DISPOSITION SCHEDULE: Destroy in office after 5 years or when administrative value ends, whichever occurs later.

12. **REGIONAL ARTICULATION PLACEMENT RECORDS FILE**. Records used to report a student's completion of course work, which could be used for credit at an area college or university. Reports list student's name, address, phone number, social security number, high school attended, description of course(s) taken along with final grade, and other related information.

DISPOSITION INSTRUCTIONS: Destroy in office 2 years after graduation.

13. **RESIDENCE VERIFICATION FILE**. Completed forms and supporting documents verifying students residence.

DISPOSITION INSTRUCTIONS: Destroy in office after 8 years.

14. **SCHOLARSHIP PROGRAM RECORDS FILE.** Records concerning student scholarships and honor societies. Files include scholarship applications, lists of eligible students, lists of winners and alternates, teacher evaluations and comments, and lists of students selected for National Honor Society membership.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

15. **SCHOOL ACTIVITY REPORTS FILE.** Annual reports concerning students and their classroom assignments, students' classroom settings, and other related information.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

16. **SCHOOL LIBRARY/MEDIA CENTER RECORDS FILE.** Records concerning the management of school libraries. File includes library material accession records, circulation records; holding catalogs; patron assistance, request, and complaint procedures; collection shelf lists; and records concerning payments made for late, damaged, or lost library materials.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

17. **SCHOOL REPORTS AND STUDENT LISTS FILE.** Reports and lists prepared by various programs. File includes school activity reports, principal's and teacher's monthly reports, membership by grade/ethnic/sex code reports, individual pupil reports, academic progress reports, homeroom lists, counselor lists, study hall lists, student rosters, exceptional children rosters, class lists, grade point average ranking lists, honor roll lists, and similar records.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years or when superseded, obsolete, or administrative value ends, whichever occurs first.

18. **SCHOOL SANITATION MONTHLY REPORTS FILE.** Reports outlining sanitation grades at schools.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years.

19. **SCHOOL VIOLENCE REPORTS FILE.** Reports on school violence completed by each principal and sent to the Department of Public Instruction in accordance with G.S. §115C-12(21) and §115C-47(36). Reports list name of school, type of school, number of incidents reported, number of offenders and victims, actions taken by number and type, and other related information.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years and when administrative value ends, whichever occurs later.

20. **SECOND MONTH REPORTS FILE.** Reports filed with the North Carolina Board of Education at the end of the second month of each school year (G.S. §115C-301(f)). Reports list the organization for each school, teachers' duty loads, class sizes, and other related information.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

21. **STATISTICAL REPORTS FILE.** Reports prepared by the Department of Public Instruction and used by a local education agency for planning and long range tracking of programs. Reports include state of the state, SAT, ABC's of public education, block schedule achievement, report card, alternative learning evaluation, student performance, behavior survey, testing results reports, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends, but within 5 years.

22. **STUDENT HANDBOOK FILE.** Handbooks or similar records supplied to students at the beginning of each school year. Handbooks list attendance policy, disciplinary policies and procedures, graduation requirements, academic policies, and general school rules and regulations.

DISPOSITION INSTRUCTIONS:

- a) Retain 1 copy in office permanently.
- b) Destroy remaining copies when administrative value ends.

23. **TEACHER LESSON PLANS FILE.** Records used by teachers for the classes or subjects they are instructing. File includes worksheets, discussion notes, problem-solving materials, and other related records used to obtain an instructional objective.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

24. **TEACHER SCHEDULING RECORDS FILE.** Records and reports documenting teachers' course schedules and timetables. File includes teacher timetables reports, room timetables reports, course load by teacher reports, teacher directories and similar records.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years or when superseded, obsolete, or administrative value ends, whichever occurs first.

- D. **STUDENT RECORDS.** Records concerning students in the schools administered by the local education agency.

Custodians of records containing student identifiable information should be familiar with **20 USCA 1232g**, the **Family Educational and Privacy Rights Act**. Provisions of this act governing access to students' records and release of information from them should be applied along with applicable state statutes. Other legislation may exist that affects the maintenance, amendment, and/or disposition of student records. Custodians should educate themselves about such legislation in order to protect against unauthorized or improper disclosure.

1. **EXAMINATION MATERIALS FILE.** Records used to administer local or state standardized examinations and tests that measure students' performance or level of acquired knowledge. File includes all testing materials and student answer documents. (Comply with applicable provisions of G.S. §115C-174.13 regarding the confidentiality of records containing the identifiable scores of individual students.)

DISPOSITION INSTRUCTIONS: Destroy in office student answer documents for all tests containing responses and modified versions six months after the return of a student's test scores.

*Test coordinators should contact the Department of Public Instruction, Division of Accountability Services, Testing Section for procedures for recycling and destroying all other test materials.

2. **EXAMINATION REPORTS FILE.** Records concerning the administration of a standardized examination. File includes class record sheets, summary goal reports, individual reports and class roster reports, and other related records. (Comply with applicable provisions of G.S. §115C-174.13 regarding the confidentiality of records containing the identifiable scores of individual students.)

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years provided test scores are posted to student's North Carolina cumulative record.

3. **HEALTH RECORDS FILE.** Health-related records for students.

- a) **DIAGNOSTIC AND SUMMARY REPORTS.** Reports from physicians documenting a student's chronic health condition. (Records may be retained as part of student's cumulative record or separately. If retained separately records should be merged with student's cumulative record upon student's departure from school system but prior to microfilming.)

DISPOSITION INSTRUCTIONS: Retain permanently in student's cumulative records file.

- b) **INJURY REPORT FORMS.** Injury report forms describing medical attention provided to a student on campus by school officials for injuries deemed serious.

DISPOSITION INSTRUCTIONS: Destroy in office when student reaches 29 years of age and has not received services within the last 10 years, if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

- c) **KINDERGARTEN HEALTH ASSESSMENT FORMS.** Initial immunization records and results of physical examinations necessary for a student to enter kindergarten. (Comply with applicable provisions of G.S. §130A-441 regarding confidentiality of records.)

DISPOSITION INSTRUCTIONS: Retain in cumulative records file until elementary school is completed, then destroy in office, or retain permanently if the form contains the only doctor-signed, clinic-stamped immunization record.

- d) **MEDICATION AND PROCEDURES LOG.** Yearly log documenting medication administration and performance of skilled procedures provided to student by school nurses and/or designated school staff.

DISPOSITION INSTRUCTIONS: Destroy in office when student reaches 29 years of age and has not received services within the last 10 years, if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

- e) **PERMANENT HEALTH RECORD CARDS FILE.** Card providing information on student's medical history/status while in the public school system. Card includes immunization information, vision/hearing screening results, health status including chronic illness, seizures, allergies, etc., special health considerations, and narrative notes entered by the nurses or other school officials.

DISPOSITION INSTRUCTIONS: Retain permanently in student's cumulative records file.

- f) **PHYSICIAN'S AUTHORIZATION FORMS FILE.** Authorization forms including physician's orders to administer prescribed medicine, physician's orders for medical treatment and/or invasive health care procedures to be performed on the student, and physician's order for "do not resuscitate." Parent signs each type of form. (G.S. §115C-307)

DISPOSITION INSTRUCTIONS: Destroy in office when student reaches 29 years of age and has not received services within the last 10 years, if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

- g) **STANDARD ACTION PLANS OR INDIVIDUALIZED ACTION PLANS FILE.** Plans for students with life-threatening and/or chronic health conditions that describe procedures to be performed by school staff on the student throughout the year. The plan should be attached to the

student's permanent health record card while in use.

DISPOSITION INSTRUCTIONS: Retain in student's cumulative file until superseded or obsolete and then destroy. Note on permanent health record card when plan is discontinued.

4. **NORTH CAROLINA CUMULATIVE RECORDS FILE.** Cumulative record of students' elementary and secondary educational career. File includes personal and family data; health and immunization information; attendance reports; standardized test dates and results; elementary, middle, and high school inserts or grade sheets; copies of birth certificates; and driver education certificates. File may also include photographs, correspondence to and from parents and/or guardians and school personnel, and court order documents such as birth date and name change verification. File also includes references to dates of separation due to graduation, withdrawal, or expulsion. (Comply with applicable provisions of G.S. §115C-402 regarding confidentiality of student records.)

DISPOSITION INSTRUCTIONS: Destroy in office worksheets when administrative value ends. Destroy in office suspension or expulsion notices in accordance with G.S. §115C-402. Retain in office remaining records permanently. [It is recommended that permanent records be microfilmed 2 years after the student graduates or otherwise leaves the school system. Records should be microfilmed to state standards established by the Division of Archives and History. Paper records that have been microfilmed may be destroyed if the microfilm has been verified and quality control procedures completed. Retain microfilm copy of records permanently.]

5. **STUDENT ABSENTEE REPORTS FILE.** Daily reports or bulletins listing names of students absent from school the previous day, reason for absence, whether absence is excused or unexcused. File includes student's name grade, sex, homeroom number, teacher's name, and reason for absence. File may also include student's social security number.

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year or when administrative value ends, whichever occurs first.

6. **STUDENT ATTENDANCE (CLASSROOM) FILE.** Records completed by teachers showing each student's daily, weekly and monthly class attendance. File includes attendance sheets, books, and/or cards listing student's name and whether absent, present, or tardy.

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year. (See also **STUDENT ATTENDANCE (SCHOOL) FILE**).

7. **STUDENT ATTENDANCE (SCHOOL) FILE.** Records showing each student's daily, weekly, monthly, and/or yearly school attendance. File includes individual pupil reports compiled from student's classroom attendance records. Reports list student's name, address, school attended, homeroom code, grade, sex, race, birth date, and total number of absences by day. (Files may be maintained in addition to a student's cumulative record.)

DISPOSITION INSTRUCTION: Destroy in office after 5 years provided appropriate information has been posted to student's cumulative record.

8. **STUDENT CHECK IN/OUT LOGS FILE.** Daily logs or records showing when students arrived late or left school early. Logs list student's arrival, departure, and re-admit times; student's name; teacher's name; and other related information.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years and when administrative value ends, whichever occurs later.

9. **STUDENT CLASSWORK RECORDS FILE.** Records created and/or used by teachers and students in the classroom. File includes non-standardized test materials, term papers, completed homework assignments, assignment books, notebooks, and other class work or tutoring-related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year and when administrative value ends, whichever occurs later, if not returned to student.

10. **STUDENT DISCIPLINE RECORDS FILE.** Records used to report and review adverse student behavior. File includes violent incident reports; discipline profile reports; disciplinary action plans; classroom detention notices; in-school and out-of-school suspension records; correspondence between parents and/or guardians and school personnel; supporting records describing student's behavior, facts and circumstances surrounding incident, and actions taken by school officials and/or law enforcement officers. File also includes school violence reports and suspension reports when used as required by G.S. §115C-391.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years and when administrative value ends, whichever occurs later.

11. **STUDENT DROPOUT RECORDS FILE.** Records used to track student withdrawals from school. File includes student data forms showing age, race, gender, grade level, date of withdrawal, reason for withdrawal, suspension data, family data, intervention/prevention profiles, and monthly summaries of all dropouts.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years.

12. **STUDENT ENTRY/WITHDRAWAL RECORDS FILE.** Records and/or logs showing when students enter or withdraw from school. File includes student information sheets and withdrawal forms listing student's name, family data, identification numbers, entry/withdrawal codes, reason for withdrawal or transfer, current grade level, grades and absences to date, and signatures of school personnel. (Records are often maintained only at the school level).

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when administrative value ends, whichever occurs later.

13. **STUDENT GRADE RECORDS (CLASSROOM) FILE.** Teachers' records showing individual student's grades. File includes teacher grade books, progress reports, bubble sheets, and/or grade reports for each six or nine week grading period for the school year. (Grades are used to compute semester and yearly averages for each student by subject.)

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year provided appropriate information has been posted to student's cumulative record. (See also **STUDENT GRADE RECORDS (SCHOOL) FILE.**)

14. **STUDENT GRADE RECORDS (SCHOOL) FILE.** Schools' records showing individual student's grades. Records list grades by subject for each six or nine week grading period, semester or midterm averages, student's final grades, and whether promoted or held back. File also includes student report cards and marks gathering forms.

DISPOSITION INSTRUCTION: Destroy in office after 5 years provided appropriate information has been posted to student's cumulative record.

15. STUDENT INFORMATION ACCOUNTABILITY SYSTEM (SIAS) (ELECTRONIC) FILE.

SIAS is an electronic data processing record used by the local education agency to manage various types of student records and generate reports. Students' names, dates of birth, parents' names, grade level, students' status as academically gifted or exceptional, attendance data, course selection and verification, academic progress information and grades, honor roll designations, and other related data are entered into this electronic file. Programs within SIAS enable the local education agency to generate reports concerning vocational education programs, student demographics, annual dropouts, exceptional students, human resource management, transportation activities, and other related subjects. [Individual schools within the local education agency enter data into SIAS. That data is transmitted to the central office where it is compiled and transmitted as countywide data to the Department of Public Instruction. (While a local education agency is not required to use the system provided by the Department of Public Instruction, it should follow the same disposition instructions as those listed in this schedule for any electronic data processing system used.)]

DISPOSITION INSTRUCTIONS: General guidelines for disposing of machine readable and electronic data processing records may be found in STANDARD-4. MACHINE READABLE AND ELECTRONIC RECORDS.

- a) Back-up by copying all electronic files to magnetic tape, disk, or other machine readable medium and storing the copy at a secure, protected, off-site location. Update those back-up files periodically by erasing and/or exchanging them with media containing more current data.
- b) Erase or delete in office student specific information when administrative value ends, but within 5 years, provided it has been posted to student's cumulative record.
- c) Erase or delete in office information used to generate reports according to disposition instructions for those specific reports. For reports not specifically listed in this standard, erase or delete in office information used to generate those reports according to guidelines in STANDARD-4. MACHINE READABLE AND ELECTRONIC RECORDS.

16. STUDENT ORGANIZATION RECORDS FILE. Records concerning student organizations at each school. File includes membership lists, records of activities, scrapbooks, student newspapers, minutes (when kept), and other related records.

DISPOSITION INSTRUCTIONS:

- a) Transfer records with obvious historical value to the Histories File (Standard – 1, item 19).
- b) Destroy in office remaining records when superseded, obsolete, or reference value ends.

17. STUDENT SCHEDULING RECORDS FILE. Records and reports documenting a student's course selection and timetables. File includes course load by student reports, timetable reports, course selection and verification reports and slips, student scheduling reports and similar records.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends, but within 5 years.

18. STUDENT TRANSFER RECORDS FILE. Records concerning the transfer of students within or out of district schools. File includes transfer forms listing students' and parents' names, addresses, grade level, school names, and reason for transfer; correspondence; tuition receipts; statement of board approval or denial; and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

E. **TEXTBOOK RECORDS**. Records concerning the selection and purchase of textbooks.

1. **ROUTINE REPORTS (TEACHERS, PRINCIPALS, AND SUPERINTENDENTS) FILE**. Reports summarizing inventories from individual schools or the central office, invoices for books, and requests from schools to order books.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years.

2. **SUMMARY SHEETS FILE**. Records concerning specific books compiled from the individual school inventories.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years or when superseded and obsolete.

F. **TRANSPORTATION RECORDS**. Records concerning the transportation of students.

1. **ACCIDENT REPORTS AND TORT CLAIMS FILE**. Copies of accident reports, plaintiff's affidavits, and notices of tort claims. (See G.S. §143-300.1)

DISPOSITION INSTRUCTIONS: Destroy in office 7 years after settlement of claim.

2. **ANNUAL TRANSPORTATION REPORTS FILE**. Summary reports listing the activities of a local education agency's transportation department. Reports include number of days fleet was in operation, total number of miles buses were driven, number of buses operated, salaries paid to drivers and other transportation personnel, number of personnel employed, list of local expenditures, transportation policy questionnaires, inventory data, and other related information. Copies of report are sent to the central office and the Department of Public Instruction.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

3. **BUS INSPECTION REPORTS FILE**. Inspection reports of school buses or school transportation service vehicles.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

4. **CONTRACT TRANSPORTATION FOR CHILDREN WITH DISABILITIES AND OTHER CONTRACTED SERVICES FILE**. Records concerning contracted transportation services for children with disabilities or other pupils, or other groups. File includes contracts, bus driver routes, salary schedules, refund reports, school bus passenger reports, annual transportation reports, inspection reports, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

5. **COST OF TRANSPORTATION FILE**. Records concerning the operation, maintenance, replacement, and insurance of school buses or other school transportation service vehicles. File includes requisitions, expenditure reports, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

6. **SCHOOL BUS INVENTORY AND MAINTENANCE FILE.** Records compiled from the State Vehicle Fleet Management System (SVFMS) file that concern the maintenance of school buses or school transportation service vehicles. File includes 30-day inspection worksheets, oil filter reports, fuel receipts, preventative maintenance charge tickets, bus fleet inventories, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years if no litigation, claim, audit, or other official action involving the records has been initiated.

7. **SCHOOL BUS ROUTES FILE.** Records concerning routes taken by school buses. File includes descriptions of routes, passenger lists, bus run reports, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

8. **SELT BELT FILE.** Records concerning the use and installation of seat belts and other restraint systems in school buses. File includes consent forms and similar records showing student's name, bus number, date system requested, type of system requested, and signatures of school's principal and student's parent and/or guardian.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

9. **STATE VEHICLE FLEET MANAGEMENT SYSTEM (SVFMS) (ELECTRONIC) FILE.** SVFMS is a electronic data processing record used by the local education agency to track inventory and maintenance of school buses or school transportation service vehicles. Preventative maintenance information and inventories of buses are entered into this electronic file.

DISPOSITION INSTRUCTION: General guidelines for disposing of machine readable and electronic data processing records may be found in STANDARD-4. MACHINE READABLE AND ELECTRONIC RECORDS.

SVFMS inventory and maintenance information should be retained in electronic form for 3 years after applicable inventories and maintenance reports are produced and then erased or deleted.

10. **TRANSPORTATION INFORMATION MANAGEMENT SYSTEM (TIMS) (ELECTRONIC) FILE.** TIMS is an electronic data processing record concerning the management of school transportation services. Bus scheduling and routing information, students' addresses, bus maintenance schedules, mileage of buses, and other related data are entered into this electronic file.

DISPOSITION INSTRUCTIONS: General guidelines for disposing of machine readable and electronic data processing records may be found in STANDARD-4. MACHINE READABLE AND ELECTRONIC RECORDS.

TIMS data and statistics should be retained in electronic form for 3 years after applicable statistical reports are produced and then erased or deleted.

11. **TRANSPORTATION RECORDS FILE.** Records documenting school bus maintenance and use. File includes number of hours driven, refund and materials received report, and transportation charge. File also includes summaries, reports, transportation audits, and similar records generated by the Transportation Management System (TIMS) and/or received from the N.C. Department of Public Instruction.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years or when superseded, obsolete, or administrative value ends, whichever occurs first.

RECORDS RETENTION AND DISPOSITION SCHEDULE AMENDMENT


LOCAL EDUCATION AGENCIES

Amend the records retention and disposition schedule for Local Education Agencies by changing the disposition instructions for Item 21, Insurance Policies File, in Standard-1. Administration and Management Records; by changing the disposition instructions for Item 8, Insurance Policies File, in Standard-3. Legal Records; and by changing the description for Item 57, Withholding Tax File, in Standard-2. Budget and Fiscal Records, as shown on substitute pages 4, 17, and 14 dated July 26, 1999.

Amend all disposition instructions that include the phrase "Destroy...if no litigation, claim, audit, or other official involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved," to read:

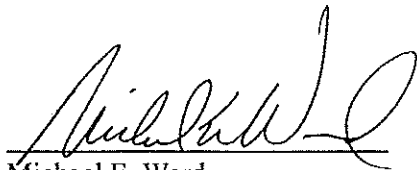
"Destroy...if no claim, audit, or other official action involving the records has been initiated. If official action (excluding litigation) has been initiated, destroy in office after completion of action and resolution of issues involved. (Also see Item 22, **Litigation Case File**, in Standard-1. **ADMINISTRATION AND MANAGEMENT RECORDS**.)"

APPROVAL RECOMMENDED

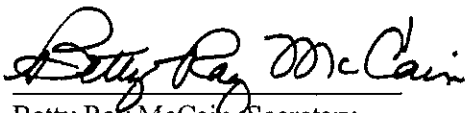


Jeffrey J. Crow, Director
Division of Archives and History

APPROVED



Michael E. Ward
Superintendent of Public Instruction



Betty Ray McCain, Secretary
Department of Cultural Resources

July 26, 1999

20. **INDEX FILE.** Location listings of specific information or records.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

- *21. **INSURANCE POLICIES FILE.** Insurance policies listing specific terms and conditions of coverage for buildings, liabilities, fire, vehicles, workers' compensation, and other related activities or property.

DISPOSITION INSTRUCTIONS: Destroy in office 6 years after termination or expiration of policy if no claim, audit or other official action involving the records has been initiated. If official action (excluding litigation) has been initiated destroy in office after completion of action and resolution of issues involved. (Also see item 22, page 4 **STANDARD-1. ADMINISTRATION AND MANAGEMENT RECORDS, LITIGATION CASE FILE.**)

22. **LITIGATION CASE FILE.** Correspondence and legal records concerning cases in which the local education agency is a party. (Comply with applicable provisions of G.S. §132-1.1 regarding confidentiality of legal records.)

DISPOSITION INSTRUCTIONS: Transfer to Litigation File (item 10) in Standard 3, Legal Records, when reference value ends.

23. **MANAGEMENT STUDIES FILE.** Internal studies conducted by administrators.

DISPOSITION INSTRUCTIONS:

- a) Transfer studies with obvious historical value to the Histories File (item 19) after 3 years.
- b) Destroy in office remaining records after 3 years.

24. **MEETINGS FILE.** Notes, memorandums, electronic tape recordings, and all other records (excluding minutes and agendas) for all types of meetings.

DISPOSITION INSTRUCTIONS: Destroy in office after approval of official minutes.

25. **MINUTES FILE.** Official copies of minutes of committees, commissions, and boards. (This is an essential agency record.)

DISPOSITION INSTRUCTIONS:

- a) Transfer all unmicrofilmed, signed minutes to the State Records Center to be microfilmed for security and returned.
- b) Transfer official signed photocopies of future minutes to the State Records Center after each meeting to be microfilmed for security.
- c) Retain in office original minutes permanently.

26. **ORGANIZATION CHARTS FILE.** Charts indicating administrative lines of responsibility.

DISPOSITION INSTRUCTIONS:

*Shown as amended on July 26, 1999

49. **SALES TAX FILE.** Records concerning the collection of sales and use taxes from various sources in an agency. File includes ledgers or journals, computer printouts listing amounts collected, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

50. **TELEPHONE LOGS (BILLINGS) FILE.** Logs used to record telephone calls, charges, and costs.

DISPOSITION INSTRUCTIONS: Destroy in office when released from all audits.

51. **TIME REPORTS FILE.** Reports detailing time spent on program elements of the local education agency.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends but within 6 years.

52. **TRAVEL REIMBURSEMENTS FILE.** Requests for reimbursement for travel and related expenses.

DISPOSITION INSTRUCTIONS: Destroy in office when released from all audits.

53. **TRAVEL REQUESTS FILE.** Requests for travel authorization and related correspondence.

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year..

54. **VEHICLE MAINTENANCE FILE.** Records concerning the use and maintenance of agency vehicles. File includes maintenance schedules, mileage logs, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when released from all audits.

55. **VOUCHER REGISTERS FILE, GENERAL EXPENSE AND PERSONAL SERVICE.** Voucher registers listing payment of funds for general expenses or personal services.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

56. **VOUCHERS FILE, VARIOUS FUNDS.** Vouchers providing verification of payments from various funds.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

- *57. **WITHHOLDING TAX FILE.** File consists of W-4 forms detailing payroll withholding exemptions (state and federal) for each employee.

Shown as amended on July 26, 1999

6. **EASEMENTS FILE.** Records concerning the county's right to limited use of private property. File includes copies of easements, correspondence, and other related records.

DISPOSITION INSTRUCTIONS: Retain in office permanently.

7. **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) FILE.** Records concerning local education agency compliance with federal EEOC regulations. File includes rules and regulations, compliance reports, correspondence, and other related records. (Information in file does not relate to specific legal cases.)

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

- *8. **INSURANCE POLICIES FILE.** Insurance policies entered into by the local education agency for coverage for buildings, liabilities, fire, vehicles, workers' compensation, and other related topics.

DISPOSITION INSTRUCTIONS: Destroy in office 6 years after termination or expiration if no claim, audit, or other official action involving the records has been initiated. If official action (excluding litigation) has been initiated, destroy in office after completion of action and resolution of issues involved. (Also see item 22, page 4 **STANDARD-1. ADMINISTRATION AND MANAGEMENT RECORDS, LITIGATION CASE FILE.**)

9. **LEASES FILE.** Leases, with supporting documents, entered into by the local education agency.

DISPOSITION INSTRUCTIONS: Destroy in office 3 years after termination or expiration if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

10. **LITIGATION FILE.** Records concerning litigation in which agency is a party. File includes legal opinions and briefs, correspondence, affidavits, photographs, medical reports, records of appeals, and other related records used in preparing proceedings. (Portions of file may be considered confidential in accordance with G.S. §132-1.1.)

DISPOSITION INSTRUCTIONS:

- a) Retain in office official copy permanently.
- b) Destroy in office reference or duplicate copies 3 years after case is closed.

11. **OATHS OF OFFICE FILE.** Oaths of office taken by agency officials.

DISPOSITION INSTRUCTIONS:

- a) Transfer official copy to clerk of superior court immediately.
- b) Destroy in office reference copies 3 years after official termination.

*Shown as amended on July 26, 1999

Policy LICN-007: Licensure Suspension and Revocation

Status: ADOPTED

Original Adopted Date: 05/03/2018 | **Last Reviewed Date:** 05/03/2018

NORTH CAROLINA STATE BOARD OF EDUCATION

Policy Manual

Item	Description
Policy Title	Licensure Suspension and Revocation
Policy Category	Licensure (LICN)
Policy ID	LICN-007
Policy Date	05/03/2018
Previous Policy Dates	07/01/1986, 07/01/1988, 11/01/1990, 08/04/1993, 10/01/1993, 05/06/1999, 08/01/2000, 11/01/2001, 11/06/2003, 10/07/2004
Statutory Reference	G.S. 115C-12; 115C-268.1; 115C-268.5; 115C-270.5; 115C-270.20; 115C-270.35; 115C-325; 115C-400
NC Administrative Code	<p>16 NCAC 06C .0372 DENYING A LICENSE APPLICATION OR SUSPENSION OR REVOCATION OF A LICENSE ISSUED BY THE NC DPI (https://simbli.eboardsolutions.com/SU/NkG4jXQk2PCBAgclYslshFbA==)</p> <p>16 NCAC 06C .0373 REPORTING REQUIREMENTS FOR SUSPECTED CHILD ABUSE BY A LOCAL EDUCATION AGENCY ADMINISTRATOR TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION(https://simbli.eboardsolutions.com/SU/QClplus1tuEwXWEcEStkNExhA==)</p> <p>16 NCAC 06C .0374 INVESTIGATION REQUIREMENTS TO DETERMINE REASONABLE CAUSE TO SUSPEND OR REVOKE AN EDUCATOR LICENSE(https://simbli.eboardsolutions.com/SU/HcmXoIElwKecqD5pTBBYZw==)</p> <p>16 NCAC 06C .0375 VOLUNTARY SURRENDER OF AN EDUCATOR LICENSE(https://simbli.eboardsolutions.com/SU/E2CxfWE0gUlcO8plus5EPslshmhA==)</p> <p>16 NCAC 06C .0376 REINSTATEMENT OR ISSUANCE OF A SUSPENDED, REVOKED, OR DENIED LICENSE(https://simbli.eboardsolutions.com/SU/nvwX9xcixeb59TtHoYuXCA==)</p>

I. Licensure Suspension and Revocation

1. The State Board of Education shall automatically revoke the license of a teacher or school administrator without the right to a hearing upon receiving verification of the identity of the teacher or school administrator together with a certified copy of a criminal record showing that the teacher or school administrator has entered a plea of guilty or nolo contendere to or has been finally convicted of any of the following crimes: Murder in the first or second degree, GS 14-17; Conspiracy or solicitation to commit murder, GS 14-18.1; Rape or sexual offense as defined in Article 7A of Chapter 14 of the General Statutes; Felonious assault with deadly weapon with intent to kill or inflicting serious injury, GS 14-32; Kidnapping, GS 14-39; abduction of children, GS 14-41; Crime against nature, GS 14-177; Incest, GS 14-178 or 14-179; Employing or permitting minor to assist in offense against public morality and decency, GS 14-190.6; Dissemination to minors under the age of 16 years, GS 14-190.7; Dissemination to minors under the age of 13 years, GS 14-190.8; Displaying material harmful to minors, GS 14-190.14; Disseminating harmful materials to minors, GS 14-190.15; First degree sexual exploitation of a minor, GS 14-190.16; Second degree sexual exploitation of a minor, GS 14-190.17; Third degree sexual exploitation of a minor, GS 14-190.17A; Promoting prostitution of a minor, GS 14-190.18; Participating in prostitution of a minor, GS 14-190.19; Taking indecent liberties with children, GS 14-202.1; Solicitation of child by computer to commit an unlawful sex act, GS 14-202.3; Taking indecent liberties with a student, GS 14-202.4; Prostitution, GS 14-204; and child abuse under GS 14-318.4.

The Board shall mail notice of its intent to act pursuant to GS 115C-270.35 by certified mail, return receipt requested, directed to the teacher or school administrator at their last known address. The notice shall inform the teacher or school administrator that it will revoke the person's certificate unless the teacher or school administrator notifies the Board in writing within 10 days after receipt of the notice that the defendant identified in the criminal record is not the same person as the teacher or school administrator. If the teacher or school administrator provides this written notice to the Board, the Board shall not revoke the certificate unless it can establish as a fact that the defendant and the teacher or school administrator are the same person.

2. The SBE may deny an application for a license or may suspend or revoke a license issued by the Department only for the following reasons:
 - a. fraud, materials misrepresentation or concealment in the application for the license;
 - b. changes in or corrections of the license documentation that make the individual ineligible to hold a license;
 - c. conviction or entry of a plea of no contest, as an adult, or a crime if there is reasonable and adverse relationship between the underlying crime and the continuing ability of the person to perform any of his/her professional functions in an effective manner.
 - d. final dismissal of a person by a local board pursuant to G.S. 115C.325(e)(1)b if there is a reasonable and adverse relationship between the underlying misconduct and the continuing ability of the person to perform any of his/her professional functions effectively;
 - e. final dismissal of a person by a LEA under G.S.115C.325(e)(1)e (physical or mental incapacity);
 - f. resignation from employment with a LEA without thirty calendar days' notice, except with the prior consent of the local superintendent;
 - g. revocation of a license by another state;
 - h. any other illegal, unethical or lascivious conduct by a person if there is a reasonable and adverse relationship between the underlying conduct and the continuing ability of the person to perform any of his/her professional functions in an effective manner; and
 - i. failure to report revocable conduct as required under paragraph (3) of this policy.
3. In addition to any duty to report suspected child abuse, any superintendent, assistant superintendent, associate superintendent, personnel administrator or principal who knows or has reason to believe that a licensed employee of the LEA has engaged in behavior that would justify revocation of the employee's license under sections (c), (d), or (h) of paragraph (a) of this policy and which behavior involves physical or sexual abuse of a child, shall report that information to the Superintendent of Public Instruction promptly or at least no later than five working days after the date of a dismissal or other disciplinary action or the acceptance of a resignation based upon that conduct. For purposes of this section, the term "physical abuse" shall mean the infliction of physical injury other than by accidental means and other than in self-defense. The term "sexual abuse" shall mean the commission of any sexual act upon a student or causing a student to commit a sexual act, regardless of age of the student and regardless of the presence or absence of consent. This paragraph shall apply to acts that occur on or after October 1, 1993.
4. Upon the receipt of a written request and substantiating information from any LEA, local superintendent or other person in a position to present information as a basis for the suspension or revocation of a person's license, the Superintendent of Public Instruction will conduct an investigation sufficient to determine whether reasonable cause exists to believe that the person's license should be suspended or revoked.
 - a. If the Superintendent determines that reasonable cause exists to believe that the person's license should be suspended or revoked on one or more of the grounds specified in paragraph (a) of this policy, the Superintendent shall prepare and file written charges with the SBE.
 - b. The SBE will review the written charges and determine whether the person's license should be suspended or revoked based on the information contained in the written charges. If the SBE determines that the written charges constitute grounds for suspension or revocation, it shall provide the person with a copy of the written charges, and notify the person that it will revoke the person's license unless the person, within 60 days of receipt of notice, initiates administrative proceedings under Article 3, Chapter 150B of the General Statutes. The notice will be sent certified mail, return receipt requested.
 - c. If the person initiates administrative proceedings the SBE will defer final action on the matter until receipt of a proposed decision as provided for in G.S. 150B-34. If the person does not initiate administrative proceedings within 60 days of receipt of notice, the SBE may suspend or revoke the person's license at its next meeting.
5. The SBE may suspend an individual's license for a stated period of time or may permanently revoke the license, except as limited by G.S. 115C-325(o) (the remainder of the year for resignation without 30 day notice).
6. The SBE may accept the voluntary surrender of a license in lieu of seeking revocation of the license. Before it accepts a voluntary surrender, the SBE shall make findings of fact regarding the circumstances surrounding the voluntary surrender to demonstrate

that grounds existed under which the SBE could have initiated license revocation proceedings. The SBE shall treat a voluntary surrender the same as a revocation.

7. The SBE may reinstate a suspended or revoked license or may grant a new license after denial of a license under paragraph (2) of this policy upon an individual's application submitted no sooner than six months after the suspension, revocation, or denial and a showing that:
 - a. the action that resulted in suspension, revocation or denial of the license did not involve abuse of minors; moral turpitude or grounds listed in G.S.115C-325(e)(1)(b);
 - b. the person has no record of subsequent behavior that could have resulted in license revocation; and
 - c. there is no court order or judicial determination that would prohibit the person from returning to or holding a licensed position.
 8. The SBE will notify all other states of all actions, which involve the denial, suspension, revocation, surrender, or reinstatement of a license.
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TASK FORCE ON TEACHER ETHICS AND LICENSURE
REPORT

RAISING THE BAR FOR NORTH CAROLINA TEACHERS

February 25, 2010

**TASK FORCE ON TEACHER ETHICS AND LICENSURE
MEMBERS**

Bob McGrattan, Task Force Chairperson

Assistant Superintendent HR, Asheville City Schools

John J. Aldridge, *Special Deputy Attorney General, Law Enforcement Liaison*

Cathy Barlow, *Dean of Education, UNC Wilmington*

Diana Beasley, *2006-07 Teacher of the Year*

James Bell, *2007-08 Teacher of the Year*

Bruce Boyles, *Superintendent, Cleveland County*

Kendra D. Hill, *Deputy Counsel to Gov. Beverly Perdue*

Tom Humble, *Principal, Raleigh Charter High School*

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INTRODUCTION

Teachers are intended by parents, citizenry and lawmakers alike to serve as good examples for their young charges. Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil. It is not inappropriate or unreasonable to hold our teachers to a higher standard of personal conduct, given the youthful ideals they are supposed to foster and elevate.

Faulkner v. New Bern-Craven County Bd. of Educ., 311 N.C. 42, 59, 316 S.E.2d 281, 291 (1984).

As the State Supreme Court clearly wrote in *Faulkner*, North Carolina's teachers are held to a high standard of ethical conduct because of their influential role in the lives of our children. To this end, the Task Force on Teacher Ethics and Licensure ("Task Force") was established to review the ethical requirements for North Carolina teachers, administrators, substitute teachers, and teacher assistants.

The Task Force used the following three questions as guidelines for analyzing current ethical standards and proposing improvements:

- What are the needs and expectations of the education community, the public, and especially parents and students?
- What does the education profession expect of its members?
- What State policies and procedures should be adopted or amended in order to strengthen the process for licensing and disciplining teachers?

The Task Force's recommendations originated from the shared goal of the North Carolina Superintendent of Public Instruction ("Superintendent") and the State Board of Education ("Board"): *to ensure that the children of North Carolina have a safe and productive learning environment by placing in every classroom only the most qualified teacher whose character is beyond reproach.*

The Task Force would especially like to thank the State Superintendent, Dr. June Atkinson, for her support in this endeavor.

A. HISTORICAL PERSPECTIVE

Pursuant to Article IX, sec. 5 of the North Carolina Constitution the State Board of Education is vested with the authority to license teachers and other professionals. Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971), cert. denied, 406 U.S. 920 (1972) Consistent with that constitutional authority, the General Statutes provide that "State Board of Education shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina" N.C.G.S. §115C-296(a).

The State Board of Education exercises its plenary authority with respect to the licensing of teachers in several ways. First, it has adopted a Rule, codified as 16 N.C.A.C. 6C.0312, that outlines the grounds for denying a license, or in appropriate cases, revoking or suspending a license. That Rule also sets out the procedures to be followed in revoking a teaching license. A copy of the Rule is attached in Appendix I.

Second, the State Board has delegated to the State Superintendent and to the Department of Public Instruction the responsibility for the day-to-day administration of State Board policies and legislation governing the licensing of professional educators. Staff at the Department, in particular, oversee the immense paperwork and other ministerial duties associated with reviewing applications for licensure. In addition, the State Board legal staff participate in investigating allegations of misconduct and initiating revocation proceedings with the approval of the State Superintendent.

The State Superintendent has appointed an Advisory Committee on Teacher Ethics which consists of members of the profession, including central office administrators, principals, teachers, and representatives from the Institutions of High Education. (IHEs) The Ethics Advisory Committee interviews applicants for licensure where the applicant indicates a past criminal conviction, and then makes a recommendation to the Superintendent as to whether the teacher should receive a license. The Committee follows a similar process when allegations arise that could lead to disciplinary action against an educator's license.

The State Board of Education has also adopted a Code of Ethics for Professional Educators as well as a Testing Code of Ethics applicable in the context of test administration. A copy of each is attached in Appendices II and III, respectively.

Prior to 1993, no policy existed that required that employers, LEAs or individual supervisors report any teacher misconduct to the State Department. In that year, the State Board adopted a mandatory reporting rule that required school administrators to report to the State Department any misconduct of a licensed educator that would amount to sexual or physical abuse of a student, with the definition of sexual abuse being broad enough to encompass sexual misconduct on the part of a licensed educator.

Since the adoption of this mandatory reporting rule, the number of teacher misconduct cases reported to the State has increased significantly, resulting in many more revocations of teacher licenses. Many local districts report all potentially revocable offenses to the State. Consequently, the incidence of "secret" settlement agreements at the local level has decreased significantly, thus reducing the potential for "passing the trash," the term frequently used to describe the situation where an employee and school system enter into a confidential agreement permitting the teacher to resign without further negative impact to the teacher's license or reputation.

The staff available at the State level to investigate and prosecute the teacher misconduct cases is very limited. The legal department consists of one attorney and a paralegal that both have extensive legal responsibilities outside of the licensure area. Staff in the Licensure Section primarily deal with intake issues and ensuring that educational qualifications are met.

Upon receipt of a report of educator misconduct from a local school district (or any other reliable source), the legal staff at DPI undertake to collect all relevant materials and follow up with any necessary investigation. However, with limited staff, the legal department relies heavily on the investigation that took place at the local level, either by school authorities or by law enforcement. Legal staff compile all available information and take the information to the Ethics Committee for review and recommendation to the State Superintendent for disciplinary action.

Notably, some instances of misconduct warrant automatic revocation of a teacher's license. N.C.G.S. §115C-296(d)(2), sets forth a list of offenses that, upon conviction, results in automatic revocation of a license. A copy of the relevant section of the statute is attached in Appendix IV.

B. ABOUT THE TASK FORCE ON TEACHER ETHICS AND LICENSURE

The Task Force, appointed by the State Superintendent, consists of school board attorneys, human resource directors, and members of various educational organizations such as Personnel Administrators of NC (PANC), North Carolina Association of Educators (NCAE), Professional Educators of NC (PENC), and the North Carolina School Boards Association (NCSBA). With the assistance of the Department of Public Instruction (DPI) staff, the Task Force members reviewed State laws and policies regarding ethics requirements for professional educators, giving special attention to the licensure application and certification process. The Task Force has identified several critical needs areas in education and has made recommendations to ensure a productive and safe school environment for students and teachers.

In order to address these critical needs areas, the Task Force makes the following recommendations:

Recommendation 1: Revise the current licensure application to include additional questions regarding the applicant's background to make the self-reporting process a more comprehensive and effective evaluation tool.

Recommendation 2: Support legislation to create confidentiality protections to encourage full disclosure and to ensure that the information disclosed on the expanded teacher application is protected.

Recommendation 3: Recommend legislation to authorize the State Board of Education to conduct fingerprint background checks as part of the application for initial licensure and license renewal.

Recommendation 4: Support legislation allowing the State Board to share background check information with an applicant's educational employers, and requiring local school boards to report to the State their findings from any local background checks.

Recommendation 5: Require teachers and administrators to report any criminal arrests or charges within a certain time period to the LEA in which they are employed, and also to report any such arrests to the Department of Public Instruction.

Recommendation 6: Require teacher assistants and substitutes to be subject to a licensing or permitting process in order to ensure consistent oversight at the State level.

Recommendation 7: Establish initial and continuing ethics training for all education professionals, including teachers, administrators, substitutes, and teacher assistants. Specifically, the Institutions of Higher Education should require at least a semester-hour course in ethics prior to recommending a teacher for a license. Teachers should have to take a certain number of ethics hours during each 5-year renewal cycle.

Recommendation 8: Update and distribute the Code of Ethics for professional educators and include on the back of every license that is issued. All new and beginning teachers should be given an orientation at the local level, during which the Code is discussed. In addition, local school boards should adopt and disseminate policies and procedures governing not only teacher misconduct, but the reporting and investigation of such misconduct. Teachers should be required to sign a form prior to employment acknowledging receipt of a copy of the Code and promising to abide by its provisions.

Recommendation 9: Adopt rules by the State Board of Education detailing appropriate online behavior for teachers and teacher assistants.

Recommendation 10: Revise the list of behaviors for which discipline against a license is warranted to include other conduct, such as revocation by another professional licensing agency. In addition, the list of conduct, which must be reported to the State should be expanded. Finally, the State should be given a broader range of disciplinary actions to take against a license.

Recommendation 11: Require local school officials and local board attorneys to communicate with local law enforcement and District Attorneys to ensure the exchange of information when necessary. There should be an effort by local and state officials to encourage judges to order a teacher to surrender his or her license as part of sentencing.

Recommendation No. 12: Maintain and improve the Department of Public Instruction's Web site, which lists all teachers who have been disciplined and the grounds for the discipline, including the charges filed and the ultimate disposition (order of revocation, settlement order, etc.).

Recommendation 13: Require school administrators, including both central office and school building administrators to participate in ongoing training and education regarding the investigation and reporting of ethical misconduct by employees.

Recommendation 14: Encourage local school systems to provide education for students on recognizing and reporting teacher misconduct.

Recommendation 15: Increase the Department of Public Instruction's/State Board of Education's resources dedicated to the investigation and prosecution of teacher misconduct cases and to the implementation of the recommendations proposed by the Superintendent's Task Force on Teacher Ethics and Licensure.

PART I: PROPOSED AMENDMENTS TO THE LICENSURE APPLICATION

A. COMPREHENSIVE CHARACTER AND FITNESS QUESTIONS

Recommendation 1: Revise the current licensure application to include additional questions regarding the applicant's background to make the self-reporting process a more comprehensive and effective evaluation tool.

The State Board of Education, unlike many licensing boards in the state, is not authorized to perform fingerprint checks on applicants for teacher licensing. The Board relies solely upon the information reported on the application for licensure.

Under the current application for a teaching license or the renewal of a license, an applicant is asked only two character and fitness questions:

1. Have you ever had a certificate or license revoked or suspended by another state or other governing body?
2. Have you ever been convicted of a crime (other than a minor traffic offense)?

If the applicant answers either question affirmatively, DPI staff review the applicant's supporting documentation and written explanation. Based on this review, staff will determine whether further information and a face-to-face interview is needed, and, if so, will invite the applicant to an interview with the State Superintendent's Ethics Advisory Committee. The purpose of the interview is to determine what, if any, action the Superintendent should take against the applicant's license. Disciplinary action includes denial or nonrenewal of a license, revocation, or suspension, or the issuance of a probationary license. Ultimately, the State Superintendent notifies the applicant of her decision and, if applicable, notifies the applicant of his or her right to appeal. A more detailed summary of the Ethics Committee review process is available in Appendix V.

After reviewing teacher licensure requirements in other states as well as other professional licensure requirements in North Carolina, the Task Force has determined that the current application questions are deficient in both scope and depth. For instance, the first question is unclear as to what *kinds* of license revocations should be reported and also fails to inquire about less severe disciplinary actions taken against a license or any pending investigations. The second question is too narrow because it only covers fully adjudicated convictions; thus, an applicant is not required to include pending charges or other relevant criminal history (e.g. arrests, indictments, plea deals, etc.). There is also no explicit requirement to inform the Superintendent of incarceration or probation. As a result, applicants have demonstrated confusion regarding the nature and extent of answers required. Furthermore, because the State does not currently conduct criminal background checks on any licensure applicant, the State is compelled to rely solely on the applicant's responses to the self-reporting questions. Whether through confusion, or intentionally, applicants often are not forthcoming in

their responses. As a result, the State often does not receive accurate information. Asking more questions, and particularly more probing questions, will hopefully result in more accurate information.

The current licensure application fails to provide significant, meaningful information about an applicant's character and fitness. A more comprehensive line of questioning is necessary in order to obtain complete and honest answers about prior alleged or actual misconduct.

Accordingly, the Task Force has drafted and proposed an updated set of questions for the character and fitness section of the NC Teaching Licensure application (a final draft of the proposed questions is provided in Appendix VI). The proposed application should provide a more in-depth and thorough survey of an applicant's history and capacity to be an effective teacher and role model. The proposed changes include: (1) New questions regarding the applicant's criminal background, including alleged or actual child abuse or neglect, as well as any past arrests, criminal charges, indictments, guilty or no contest pleas, and probation; (2) Expanded questions regarding professional licensing, including the denial, revocation, or suspension of a license and any pending adverse actions or past disciplinary action; (3) New questions regarding employment history, including actual or alleged misconduct; and (4) New questions regarding prior military service, discipline, and discharge.

The Task Force strongly urges the Superintendent to adopt and implement the proposed changes to the teacher licensure application.

B. STATUTORY CONFIDENTIALITY PROTECTIONS

Recommendation 2: Support legislation to create confidentiality protections to encourage honesty and to ensure that the information disclosed on the expanded teacher application is protected.

The legislature should enact legislation exempting licensure applications from the Public Records Act. The Task Force recommends confidentiality protections to ensure that the applicant's expanded character and fitness responses are protected from disclosure. All information short of a final disposition should be confidential. At present the licensure documents in the possession of the State Board or the Department are public records and not protected from disclosure. In order to encourage honesty, and hence accuracy, a teacher's responses to questions about prior employment actions should enjoy the same protection those records would have if part of the personnel file. See G.S. §115C-319.

PART II: EXPANDED BACKGROUND CHECKS FOR TEACHING LICENSE APPLICANTS

A. STATE FINGERPRINT BACKGROUND CHECKS FOR TEACHER LICENSING

Recommendation 3: Recommend legislation to authorize the State Board of Education to conduct fingerprint background checks as part of the application for initial licensure and license renewal.

State law requires each board of education to adopt a policy on criminal history checks as a part of the *employment* application process for school personnel.¹ Some school districts conduct database checks, while others conduct fingerprint criminal background checks, all at no cost to the applicant. However, in deciding whether or not to *license* an applicant, the State Board, unlike numerous other licensing boards, does not currently have the authority to conduct fingerprint background checks. This lack of information limits the State Board's ability to make a well-informed decision as to the applicant's fitness to be a licensed North Carolina teacher or administrator.

Other licensing boards in our State have the authority to conduct such criminal background checks. For example, G.S. § 90-11 allows the Medical Board to receive a fingerprint criminal record check from the Department of Justice for an applicant seeking a medical license.² Given that teachers are entrusted to work closely with students, they should be subject to similarly rigorous background checks. Furthermore, many other states require fingerprint background checks before issuing a license. The Task Force thus recommends similar legislation which would give the State the authority to conduct fingerprint background checks as part of the licensing or licensing renewal procedures.

B. INFORMATION SHARING PROCEDURES

Recommendation 4: Support legislation allowing the State Board to share background check information with an applicant's educational employers, and requiring local school boards to report to the State their findings from any local background checks.

If the State Board is allowed to conduct fingerprint criminal history checks, the Task Force recommends that laws or policies be enacted to allow the sharing of confidential criminal history information between the State and each Local Education Agency (LEA) or charter school. Results from any criminal background checks, whether conducted by the State for the purpose of licensure or by the LEA for the purpose of employment, should be shared between the Department of Public Instruction ("DPI") and the LEA. DPI will use the results to determine whether to issue, revoke, or suspend licenses, and the LEAs may use the information to make hiring decisions. The Task Force also discussed requiring LEAs to conduct an updated criminal background check whenever a teacher moves from one district to another (which many LEAs already do voluntarily).

Currently, the General Statutes require an LEA to provide any criminal history information it receives on a licensed professional to the SBE. G.S. §115C-332(e). Most LEAs are not complying with this requirement. State officials should make every effort to communicate the requirement to LEAs to report background checks to the SBE. In addition, the SBE should undertake to enforce this requirement to the extent possible.

C. OTHER SUGGESTIONS/CONCERNS

COST TO APPLICANTS

Current law prohibits LEAs from charging applicants for the cost of general database criminal history checks or the more expensive fingerprint checks.³ Typically most other states do require applicants to pay the fees for the criminal background checks. The Task Force discussed potential ways to cover the costs of the more rigorous criminal history checks (fees include a \$10.00 charge for the fingerprinting service and a separate \$38.00 processing charge by the State Bureau of Investigation). The fees could be subsidized from a State fund or added entirely to the license application fee at the State Board's discretion.

CONFIDENTIALITY

Any criminal history information obtained and/or shared by the State and the LEAs needs to be exempted from public records laws and subject to a confidentiality provision.⁴

NONCERTIFIED PERSONNEL

Finally, the State may want to consider expanding background checks to include noncertified employees such as teacher assistants, student teachers, volunteers, substitutes, etc.

Teachers and licensed administrators are not the only personnel who have daily, unsupervised contact with students. In particular, teacher assistants and substitutes are afforded unlimited and often unsupervised access to children in our schools. As discussed more fully in Part III, the Task Force believes that legislation should be adopted that requires these non-certified personnel to be licensed.

D. CONTINUED SELF-REPORTING

Recommendation 5: Require teachers and administrators to report any criminal arrests or charges within a certain time period to the LEA in which they are employed, and also to report any such arrests to the Department of Public Instruction.

The Task Force recommends that teachers and administrators be required to report any criminal arrests or charges within a certain time period to the LEA, which would then forward the report to the DPI. DPI should also include a requirement on the license application that the licensee has an obligation to report any subsequent arrests immediately to the Department.

E. DATA AND EXAMPLES

MULTI-STATE COMPARISON

The Task Force researched laws and policies from fifteen other states to determine whether they have implemented the use of fingerprinting for background checks. The results are summarized below, and a full report is available in Appendix VII.

- Eleven states out of fifteen require fingerprints and conduct fingerprint background checks.
- Three states out of fifteen do not perform fingerprint background checks but they do conduct name-based criminal background checks.
- Most of the states require the applicant, especially a first-time applicant, to pay the background check fee either partially or entirely.

CASE STUDY: CHARLOTTE-MECKLENBERG SCHOOLS

In order to better understand the process of fingerprinting school employees, the Task Force reviewed the hiring practices of Charlotte-Mecklenburg Schools (CMS) as a model in North Carolina. The Charlotte-Mecklenburg school district has been fingerprinting all “new hires” since the early 1990’s. Following is a summary of an interview with Ms. Ellen Seth, Charlotte-Mecklenburg’s Employee Relations Compliance Information Supervisor:

CMS works with a private vendor to fingerprint an average of 3,000 applicants per year. The fingerprints are then mailed to the SBI, which conducts its search before sending the information on to the FBI. Approximately one out of one hundred applicants are excluded due to the information provided from the fingerprints. CMS enacted the fingerprinting background check program because fingerprints are conclusive as to identity, whereas background checks by name can return erroneous results if the applicant’s name is shared by another individual.

The entire process takes approximately two weeks. The fingerprints are currently sent to the SBI by mail, but CMS is prepared to use electronic fingerprinting, which should shorten the length of time for receiving results from the SBI/FBI.

The cost of the program is about \$233,000 per year, with \$42,000 and \$191,000 going to the private vendor and SBI/FBI respectively. There is one CMS staff member who completes the process in coordination with the private fingerprinting business.

CASE STUDY: CALIFORNIA PUBLIC SCHOOLS

California law requires all public school employers to secure criminal background clearance for each new employee.⁵ In addition, all first-time California Credential Applicants are required to submit fingerprints to the California Commission on Teacher Credentialing (CTC).⁶ California employs a credentials analyst and a credentials technician to evaluate the fingerprints taken of new employees. The state uses a service called LiveScan, which is open to the public on an appointment-only basis. LiveScan fingerprints for numerous agencies, not only

the school district. It takes approximately two weeks for the results to be processed but it can take as long as several months to clear.⁷

A teacher, new to the profession, will typically pay: (1) A \$55 Credential application fee to CTC; and (2) A \$71 fee (\$20 rolling fee (variable) + \$32 state clearance + \$19 FBI clearance), paid at the time of the LiveScan, for Criminal Background clearance, which is automatically reported to the CTC.⁸

CASE STUDY: TEXAS PUBLIC SCHOOLS

In 2007, the Texas General Assembly passed legislation requiring all school employees to submit fingerprints for national criminal background checks.⁹ Pursuant to that legislation, the State Board for Educator Certification has been reviewing the national criminal history record information of employees who had not previously submitted fingerprints to the department. During its implementation of the law, the Texas Education Agency reports that it has identified felony records for about 1,000 certified educators and 4,000 noncertified employees.¹⁰

PART III: LICENSING SUBSTITUTE TEACHERS AND TEACHER ASSISTANTS

Recommendation 6: Require teacher assistants and substitutes to be subject to a licensing or permitting process in order to ensure consistent oversight at the State level.

Teachers are not the only school employees who have unlimited and often unsupervised access to school children. Teacher assistants and substitutes also have frequent unsupervised contact with students. Yet those paraprofessionals are not subject to any uniform or standardized credentialing standards. Most professions recognize the need to monitor and oversee the quality of their paraprofessionals, particularly when the duties to be performed by them mirror or substantially support duties performed by the licensed professional. In light of the incredible one-on-one contact, often unsupervised, that these paraprofessionals have with students, the Task Force strongly supports further inquiry into the feasibility of licensing or certifying teacher assistants and substitutes.

Presently, the State can monitor only licensed educators, in terms of the power to revoke or suspend licenses. Thus, the Task Force recommends creating a certification process for substitutes and teacher assistants in order to better police those school employees who interact closely with children but are not State-certified. While many, if not all, local school systems do their own background checks on these employees, nevertheless there is no uniformity with regard to those background checks and there is also no standardized method of communication between and among school systems. For example, a teacher assistant or substitute who engages in unethical or criminal conduct in one district may be subject to dismissal in that district but may, in fact, end up obtaining employment in another district through a simple lack of communication between districts. A State repository of information, maintained as part of a licensing process, would serve to remedy the typical situation in which a teacher assistant or

substitute is dismissed for engaging in questionable conduct in one county only to resurface in another. A central licensing agency at the State level would ensure a central repository for records as well as a centralized monitoring unit which could receive and investigate complaints against teacher assistants and substitutes. The State agency would then be in a position to take disciplinary action, effective statewide, against these employees' licenses or permits.

MULTI-STATE COMPARISON

The Task Force researched policies from fourteen states to determine whether other states require any kind of licensing for substitute teachers and paraprofessionals. The results are summarized below, and a full report is available in Appendix VIII.

- Seven out of the fourteen states require some type of license or permit for substitute teachers.
- Seven out of the fourteen states do not require a substitute teacher to have a license or permit.
- Five states out of the fourteen have some licensing or permit procedure for paraprofessionals and teacher assistants (though Wisconsin licenses only Special Education assistants).

PART IV: BUILDING AND MAINTAINING EDUCATOR ETHICS

Teachers are role models for their students. This heightened responsibility not only applies to the classroom, but extends to teachers' personal lives as well. In order to protect and educate the impressionable youth with whom they interact almost daily, teachers and administrators must demonstrate not only the right behavior but also the critical decision-making skills required to prepare students for ethics in the classroom as well as outside of it.

It is critical that North Carolina's educators and administrators demonstrate a strong understanding and practice of ethical behavior. In 2008, the Josephson Institute Center for Youth Ethics conducted a survey about the moral standards of nearly 30,000 high school students in America.¹¹ The troubling report revealed that 30 percent of young people reported stealing an item from a store during the previous year, while 64 percent admitted to cheating on an exam during the previous year.¹² The Josephson Institute study shows that many of today's students lack a strong sense of ethics and morality. Therefore, in addition to purely scholastic development, our schools need to be beacons of ethical standards and character development.

A. ESTABLISHING EDUCATOR ETHICS

Recommendation 7: Establish initial and continuing ethics training for all education professionals, including teachers, administrators, substitutes, and teacher assistants. Specifically, the Institutions of Higher Education should require at least a semester-hour course in ethics prior to recommending a teacher for a license. Teachers should have to complete a certain number of ethics hours during each 5-year renewal cycle.

Recommendation 8: The Code of Ethics for professional educators should be updated and widely distributed. It should be placed on the back of every license that is issued. All new and beginning teachers should be given an orientation at the local level, during which the Code is discussed. In addition, local school boards should adopt and disseminate policies and procedures governing not only teacher misconduct, but the reporting and investigation of such misconduct. Teachers should be required to sign a form prior to employment acknowledging receipt of a copy of the Code and promising to abide by its provisions.

Enforcing ethical standards in education creates a strong foundation for the teaching profession – a foundation based upon care, respect, trust, and integrity. In North Carolina, the current process of addressing ethical issues for educators tends to be reactive rather than proactive. While it is certainly imperative to have a strong policy in place to deal with teachers who violate ethical commitments, it is equally important to address the issue *before* teachers ever enter the classroom.

Accordingly, the Task Force proposes that the State Board, in coordination with education stakeholders, develop initial and continuing ethics training for new and experienced teachers. While emphasizing that teachers are to be role models for their students at all times, the training program should provide teachers with guidelines and standards for maintaining an appropriate and professional persona both at school and in their personal lives.

The ethics training for teachers should cover a wide spectrum of issues, such as:

- Use of physical force with children (within the limits of state law¹³ and local policy);
- Inappropriate relations with student(s);
- Misuse of school funds and property;
- Violations of state and district testing ethics;
- Illegal use of firearms and controlled substances;
- Inappropriate use of computers and other electronic devices;
- Convictions of crimes;
- Setting appropriate boundaries with students;
- Reporting professional misconduct to appropriate authorities.

The ethics training should be incorporated into the licensure programs for all teachers, administrators, teacher assistants, and substitute teachers. Additionally, the Task Force proposes that a class on ethics should be required as part of every five-year renewal cycle of a license. The Task Force recognizes that incorporating ethics training into teacher education programs and requiring such training for renewal credits could result in some additional costs; nevertheless, the continued failure to adequately train North Carolina's teachers on these worthwhile issues could ultimately lead to an even higher social cost to the public.

B. EXAMPLE: STATE AND INTEREST GROUP INITIATIVES

Many education departments, legislatures and interest groups in other states are recognizing the importance of ethics education by encouraging or mandating the teaching of educator ethics, and by creating structured training materials and programs for education professionals.

STATE INITIATIVES

Incidences of reported teacher misconduct are on the rise nationwide. In response to this increased activity, many states have established educator professional practices committees, commissions, or boards to oversee educator discipline. These governing bodies have several purposes, including:

- Establishing standards and requirements for obtaining and maintaining teaching licenses;
- Issuing, renewing, suspending, and revoking licenses;
- Hearing appeals regarding actions taken against licenses;
- Setting standards for examinations to ensure eligibility for licenses;
- Creating plans for attracting qualified candidates to the profession.

Nebraska: The Nebraska Professional Practices Commission¹⁴ has produced six topic-specific videos dealing with teacher ethics,¹⁵ accompanied by a teaching guide that is available online regarding teacher ethics.¹⁶

Oregon: The Teacher Standards and Practices Commission of Oregon¹⁷ requires all teachers to complete an online ethics program. The program is a 2.5 hour internet course that addresses student rights, ethical standards and boundaries, consequences of abuse, state reporting laws, and prevention.

Florida: The Florida legislature recently passed the “Ethics in Education Act” (SB1712) that requires all local school boards to train employees on ethics.¹⁸ Florida has also banned secret or confidential agreements that conceal the reason for a resignation from employment by a teacher.¹⁹

St. Petersburg College in Florida has designed an eight-week course that trains educators to become better teachers and to learn strategies that can help protect their careers and reputations.²⁰ The course focuses on the State Board of Education rules, critical thinking skills, Florida statutes, professional conduct, and the history of ethical thought. The course is a practical approach to recognizing, understanding, and solving ethical problems facing today’s teachers. Additionally, the course fulfills the Florida Department of Education’s requirement that educators who have been disciplined by the licensing board pass a three-credit college level course prior to being reinstated as an educator. New teachers are also required to pass an approved ethics course before teaching in Florida’s schools.

C. CYBER ETHICS

Recommendation 9: The State Board of Education should adopt rules detailing appropriate online behavior for teachers and teacher assistants.

Educators often do not realize the extent to which personal internet usage can jeopardize one's ethical commitment to teaching. Therefore, teachers must be keenly aware of the potential for ethical and even legal violations when communicating and posting personal information on sites such as MySpace, Facebook, and Twitter. The problems with teacher online usage arise in two situations.

First, in the most extreme cases, teachers are using social networking sites and other modern chatting forums to initiate or encourage sexual encounters with their students. For example, police recently arrested a 36-year-old eighth-grade teacher in Arizona for allegedly having a sexual encounter with a student on school property.²¹ The mother of the student informed local police when she found suspicious conversations on Facebook.²² In a similar situation, a 37-year-old high school teacher in Philadelphia, who was accused of having sex with one of her students, allegedly sent sexually explicit messages via an online social network and cell phone.²³ The sexual relationship reportedly developed after the teacher initially sent the student a "friend" request on Facebook.²⁴

Second, teachers seriously misjudge the nature and extent of personal information posted on their own social network profiles. Not only can these personal websites send a detrimental message to students, but in some cases, states have denied teachers licenses because of inappropriate drug or sexual content appearing in online profiles. For instance, a 27-year-old teacher filed a federal lawsuit against Millersville University in Pennsylvania when the state denied her a teaching credential after seeing a photo of her on MySpace labeled "drunken pirate."²⁵ The school accused her of encouraging underage drinking and informed her that she was ineligible for a teaching certificate.²⁶ Furthermore, ABC News recently conducted a random review of teachers' personal MySpace and Facebook pages and found many examples of inappropriate content including a first-grade teacher who listed "dancing like an a**hole" among her favorite activities; a teacher who posted pictures of herself drinking with friends; and a teacher who posted a picture of herself in a bikini.²⁷

Thousands of new young teachers grew up with their lives displayed online via these common social networking sites. School districts should not unrealistically assume that these novice educators can understand and appreciate the complexity of virtual ethics simply because they have obtained a teaching degree. Specifically, teachers must realize that being "friends" with students online is inappropriate regardless of whether the teacher's personal webpage is entirely "clean." Thus, the Task Force recommends that the State Board of Education adopt a policy detailing appropriate online behavior for teachers and teacher assistants.

CASE STUDY: LEE COUNTY SCHOOLS

Through its ongoing research, the Task Force became aware of one particular LEA in North Carolina that has taken a strong stand towards preventing inappropriate or unethical teacher-student online interactions.

Lee County Schools in North Carolina has recently “adopted a policy prohibiting teachers from communicating with students on public social networking sites and through text messages.”²⁸

Superintendent Jeff Moss explained that the schools took action in response to multiple accounts of teachers becoming sexually involved with students. He feels that it is the school’s responsibility to protect students online as well as in the classroom, and that social network communication makes the student-teacher relationship less defined.

However, the LEA recognizes that networking websites can in fact be valuable resources for students to contact their teachers online after school hours. Thus, in place of Facebook and MySpace, the LEA is building its own online networking site to facilitate valuable after-hour educational activities and to encourage responsible, professional teacher-student interaction. The site will be monitored by District staff for any inappropriate or unethical communications.²⁹

PART V: DISCIPLINARY ACTIONS AGAINST A LICENSE FOR ETHICAL MISCONDUCT

Recommendation 10: The list of behaviors for which discipline against a license is warranted should be revised to include other conduct, such as revocation by another professional licensing agency. In addition, the list of conduct which must be reported to the State should be expanded. Finally, the State should be given a broader range of disciplinary actions to take against a license.

At the present time, the State Board has a Rule, codified at 16 N.C.A.C. 6C.0312, which outlines the specific misconduct that can lead to denial, suspension, or revocation of a professional educator’s license. The list is fairly comprehensive but could use updating in order to more adequately capture offenses not specifically set out. For example, more and more teachers are engaged in misconduct involving the use of computers or cell phones. In addition, a significant number of offenses involve a violation of the testing code of ethics. Adding those specific offenses to the list will strengthen the ability of State officials to take appropriate disciplinary action against educators. Other suggested changes include expanding “revocation of a license by another state” to include revocation or suspension of any professional licensing by any state agency.

Of particular importance is the need to add a category of offenses to include the failure or refusal of a teacher to cooperate with an investigation. In order to fulfill its duty to monitor misconduct and to investigate allegations of misconduct, the State Board, the State Superintendent, and the Ethics Committee need to have authority to sanction those professionals who do not cooperate with the investigation into alleged misconduct. Thus the Task Force specifically recommends that the list of revocable offenses be amended to add as a ground the failure or refusal to cooperate with an investigation.

The Task Force also recommends that the requirement to report to the State Board outlined in 16 N.C.A.C. 6C.0312(b) be enlarged to include the mandatory reporting of any behavior on the part of a licensed educator that could lead to disciplinary action.

The Task Force recommends that the Rule specifically authorize the State Board to issue reprimands, in addition to the authority to revoke or suspend. While the inherent authority to reprimand no doubt exists, the explicit authority would reinforce the broad range of the State Board's disciplinary authority and give notice of the option of the Board to reprimand as well as revoke or suspend. Notably, also, the use of reprimand encourages compliance with ethical standards without resorting to the more serious sanctions of revocation and suspension. Finally, a reprimand is submitted to the national database established by NASDTEC the same way that revocations and suspensions are, thus putting other states on notice of this disciplinary action taken against the teacher.

Finally, the present rule permits a teacher whose license has been revoked to apply for reinstatement after six months. This period of time is entirely too short. The period should be lengthened to at least two years so that a teacher would not be able to apply for reinstatement until at least two years had passed.

Recommendation 11: Local school officials and local board attorneys need to communicate with local law enforcement and District Attorneys to ensure the exchange of information when necessary. There should be an effort by local and state officials to encourage judges to order a teacher to surrender his or her license as part of sentencing.

In many instances, misconduct on the part of a teacher ends up in the hands of law enforcement, including local police and the district attorney's office. Often the criminal investigation parallels the investigation by school officials, but sometimes the criminal investigation supplants the school investigation. Regardless of the progress of the investigation, it is critical that all parties share information necessary to the proper administration of justice and the proper administration of the education system.

It is recommended that school attorneys and district attorneys create active working relationships in order to enhance and increase communication. Finally, local and state officials should encourage judges to require a teacher to surrender his or her license as a part of sentencing or a plea agreement.

Recommendation 12: The Department of Public Instruction should maintain an improved website which lists all teachers who have been disciplined and the grounds for the discipline, including the charges filed and the ultimate disposition (order of revocation, settlement order, etc.).

The list of disciplinary actions currently located on the State Board's Legal Affairs web site is an insufficient instrument for tracking and recording disciplinary actions taken against teachers. The online disciplinary action list³⁰ is accessible on the State Board's website but difficult to locate. Further, it does not provide a copy of DPI's or the State Board of Education's findings. The inadequacy of the website currently makes it difficult for local school administrators, members of the public, and other states to know if and when a teacher's license has been revoked or suspended.

Accordingly, the Task Force recommends that the current website content and accessibility be reviewed and continue to be updated in ways that improve communication to all interested persons. It will be helpful to study the websites used by other professional licensing boards within the state, as well as websites used in other states in the education profession.

In addition, in an effort to curtail the practice of "passing the trash" (e.g., teachers resigning in a school district and moving to another district before any disciplinary action can be taken), the Task Force recommends researching a "red flag" system accessible only to personnel administrators at the LEA level (and DPI licensure staff) that could alert potential employers as to whether an individual is eligible for rehire within the former system and whether a teacher is being investigated for any action taken on his or her license. The specific reasons for the red flag would not be disclosed, but such a system could at least alert local officials to make further inquiries prior to any hiring decision.

PART VI: INVESTIGATING AND REPORTING EDUCATOR MISCONDUCT

Recommendation 13: School administrators, including both central office and school building administrators, should be required to participate in ongoing training and education regarding reporting ethical misconduct by employees.

Recommendation 14: Local school systems should also provide education for students on recognizing and reporting teacher misconduct.

A. Training for Educators as First Responders

It is imperative that all educators be trained to recognize misconduct among their peers, their subordinates, and their superiors. It is important that educators be aware of their duty to participate and cooperate in any investigation of misconduct on the part of co-workers or colleagues. The State depends in large part on investigation by local authorities to enable the State to move forward to discipline teachers and other professionals.

B. Sexual Misconduct

Nowhere is training more important than in the area of sexual misconduct. Reports of sexual abuse in schools are rapidly increasing across the nation. A 2004 study conducted by the U.S. Department of Education found that “sexual misconduct by educators occurs in the school, in classrooms, in hallways, in offices, on buses, in cars, in the educator’s home, and in outdoor secluded areas.”³¹ In addition, the report cites a 2003 analysis done by the American Association of University Women (AAUW) which concluded that nearly ten percent of all students “are targets of educator sexual misconduct sometime during their school career.”³²

Because of the frequency of educator sexual misconduct and the secrecy surrounding sexual abuse, school districts often have difficulty targeting the perpetrators and counseling the student victims.

Numerous difficulties arise in the area of educator sexual misconduct. First, the acts of a classroom predator are often conducted under the guise of acceptable educator duties, such as counseling, tutoring, or coaching. A teacher predator is also often the “best teacher,” “best coach,” or a pillar of the community. Many times the student victim is afraid to report because of negative repercussions from peers or the community. Many times the victim is threatened with physical harm or negative academic consequences. Often the student is ashamed or embarrassed. Ironically, many times the student is “in love” with the perpetrator and does not want to ruin the teacher’s reputation. In addition, many times others are involved: other student victims; the teacher’s family; the community at large; a winning sports team. Suffice it to say that cases involving sexual misconduct are difficult to recognize, difficult to investigate, and difficult to bring to resolution without enormous collateral damage. The cases also frequently impact or involve the criminal justice system. All of these factors warrant heightened attention and emphasis on this area of teacher misconduct.

Accordingly, the Task Force recommends that, in addition to requiring training in recognizing, investigating and reporting educator misconduct generally, the State Board should require all educators, administrators, and students to receive appropriate training in recognizing and investigating sexual misconduct by educators. The State Board should review and recommend appropriate training programs for use at the local level and should encourage the use of investigative models such as the CLEAR training.

PART VII: STAFFING NEEDS

Recommendation No. 15: The Department of Public Instruction/State Board of Education should have additional staff dedicated to the investigation and prosecution of teacher misconduct cases.

It is imperative that the State of North Carolina, the General Assembly, and the State Board create and encourage an atmosphere that expects the highest standards for educators in our public schools, not just academically but morally as well. The State Department of Public Instruction must have the resources, both financially and in staffing, to aggressively pursue educators who offend these high moral standards. Most states and indeed, most licensing boards

within our own state, have investigators and staff members whose primary, if not sole, responsibility is to investigate and prosecute offenders of the moral codes. Additionally, in order to assure uniformity throughout the State, and to comply with Leandro's³³ mandate of providing a sound basic education, the State Board should have staff available to help train, or oversee training, throughout the state, of teachers and others in the areas of teacher ethics and proper investigatory practices.

At present, allegations of teacher misconduct comes to the attention of the Department in various ways: (1) Reports by LEA officials; (2) News reports concerning criminal charges or convictions; (3) Teacher self-reporting on application for licenses; (4) Letters or phone calls from concerned parents or citizens; and (5) Reports from other states. The level of investigation required in each case varies tremendously. Where there has already been a conviction, little additional investigation is needed. However, where there is merely a report from a citizen, or where a teacher has simply resigned amid a cloud of suspicion, much more is needed. Currently there is no staff at the State department level dedicated to this function. While the Ethics Committee has some ability to serve as gatekeeper, its authority is limited and its members are volunteers. It usually limits its inquiries to its very basic, face-to-face interview with a teacher.

In the event the State Department moves towards a system of fingerprint checks, the amount of staff time needed to follow up on those background checks will increase substantially. Having fingerprint checks is critical; however, the reports received from those checks require significant follow-up in order to ascertain the facts underlying the reported arrests and convictions. This follow-up process entails contacts with courts and law enforcement from multiple states and jurisdictions.

Even without fingerprint checks, the amount of legwork necessary to follow up on allegations and reports of teacher misconduct is substantial, including phone calls and correspondence with LEAs and other states, interviews with victims, and communication with law enforcement officials. The paperwork generated can also be immense. Significant investigation and preparation is necessary prior to taking a case to the Ethics Committee or to court. Every effort should be made to support the Department both financially and with the staff necessary to fulfill this responsibility of keeping schools safe and ensuring the highest caliber of educator personnel possible.

CONCLUSION: RAISING THE BAR FOR NORTH CAROLINA EDUCATORS

The State Superintendent convened the Task Force on Teacher Ethics and Licensure to reflect upon the State's current operations and suggest improvements. Despite the severe effects of the recession and limited resources, this Task Force Report was produced. The Task Force Report recommends ways for North Carolina to improve the current licensure application and disciplinary process and to enhance safeguards that will promote ethical conduct for teachers statewide. It bears repeating that the ultimate goal of the teaching profession is to ensure that

each child has a safe and productive learning environment. All agree that only the most qualified teacher, whose character is beyond reproach, be allowed to teach in North Carolina.

Appendix I: 16 N.C.A.C. 6C.0312 License Suspension and Revocation

16 NCAC 06C .0312 LICENSE SUSPENSION AND REVOCATION

(a) Except for automatic revocations taken pursuant to G.S. 115C-296(d)(2), the SBE may deny an application for a license or may suspend or revoke a license issued by the department only for the following reasons:

- (1) fraud, material misrepresentation or concealment in the application for the license;
- (2) changes in or corrections of the license documentation that make the individual ineligible to hold a license;
- (3) conviction or entry of a plea of no contest, as an adult, of a crime if there is a reasonable and adverse relationship between the underlying crime and the continuing ability of the person to perform any of his/her professional functions in an effective manner;
- (4) final dismissal of a person by a local board pursuant to G.S. 115C-325(e)(1)b., if there is a reasonable and adverse relationship between the underlying misconduct and the continuing ability of the person to perform any of his/her professional functions effectively;
- (5) final dismissal of a person by a LEA under G.S. 115C-325(e)(1)e.;
- (6) resignation from employment with a LEA without thirty work days' notice, except with the prior consent of the local superintendent;
- (7) revocation of a license by another state;
- (8) any other illegal, unethical or lascivious conduct by a person, if there is a reasonable and adverse relationship between the underlying conduct and the continuing ability of the person to perform any of his/her professional functions in an effective manner; and
- (9) failure to report revocable conduct as required under Paragraph (b) of this Rule.

(b) In addition to any duty to report suspected child abuse under G.S. 7B-301, any superintendent, assistant superintendent, associate superintendent, personnel administrator or principal who knows or has reason to believe that a licensed employee of the LEA has engaged in behavior that would justify revocation of the employee's license under Subparagraphs (3), (4) or (8) of Paragraph (a) of this Rule and which behavior involves physical or sexual abuse of a child shall report that information to the Superintendent of Public Instruction no later than five working days after the date of a dismissal or other disciplinary action or the acceptance of a resignation based upon that conduct. For purposes of this section, the term "physical abuse" shall mean the infliction of physical injury other than by accidental means and other than in self-defense. The term "sexual abuse" shall mean the commission of any sexual act upon a student or causing a student to commit a sexual act, regardless of the age of the student and regardless of the presence or absence of consent. This paragraph shall apply to acts that occur on or after October 1, 1993.

(c) Upon the receipt of a written request and substantiating information from any LEA, local superintendent or other person in a position to present information as a basis for the suspension or revocation of a person's license, the Superintendent of Public Instruction shall conduct an investigation sufficient to determine whether reasonable cause exists to believe that the person's license should be suspended or revoked. If the Superintendent determines that reasonable cause exists to believe that the person's license should be suspended or revoked on one or more of the

grounds specified in Paragraph (a) of this Rule, the Superintendent shall prepare and file written charges with the SBE. The SBE shall review the written charges and determine whether the person's license should be suspended or revoked based on the information contained in the written charges. If the SBE determines that the written charges constitute grounds for suspension or revocation, it shall provide the person with a copy of the written charges, and notify the person that it shall revoke the person's license unless the person, within 60 days of receipt of notice, initiates administrative proceedings under G.S. 150B-3. The notice shall be sent certified mail, return receipt requested. If the person initiates administrative proceedings the SBE shall defer final action on the matter until receipt of a proposed decision as provided for in G.S. 150B-34. If the person does not initiate administrative proceedings within 60 days of receipt of notice, the SBE may suspend or revoke the person's license at its next meeting.

(d) The SBE may suspend an individual's license for a stated period of time or may permanently revoke the license, except as limited by G.S. 115C-325(o).

(e) The SBE may accept the voluntary surrender of a license in lieu of seeking revocation of the license. Before it accepts a voluntary surrender the SBE shall make findings of fact regarding the circumstances surrounding the voluntary surrender to demonstrate that grounds existed under which the SBE could have initiated license revocation proceedings. The SBE shall treat a voluntary surrender the same as a revocation.

(f) The SBE may reinstate a suspended or revoked license or may grant a new license after denial of a license under Paragraph (a) of this Rule upon an individual's application submitted no sooner than six months after the suspension, revocation, or denial, and a showing that:

- (1) the action that resulted in suspension, revocation or denial of the license did not involve abuse of minors; moral turpitude or grounds listed in G.S. 115C-325(e)(1)b;
- (2) the person has no record of subsequent behavior that could have resulted in license revocation; and
- (3) there is no court order or judicial determination that would prohibit the person from returning to or holding a licensed position.

(g) The SBE shall notify all other states of all actions which involve the, suspension, revocation, surrender, or reinstatement of a certificate.

Appendix II: Code of Professional Practice and Conduct for North Carolina Educators

16 NCAC 06C .0601 PURPOSE AND APPLICABILITY

The purpose of these Rules is to establish and uphold uniform standards of professional conduct for licensed professional educators throughout the State. These Rules shall be binding on every person licensed by the SBE, hereinafter referred to as "educator" or "professional educator," and the possible consequences of any willful breach shall include license suspension or revocation. The prohibition of certain conduct in these Rules shall not be interpreted as approval of conduct not specifically cited.

16 NCAC 06C .0602 STANDARDS OF PROFESSIONAL CONDUCT

(a) The standards listed in this Section shall be generally accepted for the education profession and shall be the basis for State Board review of performance of professional educators. These standards shall establish mandatory prohibitions and requirements for educators. Violation of these standards shall subject an educator to investigation and disciplinary action by the SBE or LEA.

(b) Professional educators shall adhere to the standards of professional conduct contained in this Rule. Any intentional act or omission that violates these standards is prohibited.

- (1) Generally recognized professional standards. The educator shall practice the professional standards of federal, state, and local governing bodies.
- (2) Personal conduct. The educator shall serve as a positive role model for students, parents, and the community. Because the educator is entrusted with the care and education of small children and adolescents, the educator shall demonstrate a high standard of personal character and conduct.
- (3) Honesty. The educator shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation in the performance of professional duties including the following:
 - (A) statement of professional qualifications;
 - (B) application or recommendation for professional employment, promotion, or licensure;
 - (C) application or recommendation for college or university admission, scholarship, grant, academic award, or similar benefit;
 - (D) representation of completion of college or staff development credit;
 - (E) evaluation or grading of students or personnel;
 - (F) submission of financial or program compliance reports submitted to state, federal, or other governmental agencies;
 - (G) submission of information in the course of an official inquiry by the employing LEA or the SBE related to facts of unprofessional conduct, provided, however, that an educator shall be given adequate notice of the allegations and may be represented by legal counsel; and
 - (H) submission of information in the course of an investigation by a law enforcement agency, child protective services, or any other agency with the right to investigate, regarding school related criminal activity; provided, however, that an educator shall be entitled to decline to give evidence to law enforcement if such evidence may tend to incriminate the

educator as that term is defined by the Fifth Amendment to the U.S. Constitution.

- (4) Proper remunerative conduct. The educator shall not solicit current students or parents of students to purchase equipment, supplies, or services from the educator in a private remunerative capacity. An educator shall not tutor for remuneration students currently assigned to the educator's classes, unless approved by the local superintendent. An educator shall not accept any compensation, benefit, or thing of value other than the educator's regular compensation for the performance of any service that the educator is required to render in the course and scope of the educator's employment. This Rule shall not restrict performance of any overtime or supplemental services at the request of the LEA; nor shall it apply to or restrict the acceptance of gifts or tokens of minimal value offered and accepted openly from students, parents, or other persons in recognition or appreciation of service.
- (5) Conduct with students. The educator shall treat all students with respect. The educator shall not commit any abusive act or sexual exploitation with, to, or in the presence of a student, whether or not that student is or has been under the care or supervision of that educator, as defined below:
 - (A) any use of language that is considered profane, vulgar, or demeaning;
 - (B) any sexual act;
 - (C) any solicitation of a sexual act, whether written, verbal, or physical;
 - (D) any act of child abuse, as defined by law;
 - (E) any act of sexual harassment, as defined by law; and
 - (F) any intentional solicitation, encouragement, or consummation of a romantic or physical relationship with a student, or any sexual contact with a student. The term "romantic relationship" shall include dating any student.
- (6) Confidential information. The educator shall keep in confidence personally identifiable information regarding students or their family members that has been obtained in the course of professional service, unless disclosure is required or permitted by law or professional standards, or is necessary for the personal safety of the student or others.
- (7) Rights of others. The educator shall not willfully or maliciously violate the constitutional or civil rights of a student, parent/legal guardian, or colleague.
- (8) Required reports. The educator shall make all reports required by G.S. 115C.
- (9) Alcohol or controlled substance abuse. The educator shall not:
 - (A) be under the influence of, possess, use, or consume on school premises or at a school-sponsored activity a controlled substance as defined by G.S. 90-95, the Controlled Substances Act, without a prescription authorizing such use;
 - (B) be under the influence of, possess, use, or consume an alcoholic beverage or a controlled substance on school premises or at a school-sponsored activity involving students; or
 - (C) furnish alcohol or a controlled substance to any student except as indicated in the professional duties of administering legally prescribed medications.

- (10) Compliance with criminal laws. The educator shall not commit any act referred to in G.S. 115C-332 and any felony under the laws of the United States or of any state.
- (11) Public funds and property. The educator shall not misuse public funds or property, funds of a school-related organization, or colleague's funds. The educator shall account for funds collected from students, colleagues, or parents/legal guardians. The educator shall not submit fraudulent requests for reimbursement, expenses, or pay.
- (12) Scope of professional practice. The educator shall not perform any act as an employee in a position for which licensure is required by the rules of the SBE or by G.S. 115C or the North Carolina General Statutes during any period in which the educator's license has been suspended or revoked.
- (13) Conduct related to ethical violations. The educator shall not directly or indirectly use or threaten to use any official authority or influence in any manner that tends to discourage, restrain, interfere with, coerce, or discriminate against any subordinate or any licensee who in good faith reports, discloses, divulges, or otherwise brings to the attention of an LEA, the SBE, or any other public agency authorized to take remedial action, any facts or information relative to actual or suspected violation of any law regulating the duties of persons serving in the public school system, including but not limited to these Rules.

Appendix III: North Carolina Testing Code of Ethics

16 NCAC 06D .0306 TESTING CODE OF ETHICS

(a) This Rule shall apply to all public school employees who are involved in the state testing program.

(b) The superintendent or superintendent's designee shall develop local policies and procedures to ensure maximum test security in coordination with the policies and procedures developed by the test publisher. The principal shall ensure test security within the school building.

- (1) The principal shall store test materials in a secure, locked area. The principal shall allow test materials to be distributed immediately prior to the test administration. Before each test administration, the building level test coordinator shall accurately count and distribute test materials. Immediately after each test administration, the building level test coordinator shall collect, count, and return all test materials to the secure, locked storage area.
- (2) "Access" to test materials by school personnel means handling the materials but does not include reviewing tests or analyzing test items. The superintendent or superintendent's designee shall designate the personnel who are authorized to have access to test materials.
- (3) Persons who have access to secure test materials shall not use those materials for personal gain.
- (4) No person may copy, reproduce, or paraphrase in any manner or for any reason the test materials without the express written consent of the test publisher.
- (5) The superintendent or superintendent's designee shall instruct personnel who are responsible for the testing program in testing administration procedures. This instruction shall include test administrations that require procedural modifications and shall emphasize the need to follow the directions outlined by the test publisher.
- (6) Any person who learns of any breach of security, loss of materials, failure to account for materials, or any other deviation from required security procedures shall immediately report that information to the principal, building level test coordinator, school system test coordinator, and state level test coordinator.

(c) Preparation for testing.

- (1) The superintendent shall ensure that school system test coordinators:
 - (A) secure necessary materials;
 - (B) plan and implement training for building level test coordinators, test administrators, and proctors;
 - (C) ensure that each building level test coordinator and test administrator is trained in the implementation of procedural modifications used during test administrations; and
 - (D) in conjunction with program administrators, ensure that the need for test modifications is documented and that modifications are limited to the specific need.
- (2) The principal shall ensure that building level test coordinators:
 - (A) maintain test material security and accountability of test materials;
 - (B) identify and train personnel, proctors, and backup personnel for test administrations; and

- (C) encourage a positive atmosphere for testing.
 - (3) Test administrators shall be school personnel who have professional training in education and the state testing program.
 - (4) Teachers shall provide instruction that meets or exceeds the standard course of study to meet the needs of the specific students in the class. Teachers may help students improve test-taking skills by:
 - (A) helping students become familiar with test formats using curricular content;
 - (B) teaching students test-taking strategies and providing practice sessions;
 - (C) helping students learn ways of preparing to take tests; and
 - (D) using resource materials such as test questions from test item banks, testlets and linking documents in instruction and test preparation.
- (d) Test administration.
- (1) The superintendent or superintendent's designee shall:
 - (A) assure that each school establishes procedures to ensure that all test administrators comply with test publisher guidelines;
 - (B) inform the local board of education of any breach of this code of ethics; and
 - (C) inform building level administrators of their responsibilities.
 - (2) The principal shall:
 - (A) assure that school personnel know the content of state and local testing policies;
 - (B) implement the school system's testing policies and procedures and establish any needed school policies and procedures to assure that all eligible students are tested fairly;
 - (C) assign trained proctors to test administrations; and
 - (D) report all testing irregularities to the school system test coordinator.
 - (3) Test administrators and proctors shall:
 - (A) administer tests according to the directions in the administration manual and any subsequent updates developed by the test publisher;
 - (B) administer tests to all eligible students;
 - (C) report all testing irregularities to the school system test coordinator; and
 - (D) provide a positive test-taking climate.
 - (4) Proctors shall serve as additional monitors to help the test administrator assure that testing occurs fairly.
- (e) Scoring. The school system test coordinator shall:
- (1) ensure that each test is scored according to the procedures and guidelines defined for the test by the test publisher;
 - (2) maintain quality control during the entire scoring process, which consists of handling and editing documents, scanning answer documents, and producing electronic files and reports. Quality control shall address at a minimum accuracy and scoring consistency;
 - (3) maintain security of tests and data files at all times, including:
 - (A) protecting the confidentiality of students at all times when publicizing test results; and
 - (B) maintaining test security of answer keys and item-specific scoring rubrics.

(f) Analysis and reporting. Educators shall use test scores appropriately. This means that the educator recognizes that a test score is only one piece of information and must be interpreted together with other scores and indicators. Test data help educators understand educational patterns and practices. The superintendent shall ensure that school personnel analyze and report test data ethically and within the limitations described in this Paragraph.

- (1) Educators shall release test scores to students, parents, legal guardians, teachers, and the media with interpretive materials as needed.
- (2) Staff development relating to testing must enable personnel to respond knowledgeably to questions related to testing, including the tests, scores, scoring procedures, and other interpretive materials.
- (3) Items and associated materials on a secure test shall not be in the public domain. Only items that are within the public domain may be used for item analysis.
- (4) Educators shall maintain the confidentiality of individual students. Publicizing test scores that contain the names of individual students is unethical.
- (5) Data analysis of test scores for decision-making purposes shall be based upon:
 - (A) disaggregation of data based upon student demographics and other collected variables;
 - (B) examination of grading practices in relation to test scores; and
 - (C) examination of growth trends and goal summary reports for state-mandated tests.

(g) Unethical testing practices include, but are not limited to, the following practices:

- (1) encouraging students to be absent the day of testing;
- (2) encouraging students not to do their best because of the purpose of the test;
- (3) using secure test items or modified secure test items for instruction;
- (4) changing student responses at any time;
- (5) interpreting, explaining, or paraphrasing the test directions or the test items;
- (6) reclassifying students solely for the purpose of avoiding state testing;
- (7) not testing all eligible students;
- (8) failing to provide needed modifications during testing, if available;
- (9) modifying scoring programs including answer keys, equating files, and lookup tables;
- (10) modifying student records solely for the purpose of raising test scores;
- (11) using a single test score to make individual decisions; and
- (12) misleading the public concerning the results and interpretations of test data.

(h) In the event of a violation of this Rule, the SBE may, in accordance with the contested case provisions of G.S. 150B, impose any one or more of the following sanctions:

- (1) withhold ABCs incentive awards from individuals or from all eligible staff in a school;
- (2) file a civil action against the person or persons responsible for the violation for copyright infringement or for any other available cause of action;
- (3) seek criminal prosecution of the person or persons responsible for the violation; and
- (4) in accordance with the provisions of 16 NCAC 6C .0312, suspend or revoke the professional license of the person or persons responsible for the violation.

Appendix IV: N.C.G.S. §115C-296(d)(2)

§ 115C-296. Board sets certification requirements

(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:

(2) The State Board shall automatically revoke the certificate of a teacher or school administrator without the right to a hearing upon receiving verification of the identity of the teacher or school administrator together with a certified copy of a criminal record showing that the teacher or school administrator has entered a plea of guilty or nolo contendere to or has been finally convicted of any of the following crimes: Murder in the first or second degree, G.S. 14-17; Conspiracy or solicitation to commit murder, G.S. 14-18.1; Rape or sexual offense as defined in Article 7A of Chapter 14 of the General Statutes. Felonious assault with deadly weapon with intent to kill or inflicting serious injury, G.S. 14-32; Kidnapping, G.S. 14-39; Abduction of children, G.S. 14-41; Crime against nature, G.S. 14-177; Incest, G.S. 14-178 or G.S. 14-179; Employing or permitting minor to assist in offense against public morality and decency, G.S. 14-190.6; Dissemination to minors under the age of 16 years, G.S. 14-190.7; Dissemination to minors under the age of 13 years, G.S. 14-190.8; Displaying material harmful to minors, G.S. 14-190.14; Disseminating harmful material to minors, G.S. 14-190.15; First degree sexual exploitation of a minor, G.S. 14-190.16; Second degree sexual exploitation of a minor, G.S. 14-190.17; Third degree sexual exploitation of a minor, G.S. 14-190.17A; Promoting prostitution of a minor, G.S. 14-190.18; Participating in prostitution of a minor, G.S. 14-190.19; Taking indecent liberties with children, G.S. 14-202.1; Solicitation of child by computer to commit an unlawful sex act, G.S. 14-202.3; Taking indecent liberties with a student, G.S. 14-202.4; Prostitution, G.S. 14-204; and child abuse under G.S. 14-318.4. The Board shall mail notice of its intent to act pursuant to this subdivision by certified mail, return receipt requested, directed to the teacher or school administrator at their last known address. The notice shall inform the teacher or school administrator that it will revoke the person's certificate unless the teacher or school administrator notifies the Board in writing within 10 days after receipt of the notice that the defendant identified in the criminal record is not the same person as the teacher or school administrator. If the teacher or school administrator provides this written notice to the Board, the Board shall not revoke the certificate unless it can establish as a fact that the defendant and the teacher or school administrator are the same person.

APPENDIX V: CURRENT SUPERINTENDENT’S ETHICS ADVISORY COMMITTEE PROCEDURES

- Each applicant is allowed to present additional documentation to the committee during the interview. Family members, school personnel, clergy, etc. may also accompany the applicant. However, remarks from others are to be limited to let the committee hear from the applicant.
- Interviews are closed to the public. Only committee members and State Board and DPI staff are present during the interview. Minutes taken during the interview are confidential.
- The applicant explains the circumstances that led to the charge(s), conviction(s), suspension, revocation, etc.
- The committee asks questions of the applicant based on the documentation submitted. If additional documentation is required, the applicant is given 30 days from the interview date to submit to licensure.
- After the applicant departs, the committee deliberates and records a recommendation to the State Superintendent based on the applicant’s documentation and interview. The State Superintendent makes a final determination on whether or not to license an applicant.

APPENDIX VI: PROPOSED TEACHER CHARACTER AND FITNESS APPLICATION

NOTICE: Please answer each question regarding your past conduct. Any false statement or omission made in this application may be grounds for denial, suspension or revocation of your license, or other disciplinary action. If in doubt, disclose and explain rather than conceal. All questions apply not only to North Carolina, but to any other state or country.

If you answer “yes” to any question, attach a detailed written explanation. If you answer “yes” to any question relating to a court proceeding, a certified true copy of the court record must accompany this application.

CRIMINAL

1. Are you on a child abuse registry or a sex offender registry of any kind?
2. Have you ever been, or are you currently being, investigated for alleged or suspected child abuse or neglect by any governmental agency? (If yes, provide explanation and documentation.)
3. Have you ever been convicted, pled guilty, or pled nolo contendere (no contest) to any criminal offense other than a minor traffic violation (criminal offense includes, but is not limited to a felony, a misdemeanor, or Driving While Impaired). Please include any conviction, regardless of pardon. You must explain relevant circumstances in detail.
NOTE: In response to this question, include all offenses other than minor traffic offenses. The following are not minor traffic offenses and must be listed: DWI, DUI, Failure to Stop in the Event of An Accident (hit and run) and Driving While License Revoked or Suspended (DWLR). (If yes, provide explanation and documentation.)
4. Have you ever received probation, deferred prosecution, or any type of pre-trial adjudication, including a PJC (prayer for judgment) other than for a minor traffic offense? [Note: This question does not seek information about matters for which the records have been expunged by a court order.] (If yes, provide explanation and documentation.)
5. Have you ever participated in a diversion program in lieu of prosecution? [Note: This question does not seek information about matters for which the records have been expunged by a court order.] (If yes, provide explanation and documentation.)
6. Have you ever been arrested, indicted or otherwise charged with a crime other than for a minor traffic offense regardless of whether you were convicted or whether the charges were dropped? [Note: This question does not seek information about matters for which the records have been expunged by a court order.] (If yes, provide explanation and documentation.)

7. Are you currently named in a pending criminal charge, indictment or special presentment of any offense other than for a minor traffic violation? [Special Presentment is used in some jurisdictions to charge an individual with a crime.] (If yes, provide explanation and documentation.)

PROFESSIONAL LICENSING

8. Have you ever had a professional certificate, credential, or license of any kind revoked or suspended, or surrendered one prior to its expiration? (If yes, provide explanation and documentation.)
9. Have you ever been reprimanded, censured, placed on probationary status or suspended by a licensing board, commission or agency for any alleged misconduct or alleged violation of professional standards of conduct? (If yes, provide explanation and documentation.)
10. Are there any pending adverse actions or investigations against you relating to a professional certificate, credential, or license in North Carolina, any other state or country? (If yes, provide explanation and documentation.)
11. Have you ever been denied a professional license for which you applied? (If yes, provide explanation and documentation.)
12. Have you ever been granted a professional license on a conditional or probationary basis for any alleged misconduct or alleged violation of professional standards of conduct? (If yes, provide explanation and documentation.)
13. Have you ever been disciplined by any board, commission or agency responsible for licensure of any kind including, but not limited to, educational licensure? (If yes, provide explanation and documentation.)

EMPLOYMENT

For purposes of this application, “misconduct” means the following:

- conviction of a crime other than a minor traffic offense
- use of excessive or inappropriate force against a minor that causes an observable physical injury;
- inappropriate interaction with a student of a sexual or romantic nature;
- theft, embezzlement or fraud related to school funds or property;
- illegal use of weapons or firearms on school property or at school-sponsored events;
- use of drugs or alcohol involving students;
- violation of the State Testing Code of Ethics; and
- excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes, provided that there is a reasonable and adverse relationship between the underlying conduct and the continuing ability of the person to perform any of his/her professional functions in an effective manner.

14. Have you ever been dismissed from employment by a school or school system for any reason, or been dismissed or had a contract non-renewed or non-extended by any employer for reasons of misconduct as defined in this application? [Non-extended means a contract or term of employment was not renewed.] (If yes, provide explanation and documentation.)
15. To your knowledge, have you ever had a disciplinary suspension, resigned, or been non-renewed or dismissed following allegations of behavior for misconduct related to your employment or arising out of your employment? [Note: This question does not seek information about any suspension with pay or administrative leave for which the records have been removed from your Central Office personnel file.] (If yes, provide explanation and documentation.)
16. Have you ever been, or are you currently being, investigated or charged by a licensing board, commission or agency with a violation of a Professional Code of Ethics or any similar code of conduct? (If yes, provide explanation and documentation.)

MILITARY SERVICE

17. Have you ever served in the armed services?

If yes, indicate dates of service: From _____ To _____ DD/MM/YYYY

18. Was your discharge honorable?

If yes, provide documentation. If not, state what your service characterization was and why.

19. Were you ever the subject of court martial charges, non-judicial punishment or otherwise disciplined while in the armed forces? (If yes, provide explanation and documentation.)

OATH

False statements or omissions are cause for denial, suspension or revocation of licensure.

I hereby certify that the information submitted on or relating to this application is true and correct. I grant the Department permission to check civil or criminal records to verify a statement made on this application. I give the Department permission to request and obtain previous employment records to verify any of the above statements. I understand that any misstatement or omission of information may subject me to disqualification, revocation and/or any other disciplinary action.

Signature of the Applicant (seal)

Date

ETHICS STATEMENT

I hereby acknowledge that I have read, understand and agree to abide by the Code of Ethics for North Carolina Professional Educators and North Carolina Standards of Professional Conduct. 16 NCAC 6C.0601 and 16 NCAC 6C.0602.

Signature of the Applicant (seal)

Date

APPENDIX VII: MULTI-STATE COMPARISON OF CRIMINAL BACKGROUND FINGERPRINTING POLICIES

STATE	Fingerprint?	Who pays cost?
California	Yes.	All first-time applicants must pay.
Georgia	Yes. All licensed employees fingerprinted.	Employee pays.
Illinois	No.	n/a
Indiana	No. Only criminal background checks conducted. May fingerprint after reviewing.	n/a
Iowa	Yes. Required for all initial applicants since 2006.	Applicant pays.
Nebraska	Yes.	All first-time applicants must pay.
New York	Yes.	All first-time applicants must pay.
Massachusetts	Probably. Proposed legislation has been introduced.	Applicant will likely be required to pay.
Missouri	No. Only criminal background checks conducted.	n/a
Montana	Yes.	Applicant pays.
South Carolina	Yes.	Applicant pays.
Texas	Yes. All teacher applicants, substitutes and charter school employees must be fingerprinted.	Paid either by State or applicant depending on when applicant was hired.
Utah	Yes.	Applicant pays unless the district absorbs the cost.
Washington	Yes.	Applicant pays.
Wisconsin	Yes. Out-of-state applicants only.	Applicant pays.

APPENDIX VIII: MULTI-STATE POLICIES ON LICENSING SUBSTITUTES AND TEACHER ASSISTANTS

STATE	License Subs/Paraprofessionals?
Georgia	Substitutes are not licensed. Paraprofessionals are licensed.
Illinois	Substitutes, paraprofessionals and teacher aides are licensed
Indiana	No license for teacher assistants. Permits are issued to substitutes.
Iowa	Substitutes must have license. Teacher aides are not required.
Nebraska	No license for substitutes, paraprofessionals or aides
New York	Substitutes have some licensing requirements. Administrators, assistants and other personnel are required to hold a license.
Massachusetts	No license required for substitutes or teacher assistants.
Missouri	Substitutes must be licensed. Teacher aides have specialized requirements.
Montana	No licensing of substitutes. Most locals conduct background checks.
South Carolina	No.
Texas	No.
Utah	No substitute or aides licensing.
Washington	Substitutes are licensed.
Wisconsin	Substitutes and Special Education aides are licensed.

¹ N.C.G.S. § 115C-332 (2009); 16 N.C.A.C. 6C.0313

² N.C.G.S. § 90-11(b) (2009)

³ N.C.G.S. §115C-332(b) and (c) (2009)

⁴ See e.g. N.C.G.S. §115C-332(f): “All the information received by the local board of education through the checking of the criminal history or by the State Board of Education in accordance with this section is privileged information and is not a public record but is for the exclusive use of the local board of education or the State Board of Education. The local board of education 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.”

⁵ Cal Ed. Code § 44332.6 (2009)

⁶ Cal Ed. Code §§ 44340-44341 (2009). See also State of California, (2007). Welcome to the commission on teacher credentialing. Retrieved July 27, 2009, from California Commission on Teacher Credentialing Web site: <http://www.ctc.ca.gov/>

⁷ *Id.*

⁸ *Id.*

⁹ Tex. Educ. Code §§ 22.081 through 22.087 (2009)

¹⁰ Peterson, M. (2009, July 27). Teacher fingerprinting moves along to 2011 deadline. *The Dallas Morning News*, Retrieved August 4, 2009, from

<http://www.dallasnews.com/sharedcontent/dws/dn/education/stories/072709dnmetskulfingerprints.3e563ee.html>.

¹¹ Josephson Institute, (2009). The ethics of American youth - 2008 summary. Retrieved July 27, 2009, from Josephson Institute: Center for Youth Ethics Web site: <http://charactercounts.org/programs/reportcard/>

¹² *Id.*

¹³ N.C.G.S. § 115C-390 (2009)

¹⁴ State of Nebraska. Retrieved July 27, 2009, from Nebraska Professional Practices Commission Web site: <http://nppc.nol.org/>

¹⁵ State of Nebraska. Retrieved July 27, 2009, from Nebraska Professional Practices Commission Web site: <http://nppc.nol.org/video.htm>

¹⁶ State of Nebraska. Code of ethics. Video. Retrieved July 27, 2009, from Nebraska Professional Practices Commission Web site: <http://nppc.nol.org/ethics.pdf>

¹⁷ State of Oregon. Teacher standards and practices commission. Retrieved July 27, 2009, from Oregon.gov Web site: <http://www.oregon.gov/TSPC/>

¹⁸ Ethics in Education Act, 2008 Fla. SB 1712. See also, Florida Department of Education. (2008). *Technical assistance paper related to the Ethics in Education Act of the 2008 Florida legislative session* Tallahassee, Florida: The Florida Department of Education. Available online at: <http://www.fldoe.org/edstandards/pdfs/SB1712TAP.pdf>

¹⁹ *Id.* at 9; Fla. Stat. § 1001.42(6) (2009).

²⁰ Ethics for educators. Retrieved July 27, 2009, from St. Petersburg College Course Descriptions Web site: <http://www.spcollege.edu/course/PHI-2623>

²¹ Bodfield, R. (2009, May 29). What ethics should teachers follow with Facebook, social sites? *WCFCourier.com*, Retrieved July 27, 2009, from

http://www.wcfcourier.com/articles/2009/05/24/news/breaking_news/doc4a199d68e6c4f153832546.txt

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Michels, S. (2008, May 6). Teachers' virtual lives conflict with classroom. *ABC News*, Retrieved August 4, 2009, from <http://abcnews.go.com/TheLaw/story?id=4791295&page=1>

²⁶ *Id.*

²⁷ *Id.*

²⁸ Hartness, E. (2009, July 7). Lee County bars teachers from contacting students on social networking sites. *WRAL.com*, Retrieved August 4, 2009, from <http://www.wral.com/news/local/story/5523284/>

²⁹ *Id.*

³⁰ NC Department of Public Instruction, (2009). SBE legal affairs revoked license. Retrieved August 5, 2009, from North Carolina State Board of Education Web site: <http://www.ncpublicschools.org/stateboard/legal/revoked>

³¹ U.S. Department of Education, Office of the Under Secretary, *Educator Sexual Misconduct: A Synthesis of Existing Literature*, Washington, D.C., 2004.

³² *Id.* at 20 (citing American Association of University Women (2001). *Hostile Hallways*, Washington, D.C.: AAUW Educational Foundation).

³³ Leandro v. State of North Carolina, 346 N.C. 336, 488 S.E.2d 249 (1997), Hoke County Bd. Of Educ v. State of North Carolina, 358 NC 605, 599 S.E.2d 365 (2004).

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 705
SENATE BILL 766

AN ACT TO PROVIDE THAT THE DEPARTMENT OF JUSTICE MAY PROVIDE
A CRIMINAL RECORD CHECK TO THE EMPLOYER OF A SCHOOL
EMPLOYEE OR POTENTIAL EMPLOYEE WITH THE CONSENT OF THE
EMPLOYEE OR APPLICANT.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 114 is amended by adding a new section to read:

"§ 114-19.2. Criminal record checks of school personnel.

(a) The Department of Justice may provide a criminal record check to the local board of education of a person who is employed in a public school in that local school district or of a person who has applied for employment in a public school in that local school district, if the employee or applicant consents to the record check. The information shall be kept confidential by the local board of education as provided in Article 21A of Chapter 115C.

(b) The Department of Justice may provide a criminal record check to the employer of a person who is employed in a nonpublic school or of a person who has applied for employment in a nonpublic school, if the employee or applicant consents to the record check. For purposes of this subsection, the term nonpublic school is one that is subject to the provisions of Article 39 of Chapter 115C of the General Statutes, but does not include a home school as defined in that Article.

(c) The Department of Justice shall charge a reasonable fee for conducting a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(d) The Department of Justice shall adopt rules to implement this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 373
SENATE BILL 223

AN ACT TO AUTHORIZE CRIMINAL RECORD CHECKS OF PUBLIC SCHOOL
EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. Article 22 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 6. Criminal History Checks.

"§ 115C-332. 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 public 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 subparagraph, such crimes also include similar crimes under federal law or under the laws of other states.

(2) 'School personnel' means any:

a. Employee of a local board of education whether full-time or part-time, or

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

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

(b) Each local board of education shall adopt a policy on whether and under what circumstances an applicant for a school personnel position shall be required to be checked for a criminal history before the applicant is offered an unconditional job. Each local board of education shall apply its policy uniformly in requiring applicants for school personnel positions to be checked for a criminal history. A local board of education that requires a criminal history check for an applicant may employ an applicant conditionally while the board is checking the person's criminal history and making a decision based on the results of the check.

A local board of education 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 local board of education the criminal history from the State and National Repositories of Criminal Histories of any applicant for a school personnel position in the local school administrative unit for which a local board of education requires a criminal history check. The local board of education 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 local board, 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 local board of education shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

The local board of education shall not require an applicant to pay for being fingerprinted.

(d) The local board of education shall review the criminal history it receives on a person. The local board 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 public school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The local

board 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 local board of education shall provide to the State Board of Education the criminal history it receives on a person who is certificated, certified, or licensed by the State Board of Education. The State Board of Education 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 local board of education through the checking of the criminal history or by the State Board of Education 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 local board of education or the State Board of Education. The local board of education 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 a local board of education, 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 Chapter 31 of Chapter 143 of the General Statutes."

Sec. 2. G.S. 114-19.2(a) reads as rewritten:

"(a) The Department of Justice may provide a criminal record check to the local board of education of a person who is employed in a public school in that local school district or of a person who has applied for employment in a public school in that local school district, if the employee or applicant consents to the record check. The Department may also provide a criminal record check of school personnel as defined in G.S. 115C-332 by fingerprint card to the local board of education from National Repositories of Criminal Histories, in accordance with G.S. 115C-332. The information shall be kept confidential by the local board of education as provided in Article 21A of Chapter 115C."

Sec. 3. The State Board of Education, in consultation with the Division of Criminal Information of the Department of Justice, shall adopt rules to implement this act.

Sec. 4. This act becomes effective July 1, 1995.

In the General Assembly read three times and ratified this the 5th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives

RECRUITMENT AND SELECTION OF PERSONNEL

Policy Code: 7100

NOTE: The text in this column is for reference only. The column should be eliminated for a board's policy.

GENERAL PRINCIPLES

It is the policy of the board to provide all applicants for employment with equal employment opportunities and to provide current employees with training, compensation, promotion and other attributes of employment without regard to race, color, religion, national origin, sex, age or handicap, except where sex, age or physical requirements are essential occupational qualifications. All candidates will be evaluated on their merits and qualifications for positions.

The board also is committed to diversity throughout the programs and practices of the school district. To further this goal, the recruitment and employment program should be designed to encourage a diverse pool of qualified applicants.

Any board mission or objective related to employment can be used here in addition to or in place of this statement.

RECRUITMENT

Recruitment for a specific vacancy will be undertaken only after the need and qualifications for the position are established and proper authorization is obtained.

All vacancies will be adequately publicized within the school district so that employees may learn of promotional opportunities. Vacancies also may be publicized externally to attract qualified applicants.

This can be tailored to reflect school practices so long as adequate notice of vacant positions is provided. Administrative procedures can be developed to provide greater detail.

SELECTION

Candidates for employment will be selected based upon their likely ability to fulfill duties identified in

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the job description as well as performance standards established by the board. In making the determination, the following information will be considered:

- application;
- education and training;
- licensure and certification (when applicable);
- relevant experience; • personal interviews; and
- references and/or background checks.

Optional provision.

Qualifications and suitability for the job being equal, personnel within the district will be given priority.

The board is statutorily required to identify in policy whether and under what circumstances criminal record checks will be conducted of applicants for school personnel positions.

A criminal records check will be conducted of all final candidates for licensed positions and classified positions that would place the candidates in the schools or other environments where they would be expected to interact regularly with students. Such positions include substitute teachers, driver training teachers, bus drivers, clerical staff, custodians, teachers, teacher assistants, assistant principals and principals. Criminal records checks will be conducted in accordance with state law and any procedures established by the superintendent.

A more detailed policy can be provided such as the NCSBA's criminal records check policy.

If a final candidate for employment or hiring as an independent contractor is found to have a criminal record, other than for minor traffic offenses, the superintendent must determine whether the individual poses a threat to the physical safety of students or personnel or has demonstrated that he or she does not have the integrity or honesty to fulfill the duties of the position. If the superintendent recommends such a candidate to the board for employment, the board must be notified of the criminal record and the basis for the superintendent's determination.

In making recommendations for the selection of personnel, the superintendent will give every consideration to conditions which could result in the employment of two members of an immediate family where one member would occupy a position which has influence over the other's employment, promotion, salary or other related management and personnel considerations. No administrative or supervisory personnel will directly supervise a member of his or her immediate family defined as spouse, children or parents.

All personnel selected for employment must be recommended by the superintendent and approved by the board.

State guidelines will be followed in the selection and employment procedure. The superintendent will develop any other procedures necessary to carry out this policy.

Legal Reference: 20 U.S.C. 1703; Civil Rights Acts of 1866, 1870, 1871, and 1964; Age Discrimination in Employment Act of 1967; Equal Pay Act of 1963; Title IX of the Education Amendments of 1972; Vocational Rehabilitation Act of 1973; Executive Order 11246; G.S. 114-19.2, 115C-36, -47, -332, 126-16.

Cross Reference:

Adopted:

STAFF-STUDENT RELATIONS

Policy Code: 7310

NOTE: The text in this column is for reference only. The column should be eliminated for a board's policy.

The relationship between staff and students should be one of cooperation, understanding and mutual respect. The staff has the responsibility to provide an atmosphere conducive to learning and to motivate each student to perform to his or her capacity. The staff is expected to model the behavior expected of students in staff-student relationships.

All employees, except student employees, are prohibited from dating, courting or entering into a romantic or sexual relationship with any student enrolled in the school district regardless of the student's age. Employees engaging in such inappropriate conduct will be subject to disciplinary action, up to and including dismissal.

The policy also can prohibit sexual harassment and make a cross reference to the sexual harassment policy.

Any employee who has reason to believe that another employee is inappropriately involved with a student, as described above, will report this information to the superintendent. An employee who fails to inform the superintendent of a suspected inappropriate relationship between an employee and a student may be subject to disciplinary action, up to and including dismissal.

Legal Reference: Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., 34 C.F.R. pt 106; G.S. 115C-47(18)

Cross Reference: Removal of Barriers (policy 1700), Prohibition Against Discrimination and Harassment (policy 1710), Harassment Defined (policy 1735), Sexual Harassment Defined (policy 1736), Student and Parent Grievance Procedure (policy 1740/4010),

Discrimination Complaint Procedure for Students,
(policy 1741), Sexual Harassment Complaint Procedure
for Students (policy 1745), Staff Responsibilities
(policy 7300)

Adopted:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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2

HOUSE BILL 240
Committee Substitute Favorable 4/27/21

Short Title: Criminal Background Checks/Schools.

(Public)

Sponsors:

Referred to:

March 9, 2021

A BILL TO BE ENTITLED
AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR INITIAL CHARTER
BOARDS OF DIRECTORS AND SCHOOL PERSONNEL LICENSURE AND TO
REVISE THE PROCESS FOR CRIMINAL HISTORY CHECKS FOR PUBLIC SCHOOL
UNITS.

The General Assembly of North Carolina enacts:

**PART I. REQUIRE CRIMINAL BACKGROUND CHECKS FOR INITIAL CHARTER
BOARDS OF DIRECTORS**

SECTION 1.(a) G.S. 115C-218.1(b)(3) reads as rewritten:

"(3) The governance structure of the school including the names of the initial members of the board of directors of the nonprofit, tax-exempt corporation and the process to be followed by the school to ensure parental involvement. The initial members of the board of directors shall consent to a criminal history check as provided in G.S. 115C-218.4. A teacher employed by the board of directors to teach in the charter school may serve as a nonvoting member of the board of directors for the charter school."

SECTION 1.(b) Article 14A of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-218.4. Charter board of directors criminal history checks.

(a) As used in this section, the following terms are defined:

(1) Criminal history. – A county, state, or federal criminal history of conviction of, or a plea of nolo contendere to, a crime, whether a misdemeanor or a felony, that indicates the applicant (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 a board member. 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, Legislative, and Court Officers; Article 6, Homicide; Article 7B, Rape and Other Sex 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, Civil Disorders, and Emergencies; 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 subsection, such crimes also include similar crimes under federal law or under the laws of other states.

(2) Member. – An individual who is a member of the board of directors of a nonprofit seeking initial approval to establish a charter school.

(b) The State Board of Education shall require all members of the board of directors of the nonprofit to be checked for a criminal history before granting final approval of a charter application. The State Board of Education shall require a member to pay for the criminal history check authorized under this subsection, but the nonprofit may pay for the criminal history check on behalf of the member.

(c) The Department of Public Safety shall provide to the State Board of Education the criminal history from the State and National Repositories of Criminal Histories of any member. The State Board of Education shall require the member to (i) be fingerprinted and to provide any additional information required by the Department of Public Safety to a person designated by the State Board of Education 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 State Board of Education shall not issue a charter to a nonprofit with a member who refuses to consent to a criminal history check.

(d) The State Board of Education shall review the criminal history it receives on a member and shall determine whether the results of the review indicate that the member (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 a member of the board of directors of a charter school. If the State Board of Education denies an application for a charter based on its review of the criminal history it receives on a member, the State Board of Education shall make written findings with regard to how it used the information when denying the application.

(e) All the information received by the State Board of Education through the checking of the criminal history in accordance with this section is privileged information and is not a public record but is for the exclusive and confidential use of the State Board of Education. The State Board of Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(f) There shall be no liability for negligence on the part of 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.

(g) Any member who willfully furnishes, supplies, or otherwise gives false information for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor."

SECTION 1.(c) This section applies to applications for initial charters that are received on or after October 1, 2021.

**PART II. CRIMINAL BACKGROUND CHECKS FOR SCHOOL PERSONNEL
LICENSURE**

SECTION 2.(a) G.S. 115C-270.1 reads as rewritten:

"§ 115C-270.1. Definitions.

As used in this Article, the following definitions shall apply:

- (1) Administrator. – An administrator or supervisor who serves in general and program administrator roles, as classified by the State Board. Administrators shall include superintendents, assistant or associate superintendents, principals, assistant principals, or curriculum-instructional specialists.
- (1a) Applicant. – An individual who submits an application for licensure, including initial applications, renewal applications, and applications for licensure reinstatement.
- (1b) Criminal history. – A county, state, or federal criminal history of conviction of, or a plea of nolo contendere to, a crime, whether a misdemeanor or a felony, that indicates the applicant (i) poses a threat to the physical safety of students or personnel, (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel, or (iii) otherwise fails to meet the standards and criteria adopted by the State Board of Education governing ethics and moral character required for professional educators. 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, Legislative, and Court Officers; Article 6, Homicide; Article 7B, Rape and Other Sex 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, Civil Disorders, and Emergencies; 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 subsection, such crimes also include similar crimes under federal law or under the laws of other states.
- (2) Professional educator. – An administrator, teacher, or student services personnel.
- (3) Recognized educator preparation program or recognized EPP. – As defined in G.S. 115C-269.1(15).
- (4) Student services personnel. – An individual providing specialized assistance to students, teachers, administrators, or the education program in general, as classified by the State Board. Student services personnel shall include individuals employed in school counseling, school social work, school psychology, audiology, speech-language pathology, and media coordination.

(5) Teacher. – An individual whose major responsibility is to either teach or directly supervise teaching, as classified by the State Board."

SECTION 2.(b) G.S. 115C-270.5(a) reads as rewritten:

"(a) Authority. – The State Board of Education shall have entire control of licensing all applicants for professional educator positions in all public schools of North Carolina, subject to the requirements of this Article. The State Board shall adopt rules for the issuance, renewal, and extension of all licenses and shall determine and fix the salary for each grade and type of license which it authorizes. The State Board of Education shall require all applicants for licensure in the State to be checked for a criminal history, as provided in G.S. 115C-270.12."

SECTION 2.(c) G.S. 115C-270.10(a) reads as rewritten:

"(a) Fee Schedule. – The State Board of Education shall establish by rule a schedule of fees for professional educator licensure and administrative changes. The fees established under this section shall not exceed the actual cost of providing the service. The schedule may include fees for any of the following services:

- (1) Application for demographic or administrative changes to a license.
- (2) Application for a duplicate license or for copies of documents in the licensure files.
- (3) Application for a renewal, extension, addition, upgrade, reinstatement, and variation to a license.
- (4) Initial application for a new graduate from any recognized educator preparation program.
- (5) Initial application for an out-of-state applicant.
- (6) All other applications.
- (7) Criminal history check.

An applicant must pay any nonrefundable or nontransferable service fees at the time an application is submitted."

SECTION 2.(d) Article 17E of Chapter 115C of the General Statutes is amended by adding a new section to read:

"§ 115C-270.12. Licensure criminal history checks.

(a) The State Board of Education shall require applicants to be checked for a criminal history before the applicant is issued an unconditional license. The State Board of Education may license an applicant conditionally while the Board is checking the applicant's criminal history and making a decision based on the results of the check. The State Board of Education shall require an applicant to pay for the criminal history check authorized under this subsection, but a governing board of a public school unit may pay for the criminal history check on behalf of the applicant.

(b) The Department of Public Safety shall provide to the State Board of Education the criminal history from the State and National Repositories of Criminal Histories of any applicant for licensure. The State Board of Education shall require the applicant to (i) be fingerprinted and to provide any additional information required by the Department of Public Safety to a person designated by the State Board of Education 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 State Board of Education shall not issue a license to an applicant who refuses to consent to a criminal history check.

(c) The State Board of Education shall review the criminal history it receives on an applicant. The State Board of Education shall determine whether the results of the review indicate that the applicant (i) poses a threat to the physical safety of students or personnel, (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as a professional educator, or (iii) otherwise fails to meet the standards and criteria adopted by the State Board of Education governing ethics and moral character required for professional educators and shall use the information when making licensure decisions. If the State Board of

Education denies an applicant based on its review of the criminal history it receives, the State Board of Education shall make written findings with regard to how it used the information when making licensure decisions.

(d) During the period of licensure, the State Board of Education may provide upon request the criminal history it receives on an applicant to the governing board of a public school unit considering employment of that individual.

(e) All the information received by the State Board of Education through the checking of the criminal history in accordance with this section is privileged information and is not a public record but is for the exclusive and confidential use of the State Board of Education and the governing board of a public school unit considering employment of an individual granted licensure. The State Board of Education may destroy the information used for the purposes authorized by this section after the licensure of the individual has ended or has been renewed. The governing board of a public school unit may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(f) There shall be no liability for negligence on the part of 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.

(g) Any applicant for licensure who willfully furnishes, supplies, or otherwise gives false information on a licensure application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor."

SECTION 2.(e) Article 13 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-931.1. Criminal background checks for applications for teacher licenses and members of boards of directors of nonprofits seeking initial approval of charters.

The Department of Public Safety may provide to the State Board of Education from the State and National Repositories of Criminal Histories the criminal history of (i) any applicant for licensure under Article 17E of Chapter 115C of the General Statutes or (ii) the member of a board of directors of a nonprofit seeking initial approval to establish a charter school under Article 14A of Chapter 115C of the General Statutes. Along with the request, the Board shall provide to the Department of Public Safety the fingerprints of the applicant or member, a form signed by the applicant or member consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories of Criminal Histories, and any additional information required by the Department of Public Safety. The applicant or member's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The State Board of Education shall keep all information obtained pursuant to this section confidential. The Department of Public Safety may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 2.(f) The State Board of Education is encouraged to work towards programming the licensure system to align with the Multistate Educator Lookup System established by the National Association of State Directors of Teacher Education and Certification to enable electronic validation of out-of-state credentials and related information.

SECTION 2.(g) This section applies to applications for licensure that are received on or after October 1, 2021.

PART III. CRIMINAL HISTORY CHECKS FOR PUBLIC SCHOOL UNITS**SECTION 3.(a)** G.S. 115C-218.90(b) reads as rewritten:

(b) Criminal History Checks. –

(1) ~~If the local board of education of the local school administrative unit in which a charter school is located has adopted a policy requiring criminal history checks under G.S. 115C-332, then the~~ The board of directors of each charter school located in that local school administrative unit shall adopt a policy ~~mirroring the local board of education policy that requires~~ requiring an applicant for employment to be checked for a criminal history, as defined provided in G.S. 115C-332. Each charter school board of directors shall apply its policy uniformly in requiring applicants for employment to be checked for a criminal history before the applicant is given an unconditional job offer. A charter school board of directors may employ an applicant conditionally while the board is checking the person's criminal history and making a decision based on the results of the check. If the local board of education adopts a policy providing for periodic checks of criminal history of employees, then the board of directors of each charter school located in that local school administrative unit shall adopt a policy mirroring that local board of education policy. A board of directors shall indicate, upon inquiry by any other ~~local board of education, charter school, or regional school governing board of a~~ public school unit in the State as to the reason for an employee's resignation or dismissal, if an employee's criminal history was relevant to the employee's resignation or dismissal.

(1a) The charter board of directors shall uniformly require applicants for employment to be checked for a criminal history either by a consumer reporting agency, as defined in G.S. 115C-332, the Department of Public Safety, or both. If the charter board of directors requires a criminal history check by the Department of Public Safety, the charter school board of directors shall require the applicant to (i) be fingerprinted and to provide any additional information required by the Department of Public Safety to a person designated by the board of directors 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 board of directors shall not employ or contract with applicants who refuse to consent to a criminal history check. The fingerprints of the applicants shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Public Safety shall provide to the charter school board of directors the criminal history from the State and National Repositories of Criminal Histories of the school personnel for which the charter school board of directors requires a criminal history record check.

(2) There shall be no liability for negligence on the part of the State Board of Education or the board of directors of the charter school, or their employees, arising from any act taken or omission by any of them in carrying out the provisions of this subsection. 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

1 this subsection shall be deemed to have been waived to the extent of
2 indemnification by insurance, indemnification under Articles 31A and 31B of
3 Chapter 143 of the General Statutes, and to the extent sovereign immunity is
4 waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of
5 the General Statutes.

6 (3) All the information received by the charter school board of directors through
7 the checking of the criminal history or by the State Board of Education in
8 accordance with this section is privileged information and is not a public
9 record but is for the exclusive use of the charter school board of directors,
10 appropriate officers of the charter school as permitted by federal law, or the
11 State Board of Education. The charter school board of directors or the State
12 Board of Education may destroy the information after it is used for the
13 purposes authorized by this section after one calendar year."

14 **SECTION 3.(b)** G.S. 115C-238.73 reads as rewritten:

15 **"§ 115C-238.73. Criminal history record checks.**

16 (a) As used in this section:

17 ...

18 (1a) Consumer reporting agency. – An entity which, for monetary fees, dues, or on
19 a cooperative nonprofit basis, regularly engages in whole or in part in the
20 practice of assembling or evaluating consumer credit information or other
21 information on consumers, including criminal history checks, for the purpose
22 of furnishing consumer reports to third parties, and which uses any means or
23 facility of interstate commerce for the purpose of preparing or furnishing
24 consumer reports, and which is regulated as provided in 15 U.S.C. § 1681, et.
25 seq. A criminal history check by a consumer reporting agency provided for
26 purposes of this section must include all of the following:

- 27 a. A search of the state criminal registry or repository in which the
28 applicant resides.
29 b. A multistate/multijurisdiction database search which includes a
30 follow-up search at the originating source for any information returned
31 by the database search and which confirms final disposition
32 information of the same.
33 c. A search of records obtained from county, state, and federal criminal
34 repositories where the individual resides and has previously resided.
35 d. A search of the National Sex Offender Registry established as
36 provided in 42 U.S.C. § 16919.

37 ...

38 (b) ~~The board of directors shall adopt a policy on whether and under what circumstances~~
39 ~~school personnel shall be required to be that requires an applicant for a school personnel position~~
40 ~~to be checked for a criminal history.~~ history, as provided in subsection (c) of this section. The
41 board of directors shall apply its policy uniformly in requiring applicants for school personnel
42 positions to be checked for a criminal history. The board of directors may grant conditional
43 approval of an application while the board of directors is checking a person's criminal history
44 and making a decision based on the results of the check. The board of directors may request the
45 criminal history check completed for licensure purposes from the State Board of Education as
46 provided in G.S. 115C-270.12 for any applicant holding a license.

47 ~~The board of directors shall not may require school personnel an applicant to pay for the~~
48 ~~criminal history record check authorized under this section.~~

49 (c) ~~The~~ The board of directors shall uniformly require applicants for school personnel
50 employment to be checked for a criminal history either by a consumer reporting agency, the
51 Department of Public Safety, or both. If the board of directors requires a criminal history check

by the Department of Public Safety, the board of directors shall require the ~~person applicant~~ to be checked by the Department of Public Safety (i) to be fingerprinted and to provide any additional information required by the Department of Public Safety to a person designated by the board of directors or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) to 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 board of directors shall ~~consider refusal to consent when making employment decisions and decisions with regard to independent contractors. not employ or contract with an applicant who refuses to consent to a criminal history check.~~ The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Public Safety shall provide to the board of directors the criminal history from the State and National Repositories of Criminal Histories of any school personnel for which the board of directors requires a criminal history record check.

The board of directors ~~shall not~~ may require ~~school personnel applicants~~ to pay for the fingerprints authorized under this section.

...

(i) The board of directors may adopt a policy providing for uniform periodic checks of criminal history of employees. The board may conduct a criminal history check as provided in subsection (c) of this section. Boards of directors shall not require employees to pay for the criminal history check authorized under this subsection. A board of directors shall indicate, upon inquiry by any other ~~local board of education, charter school, or regional school governing board~~ of a public school unit in the State as to the reason for an employee's resignation or dismissal. If a teacher's criminal history is relevant to a teacher's resignation, the board of directors shall report to the State Board of Education the reason for an employee's resignation."

SECTION 3.(c) G.S. 115C-332 reads as rewritten:

"§ 115C-332. 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 public 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-Executive, Legislative, and Court~~ Officers; Article 6, Homicide; Article 7B, Rape and ~~Kindred~~ Other Sex 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, Civil Disorders, and Emergencies; 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 subparagraph, such crimes also include similar crimes under federal law or under the laws of other states.

(1a) Consumer reporting agency. – An entity which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers, including criminal history checks, for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports, and which is regulated as provided in 15 U.S.C. § 1681, et seq. A criminal history check by a consumer reporting agency provided for purposes of this section must include all of the following:

- a. A search of the state criminal registry or repository in which the applicant resides.
- b. A multistate/multijurisdiction database search which includes a follow-up search at the originating source for any information returned by the database search and which confirms final disposition information of the same.
- c. A search of records obtained from county, state, and federal criminal repositories where the individual resides and has previously resided.
- d. A search of the National Sex Offender Registry established as provided in 42 U.S.C. § 16919.

...

(b) ~~Each local board of education shall adopt a policy on whether and under what circumstances that requires an applicant for a school personnel position shall be required to be checked for a criminal history as provided in subsection (c) of this section before the applicant is offered an unconditional job. Each local board of education shall apply its policy uniformly in requiring applicants for school personnel positions to be checked for a criminal history. A local board of education that requires a criminal history check for an applicant may employ an applicant conditionally while the board is checking the person's criminal history and making a decision based on the results of the check. The local board of education may request the criminal history check completed for licensure purposes from the State Board of Education as provided in G.S. 115C-270.12 for any applicant holding a license.~~

A local board of education ~~shall not~~ may require an applicant to pay for the criminal history check authorized under this subsection.

(c) A local board of education by policy shall uniformly require applicants for school personnel employment to be checked for a criminal history either by a consumer reporting agency, the Department of Public Safety, or both. The Department of Public Safety shall provide to the local board of education the criminal history from the State and National Repositories of Criminal Histories of any applicant for a school personnel position in the local school administrative unit for which a local board of education requires a criminal history check. The If the local board of education requires a criminal history check by the Department of Public Safety, the local board of education shall require the person to be checked by the Department of Public Safety applicant to (i) be fingerprinted and to provide any additional information required by the Department of Public Safety to a person designated by the local board, 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 local board of education shall consider refusal to consent when

~~making employment decisions and decisions with regard to independent contractors.~~not employ or contract with an applicant who refuses to consent to a criminal history check.

The local board of education ~~shall not~~may require an applicant to pay for being fingerprinted.

...

(i) The local board of education may adopt a policy providing for periodic checks of criminal history of employees. The local board may conduct a criminal history check as provided in subsection (c) of this section. Local boards of education shall not require employees to pay for the criminal history check authorized under this subsection. A local board of education shall indicate, upon inquiry by any other ~~local board of education, charter school, or regional school governing board~~ of a public school unit in the State as to the reason for an employee's resignation or dismissal, if an employee's criminal history was relevant to the employee's resignation or dismissal."

SECTION 3.(d) G.S. 116-239.12 reads as rewritten:

"§ 116-239.12. Criminal history record checks.

(a) As used in this section:

...

(1a) Consumer reporting agency. – An entity which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers, including criminal history checks, for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports, and which is regulated as provided in 15 U.S.C. § 1681, et seq. A criminal history check by a consumer reporting agency provided for purposes of this section must include all of the following:

- a. A search of the state criminal registry or repository in which the applicant resides.
- b. A multistate/multijurisdiction database search which includes a follow-up search at the originating source for any information returned by the database search and which confirms final disposition information of the same.
- c. A search of records obtained from county, state, and federal criminal repositories where the individual resides and has previously resided.
- d. A search of the National Sex Offender Registry established as provided in 42 U.S.C. § 16919.

...

(b) The chancellor shall adopt a policy, with advice and input from the advisory board, that requires an applicant for a school personnel position to be checked for a criminal history as provided in subsection (c) of this ~~section.~~section before the applicant is offered an unconditional job. The chancellor shall apply the policy uniformly in requiring applicants for school personnel positions to be checked for a criminal history. The chancellor may grant conditional approval of an application while the chancellor is checking a person's criminal history and making a decision based on the results of the check. The chancellor may request the criminal history check completed for licensure purposes from the State Board of Education as provided in G.S. 115C-270.12 for any applicant licensed by that Board. An applicant for a school personnel position not licensed by the State Board of Education shall not be required to be checked for a criminal history if he or she has received a license within six months of employment that required a criminal history check equivalent to the criminal history check required in subsection (c) of this section.

The chancellor ~~shall not~~may require an applicant to pay for the criminal history record check authorized under this section.

(c) ~~The~~ The chancellor by policy shall uniformly require applicants for employment to be checked for a criminal history either by a consumer reporting agency, the Department of Public Safety, or both. If the chancellor requires a criminal history check by the Department of Public Safety, the chancellor shall require the ~~person-applicant to be checked by the Department of Public Safety~~ (i) to be fingerprinted and to provide any additional information required by the Department of Public Safety to a person designated by the chancellor or to the local sheriff, the campus police department of the constituent institution, or the municipal police, whichever is more convenient for the person and (ii) to 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 chancellor shall ~~consider refusal to consent when making employment decisions and decisions with regard to independent contractors.~~ not employ or contract with an applicant who refuses to consent to a criminal history check. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department of Public Safety shall provide to the chancellor the criminal history from the State and National Repositories of Criminal Histories of any school personnel for which the chancellor requires a criminal history record check.

The chancellor ~~shall not~~ may require school personnel to pay for fingerprints authorized under this section.

...

(i) The chancellor may adopt a policy for periodic checks of criminal history of employees. The chancellor may conduct a criminal history check as provided in subsection (c) of this section. The chancellor shall not require employees to pay for the criminal history check authorized under this subsection. A chancellor shall indicate, upon inquiry by any other governing board of a public school unit in the State as to the reason for an employee's resignation or dismissal, if an employee's criminal history was relevant to the employee's resignation or dismissal."

SECTION 3.(e) G.S. 143B-931 is amended by adding a new subsection to read:

"(b2) The Department of Public Safety may provide a criminal history record check to the board of directors of a charter school of a person who is employed at a charter school or of a person who has applied for employment at a charter school if the employee or applicant consents to the record check. The Department may also provide a criminal history record check of school personnel as defined in G.S. 115C-332 by fingerprint card to the board of directors of the charter school from the National Repositories of Criminal Histories, in accordance with G.S. 115C-218.90. The information shall be kept confidential by the board of directors of the charter school as provided in G.S. 115C-218.90."

SECTION 3.(f) This section applies to applications for employment that are received on or after January 1, 2022.

PART IV. EFFECTIVE DATE

SECTION 4. Except as otherwise provided, this act is effective when it becomes law.

Policy EVAL-014: Code of Ethics for North Carolina Educators

Status: ADOPTED

Original Adopted Date: 02/05/1998 | **Last Reviewed Date:** 02/05/1998

**NORTH CAROLINA STATE BOARD OF EDUCATION
Policy Manual**

Item	Description
Policy Title	Code of Ethics for North Carolina Educators
Policy Category	Evaluations and Qualifications (EVAL)
Policy ID	EVAL-014
Policy Date	02/05/1998
Previous Policy Dates	06/05/1997
Statutory Reference	GS 115C-295.3, 16 NCAC 6C.0601; 16 NCAC 6C.0602

Code of Ethics for North Carolina Educators

Preamble: The purpose of this Code of Ethics is to define standards of professional conduct.

The responsibility to teach and the freedom to learn, and the guarantee of equal opportunity for all are essential to the achievement of these principles. The professional educator acknowledges the worth and dignity of every person and demonstrates the pursuit of truth and devotion to excellence, acquires knowledge, and nurtures democratic citizenship. The educator exemplifies

a commitment to the teaching and learning processes with accountability to the students, maintains professional growth, exercises professional judgment, and personifies integrity. The educator strives to maintain the respect and confidence of colleagues, students, parents and legal guardians, and the community, and to serve as an appropriate role model.

To uphold these commitments, the educator:

I. Commitment to the Student.

- A. Protects students from conditions within the educator's control that circumvent learning or are detrimental to the health and safety of students.
- B. Maintains an appropriate relationship with students in all settings; does not encourage, solicit, or engage in a sexual or romantic relationship with students, nor touch a student in an inappropriate way for personal gratification, with intent to harm, or out of anger.
- C. Evaluates students and assigns grades based upon the students' demonstrated competencies and performance.
- D. Disciplines students justly and fairly and does not deliberately embarrass or humiliate them.
- E. Holds in confidence information learned in professional practice except for professional reasons or in compliance with pertinent regulations or statutes.
- F. Refuses to accept significant gifts, favors, or additional compensation that might influence or appear to influence professional decisions or actions.

I. Commitment to the School and School System

II. Commitment to the Profession

- A. Utilizes available resources to provide a classroom climate conducive to learning and to promote learning to the maximum possible extent.
- B. Acknowledges the diverse views of students, parents and legal guardians, and colleagues as they work collaboratively to shape educational goals, policies, and decisions; does not proselytize for personal viewpoints that are outside the scope of professional practice.
- C. Signs a contract in good faith and does not abandon contracted professional duties without a substantive reason.

- D. Participates actively in professional decision-making processes and supports the expression of professional opinions and judgments by colleagues in decision-making processes or due process proceedings.
- E. When acting in an administrative capacity:
 - 1. Acts fairly, consistently, and prudently in the exercise of authority with colleagues, subordinates, students, and parents and legal guardians.
 - 2. Evaluates the work of other educators using appropriate procedures and established statutes and regulations.
 - 3. Protects the rights of others in the educational setting, and does not retaliate, coerce, or intentionally intimidate others in the exercise of rights protected by law.
 - 4. Recommend persons for employment, promotion, or transfer according to their professional qualifications, the needs and policies of the LEA, and according to the law.
- A. Provides accurate credentials and information regarding licensure or employment and does not knowingly assist others in providing untruthful information.
- B. Takes action to remedy an observed violation of the Code of Ethics for North Carolina Educators and promotes understanding of the principles of professional ethics.
- C. Pursues growth and development in the practice of the profession and uses that knowledge in improving the educational opportunities, experiences, and performance of students and colleagues.

Adopted by the State Board of Education June 5, 1997.

SECTION .0600 - CODE OF PROFESSIONAL PRACTICE AND CONDUCT FOR NORTH CAROLINA EDUCATORS

16 NCAC 6C.0601 – THE PURPOSE AND APPLICABILITY OF THE RULES OF PROFESSIONAL CONDUCT FOR EDUCATORS

The purpose of these rules is to establish and uphold uniform standards of professional conduct for licensed professional educators throughout the State. These rules shall be binding on every person licensed by the SBE, hereinafter referred to as "educator" or "professional educator," and the possible consequences of any willful breach shall include license suspension or revocation. The prohibition of certain conduct in these rules shall not be interpreted as approval of conduct not specifically cited.

History Note: Authority G.S. 115C-295.3;

Eff. April 1, 1998.

16 NCAC 6C.0602 – THE STANDARDS OF PROFESSIONAL CONDUCT FOR NC EDUCATORS

- a. The standards listed in this Section shall be generally accepted for the education profession and shall be the basis for State Board review of performance of professional educators. These standards shall establish mandatory prohibitions and requirements for educators. Violation of these standards shall subject an educator to investigation and disciplinary action by the SBE or LEA.
- b. Professional educators shall adhere to the standards of professional conduct contained in this Rule. Any intentional act or omission that violates these standards is prohibited.
 1. Generally recognized professional standards. The educator shall practice the professional standards of federal, state, and local governing bodies.
 2. Personal conduct. The educator shall serve as a positive role model for students, parents, and the community. Because the educator is entrusted with the care and education of small children and adolescents, the educator shall demonstrate a high standard of personal character and conduct.
 3. Honesty. The educator shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation in the performance of professional duties including the following:
 - A. statement of professional qualifications;
 - B. application or recommendation for professional employment, promotion, or licensure;
 - C. application or recommendation for college or university admission, scholarship, grant, academic award, or similar benefit;
 - D. representation of completion of college or staff development credit;
 - E. evaluation or grading of students or personnel;
 - F. submission of financial or program compliance reports submitted to state, federal, or other governmental agencies;
 - G. submission of information in the course of an official inquiry by the employing LEA or the SBE related to facts of unprofessional conduct, provided, however, that an educator shall be given adequate notice of the allegations and may be represented by legal counsel; and
 - H. submission of information in the course of an investigation by a law enforcement agency, child protective services, or any other agency with the right to investigate, regarding school-related criminal activity; provided, however, that an educator shall be entitled to decline to give evidence to law enforcement if such evidence may tend to incriminate the educator as that term is defined by the Fifth Amendment to the U.S. Constitution.
 4. Proper remunerative conduct. The educator shall not solicit current students or parents of students to purchase equipment, supplies, or services from the educator in a private remunerative capacity. An educator shall not tutor for remuneration students currently assigned to the educator's classes, unless approved by the local superintendent. An educator shall not accept any compensation, benefit, or thing of value other than the educator's regular compensation for the performance of any service that the educator is required to render in the course and scope of the educator's employment. This Rule shall not restrict performance of any overtime or supplemental services at the request of the LEA; nor shall it apply to or restrict the acceptance of gifts or tokens of minimal value offered and accepted openly from students, parents, or other persons in recognition or appreciation of service.
 5. Conduct with students. The educator shall treat all students with respect. The educator shall not commit any abusive act or sexual exploitation with, to, or in the presence of a student, whether or not that student is or has been under the care or supervision of that educator, as defined below:
 - A. any use of language that is considered profane, vulgar, or demeaning;
 - B. any sexual act;
 - C. any solicitation of a sexual act, whether written, verbal, or physical;
 - D. any act of child abuse, as defined by law;
 - E. any act of sexual harassment, as defined by law; and
 - F. any intentional solicitation, encouragement, or consummation of a romantic or physical relationship with a student, or any sexual contact with a student. The term "romantic relationship" shall include dating any student.
 6. Confidential information. The educator shall keep in confidence personally identifiable information regarding students or their family members that has been obtained in the course of professional service, unless disclosure is required or permitted by law or professional standards, or is necessary for the personal safety of the student or others.
 7. Rights of others. The educator shall not willfully or maliciously violate the constitutional or civil rights of a student, parent/legal guardian, or colleague.
 8. Required reports. The educator shall make all reports required by Chapter 115C of the North Carolina General Statutes.
 9. Alcohol or controlled substance abuse. The educator shall not:
 - A. be under the influence of, possess, use, or consume on school premises or at a school-sponsored activity a controlled substance as defined by N.C. Gen. Stat. § 90-95, the Controlled Substances Act, without a prescription authorizing such use;
 - B. be under the influence of, possess, use, or consume an alcoholic beverage or a controlled substance on school

- premises or at a school-sponsored activity involving students; or
- C. furnish alcohol or a controlled substance to any student except as indicated in the professional duties of administering legally prescribed medications.
10. Compliance with criminal laws. The educator shall not commit any act referred to in G.S. 115C-332 and any felony under the laws of the United States or of any state.
 11. Public funds and property. The educator shall not misuse public funds or property, funds of a school-related organization, or colleague's funds. The educator shall account for funds collected from students, colleagues, or parents/legal guardians. The educator shall not submit fraudulent requests for reimbursement, expenses, or pay.
 12. Scope of professional practice. The educator shall not perform any act as an employee in a position for which licensure is required by the rules of the SBE or by Chapter 115C or the North Carolina General Statutes during any period in which the educator's license has been suspended or revoked.
 13. Conduct related to ethical violations. The educator shall not directly or indirectly use or threaten to use any official authority or influence in any manner that tends to discourage, restrain, interfere with, coerce, or discriminate against any subordinate or any licensee who in good faith reports, discloses, divulges, or otherwise brings to the attention of an LEA, the SBE, or any other public agency authorized to take remedial action, any facts or information relative to actual or suspected violation of any law regulating the duties of persons serving in the public school system, including but not limited to these Rules.

History Note: Authority G.S. 115C-295.3;

Eff. May 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-300
SENATE BILL 742

AN ACT TO MAKE IT UNLAWFUL FOR SCHOOL PERSONNEL TO ENGAGE IN
SEXUAL ACTS WITH A STUDENT.

The General Assembly of North Carolina enacts:

Section 1. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-202.4. Taking indecent liberties with a student.

(a) If a defendant, who is a teacher, school administrator, student teacher, or coach, at any age, or who is other school personnel and is at least four years older than the victim, takes indecent liberties with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student, the defendant is guilty of a Class I felony, unless the conduct is covered under some other provision of law providing for greater punishment. The term "same school" means a school at which the student is enrolled and the school personnel is employed or volunteers. A person is not guilty of taking indecent liberties with a student if the person is lawfully married to the student.

(b) If a defendant, who is school personnel, other than a teacher, school administrator, student teacher, or coach, and who is less than four years older than the victim, takes indecent liberties with a student as provided in subsection (a) of this section, the defendant is guilty of a Class A1 misdemeanor.

(c) Consent is not a defense to a charge under this section.

(d) For purposes of this section, the following definitions apply:

(1) "Indecent liberties" means:

- a. Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or
- b. Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.

For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. 14-27.1.

(2) "School" means any public school, charter school, or nonpublic school under Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes.

- (3) "School personnel" means any person included in the definition contained in G.S. 115C-332(a)(2), and any person who volunteers at a school or a school-sponsored activity.
- (4) "Student" means a person enrolled in kindergarten, or in grade one through grade 12 in any school."

Section 2. G.S. 14-27.7 reads as rewritten:

"§ 14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.

(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony. Consent is not a defense to a charge under this section.

(b) If a defendant, who is a teacher, school administrator, student teacher, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a school at which the student is enrolled and the school personnel is employed or volunteers. A defendant who is school personnel, other than a teacher, school administrator, student teacher, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor. This subsection shall apply unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section. For purposes of this subsection, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d)."

Section 3. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 8:38 a.m. this 15th day of July, 1999

Policy SHLT-003: School-Based Mental Health Initiative

Status: ADOPTED

Original Adopted Date: 11/05/2020 | **Last Revised Date:** 11/04/2021 | **Last Reviewed Date:** 11/04/2021

**NORTH CAROLINA STATE BOARD OF EDUCATION
Policy Manual**

Item	Description
Policy Title	School-Based Mental Health Policy
Policy Category	Student Health Issues (SHLT)
Policy ID	SHLT-003
Policy Date	11/04/2021
Previous Policy Dates	11/05/2020
Statutory Reference	SL 2019-245, SL 2020-7; SL 2021-132, G.S. 7B-302(a1), G.S. 115C-105.51
Administrative Procedures Act (APA)	

Definitions:

I. Local School Mental Health (SMH) Improvement Plan

Each K-12 public school unit (PSU) shall adopt and implement a plan for promoting student mental health and well-being and for assessing and improving upon the effectiveness of supports for the mental and social-emotional health and substance use needs of its students and staff by July 1, 2021. PSUs are encouraged to conduct a mental and social-emotional health and substance use needs assessment and resource mapping to inform plan development. The plan shall provide for stakeholder engagement to achieve a coordinated system of support in the school and community for students and their families.

A. Summary of SMH Improvement Plan Components

The plan must address a continuum of mental and social-emotional health supports and services that consists of the following elements:

1. universal promotion of mental and social-emotional wellness and prevention through core instruction, curriculum, and environment; this includes a mental health training program and a suicide risk referral protocol that:
 - a. are consistent with the model program and risk referral program described below
 - b. are provided at no cost to employees include at least six hours of content for initial training occurring within first six months of employment;
 - c. PSUs may waive the initial training requirement for a new employee who completed such training at another PSU within the previous twelve months
 - d. include annual subsequent training of at least two hours
2. early intervention for mental and social-emotional health as part of the PSU's intervention system
3. referral, treatment, and re-entry, as further described below
4. a suicide risk referral protocol that is provided to school personnel who work directly with students (teachers, instructional support personnel, principals, and assistant principals; this term may also include, in the discretion of the PSU other school employees who work directly with students) in grades 6-12 (required) and K-5 (recommended) and provide both of the following:
 - a. Guidelines on the identification of students at risk of suicide
 - b. Procedures and referral sources that address actions that should be taken to address students identified in accordance with this subdivision

B. Details of SMH Improvement Plan Components

1. Universal Prevention through Core Instruction, Curriculum, and Environment

Universal prevention efforts focus on promoting a socially and emotionally healthy school environment for all students and staff. The PSU plan must describe existing preventative initiatives, if any, and identify strategies as needed for improving upon current prevention efforts. These efforts may be accomplished through use of existing resources such as the Multi-Tiered System of Support (MTSS), School Health Advisory Council, or other teams designated by the PSU for this purpose.

PSUs are strongly encouraged to include the following core/universal strategies in their plans, in addition to other strategies:

- a. Integrating social and emotional learning strategies across the curriculum and within the entire school environment in alignment with the NC Standard Course of Study.
- b. Incorporating evaluation of understanding and use of social and emotional well-being learning strategies in classroom/school management into the annual performance appraisal of teachers and administrators.
- c. Improving staffing ratios for licensed specialized instructional support personnel such as school counselors, school nurses, school psychologists, school social workers, and school occupational therapists to improve student access to school health professionals.
- d. Incorporating resources provided through staff mental health and wellness initiatives such as adult social-emotional learning and Employee Assistance Programs (EAPs).

2. Early Intervention for Mental and Social-Emotional Health and Wellness as Part of the PSU's Intervention System

Systems of early intervention focus on assisting students who are experiencing issues at school or who are otherwise identified as at risk for mental and social-emotional health or substance use issues. The PSU plan shall describe existing systems of early intervention, if any, and identify strategies as needed for improving upon those systems in order to improve outcomes for students. PSUs are encouraged to include all of the following strategies:

- a. Annual review of the PSU's policies, procedures, and/or practices for crisis intervention.
- b. Identification of methods for strengthening the PSU's response to mental and social-emotional health and substance use concerns in the school setting, including the role of crisis intervention teams.
- c. Annual review of the PSU's discipline policies and practices.
- d. Identification of strategies to avoid over-reliance on suspension or expulsion in the discipline of students with identified mental and social-emotional health or substance use concerns.
- e. Inclusion of PSU in the local community emergency preparedness plan.

3. Referral, Treatment, and Re-Entry

To facilitate student access to, and transition within and between, school and community-based mental health and substance use services, PSUs are encouraged to include in their plans:

- a. Strategies to improve access to school and community-based services for students and their families, e.g., by establishing arrangements for students to have access to licensed mental health professionals at school.
- b. Strategies to improve transitions between and within school and community-based services, e.g., through the creation of multi-disciplinary teams to provide referral and follow-up services to individual students.
- c. Formalized protocols for transitioning students to school following acute/residential mental health treatment.

Nothing in this section shall be construed to impose an additional duty on a PSU to provide referral, treatment, follow-up, or other mental health and suicide prevention services to students of the PSU or otherwise impose duties outside of school personnel's scope of practice as school providers.

4. Memorandum of Understanding (MOU)

In addition, each PSU shall offer to enter into a memorandum of understanding (MOU) with the Local Management Entity/Managed Care Organization (LME/MCO), and/or, to the extent deemed appropriate by the PSU, with local mental health and substance use providers serving the geographic area in which the PSU is located. The MOU should address the parties' respective roles and relationships and how the parties will coordinate referral, treatment, and follow-up to individual students. This requirement is not intended to impose on PSUs any obligation or responsibility to provide, or liability for failure to provide, referral, treatment, follow-up, or other services beyond those already required by state or federal law.

5. Suicide Risk Referral Protocol

To ensure timely and effective response to suicide threats, PSUs will adopt a suicide risk referral protocol that is provided to school personnel who work with students in grades 6-12 (required) and K-5 (recommended) and includes both of the following:

- a. Guidelines on the identification of students at risk of suicide.
- b. Procedures and referral sources that address actions that should be taken to address students identified in accordance

with this subdivision.

6. Stakeholder Engagement

Each PSU plan shall provide for engagement of relevant stakeholders, including families, students, community providers, and cross-system partners (e.g., county agencies, faith-based organizations, professional associations, etc.), with the goal of building school, family, and community partnerships to create and sustain coordinated mental and social-emotional health and substance use supports and services for students.

7. Liability

No governing body of a PSU, nor its members, employees, designees, agents, or volunteers, shall be liable in civil damages to any party for any loss or damage caused by any act or omission relating to the provision of, participation in, or implementation of any component of a school-based mental health plan, mental health training program, or suicide risk referral protocol required by this policy, unless that act or omission amounts to gross negligence, wanton conduct, or intentional wrongdoing. Nothing in this section shall be construed to impose any specific duty of care or standard of care on a PSU.

8. Reporting to DPI

By September 15 of each year, each PSU will report to DPI on:

- a. content of the school-based mental health plan adopted in the unit, including the mental health training program and suicide risk referral protocol, and
- b. prior school year compliance with requirements of this policy

9. Timeline

Development of the PSU plan for assessing and improving upon the effectiveness of supports for the mental and social-emotional health or substance use needs of its student population, including plans for staff training, will occur during the 2020-21 school year. By July 1, 2021, each PSU shall:

- a. adopt the plan for promoting student mental health and well-being
- b. begin implementation of said plan
- c. commence school mental and social-emotional health and substance use training program within the framework of externally-sourced professional development and technical assistance and/or as part of required professional development offered by the PSU.

The plan must be approved by the local governing board and reviewed at least every five years, starting August 1, 2025.

II. DPI Provision of Model School Mental Health Training Program

A. School Mental Health Training Program Contents

1. Development of Training Program

In consultation with other relevant State departments and stakeholders (including, but not limited to, students, families, superintendents, principals, and PSU personnel), DPI will develop a model mental health training program for K-12 PSUs that is provided to school personnel who work with students in grades K-12 and address the following topics:

- a. Youth mental health
- b. Suicide prevention
- c. Substance abuse
- d. Teenage dating violence, and in accordance with SL 2019-245,
- e. Child sexual abuse prevention
- f. Sex trafficking prevention:

for (e) and (f), school personnel who work directly with students in grades K-12 must participate in education and awareness training related to, including, but not limited to:

- i. best practices from the field of prevention
- ii. the grooming process of sexual predators
- iii. the warning signs of sexual abuse and sex trafficking
- iv. how to intervene when sexual abuse or sex trafficking is suspected or disclosed,
- v. legal responsibilities for reporting sexual abuse or sex trafficking, and available resources for assistance.

This child sexual abuse and sex trafficking training may be provided by local nongovernmental organizations with expertise in these areas, local law enforcement officers, or other officers of the court. All school personnel who work with students in grades K-12 shall receive two hours of child sexual abuse and sex trafficking training in even-numbered years beginning in 2020.

B. School Mental Health Training Program Implementation

DPI will support all PSUs by creating and helping implement a state-wide training and monitoring plan. Tools, resources,

technical assistance, and professional learning materials will be made available to support local implementation of this policy.

1. Target Audience for School Mental Health Training

The mental and social-emotional health and substance use training plan will target teachers, instructional support personnel, principals, and assistant principals; it may also include, in the discretion of the PSU, other school employees who work directly with students in grades K-12. A recommended package of professional learning specific to specialized instructional support personnel will also be offered. These training requirements shall not apply to employees who are anticipated to have minimal or no direct student contact.

2. Modes of Delivery for School Mental Health Training

DPI will ensure training programs/materials are accessible via: electronic delivery of instruction, videoconferencing, group, in-person training, and/or self-study platforms. Training may be provided by local nongovernmental organizations with expertise in these areas, LME-MCOs, institutes of higher education, licensed providers, professional learning vendors, local law enforcement officers, or other officers of the court. Low- or no-cost options and training programs/materials that align with the National School Mental Health Curriculum(<https://simbli.eboardsolutions.com/SU/QhLGtfVWmj7Q1FmR6eJslsh9g==>) will be prioritized.

3. Annual PSU Reporting to DPI

DPI will develop a submission, review, and response protocol for the PSU reports due each September 15. Efforts will be made to embed/align this reporting requirement with other related submissions.

4. DPI Five-Year SMH Policy Review Cycle

Beginning August 1, 2025, and every five years thereafter, the Superintendent of Public Instruction shall review the State Board of Education's minimum requirements for a school-based mental health plan, model mental health training program, and model suicide risk referral protocol and recommend any data-informed and evidence-based changes to the State Board of Education. The State Board shall update its policies to reflect those recommendations and publish the updates to K-12 PSUs. PSUs shall update their adopted school-based mental health plan in accordance with any updates provided by the State Board.

5. Monitoring and Compliance

DPI may audit PSUs at appropriate times to ensure compliance with the requirements of this policy. DPI will report the information it receives from annual PSU reports and audit findings to the Joint Legislative Education Oversight Committee and the Joint Legislative Oversight Committee on Health and Human Services by December 15 of each year.

III. Providing Students Information and Resources on Child Abuse and Neglect

Beginning in the 2021-2022 school year, each public school unit (PSU), including traditional PSU schools, charter schools, regional schools, laboratory schools, and high schools under the control of The University of North Carolina, shall provide to students in grades 6 - 12 information on child abuse and neglect, including age-appropriate information on sexual abuse.

A. Child abuse and neglect information shall be provided in the form of

1. a document provided to all students in grades 6 - 12 at the beginning of each school year and
2. a display posted in visible, high-traffic areas throughout each public secondary school.

B. The child abuse and neglect document and display shall include, at a minimum, the following information:

1. Likely warning signs indicating that a child may be a victim of abuse or neglect, including age-appropriate information on sexual abuse.
2. The telephone number used for reporting abuse and neglect to the department of social services in the county in which the school is located, in accordance with G.S. 7B-301 which details the requirements regarding any person or institution with knowledge of abuse, neglect, dependency, or death due to maltreatment to report such.
3. A statement that information reported pursuant to item B. 2. of this section shall be held in the strictest confidence, to the extent permitted by law, pursuant to G.S. 7B-302(a1) which details the requirement that all information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department, except under specified circumstances.
4. Available resources developed pursuant to G.S. 115C-105.51, including the anonymous safety tip line application.

C. Each traditional PSU, charter school, regional school, and laboratory school local board of education, and board providing oversight to any high school under the control of The University of North Carolina, shall implement this requirement addressing student awareness of child abuse and neglect, including sexual abuse.
