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SENATE BILL 295
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Short Title: Standards of Student Conduct.

(Public)

Sponsors:

Referred to:

March 20, 2019

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO LOCAL STANDARDS OF STUDENT CONDUCT AND TO REQUIRE THE DEPARTMENT OF PUBLIC INSTRUCTION TO DEVELOP A PLAN OF EMPLOYMENT FOR TEACHERS WITH THE NORTH CAROLINA VIRTUAL PUBLIC SCHOOL AND REPORT TO THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 115C-390.1 reads as rewritten:

"§ 115C-390.1. State policy and definitions.

...

(b) The following definitions apply in this Article:

(1) Alternative education services. – Part or full-time programs, wherever situated, providing direct or computer-based instruction that allow a student to progress in one or more core academic courses. Alternative education services include programs established by the local board of education in conformity with G.S. 115C-105.47A and ~~local board of education~~ public school unit board policies.

...

(4) Educational property. – Any school building or bus, school campus, grounds, recreational area, athletic field, or other property under the control of any ~~local board of education or charter school~~ public school unit.

...

(9) Principal. – Includes the principal and the principal's ~~designee~~ designee, or if there is no designated principal, the staff member designated by the public school unit board with the highest decision-making authority at an individual school.

(9a) Public school unit board or board. – The governing entity of a public school unit.

...

(11) School personnel. – Any of the following:

- a. An employee of a ~~local board of education~~ public school unit board.
- b. Any person working on school grounds or at a school function under a contract or written agreement with the public school ~~system~~ unit to provide educational or related services to students.



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1 c. Any person working on school grounds or at a school function for
2 another agency providing educational or related services to students.

3 ...

4 (14) Superintendent. – Includes the superintendent and the superintendent's
5 ~~designee.~~ designee, or if there is no superintendent, the staff member with the
6 highest decision-making authority and that staff member's designee.

7"

8 **SECTION 1.(b)** G.S. 115C-390.2 reads as rewritten:

9 **"§ 115C-390.2. Discipline policies.**

10 (a) ~~Local boards of education~~ Public school unit boards, in consultation with teachers,
11 school-based administrators, parents, and local law enforcement agencies, shall adopt policies to
12 govern the conduct of students and establish procedures to be followed by school officials in
13 disciplining students. These policies must be consistent with the provisions of this Article and
14 the constitutions, statutes, and regulations of the United States and the State of North Carolina.
15 Prior to adopting these policies, public school unit boards shall review current federal guidance
16 on school discipline practices issued by the United States Department of Education.

17 (a1) No later than September 1 of each year, each public school unit board shall provide
18 the Department of Public Instruction with a copy of its most up-to-date student discipline
19 policies.

20 (b) Board policies shall include or provide for the development of a Code of Student
21 Conduct that notifies students of the standards of behavior expected of them, conduct that may
22 subject them to discipline, and the range of disciplinary measures that may be used by school
23 officials.

24 (c) Board policies may authorize suspension for conduct not occurring on educational
25 property, but only if the student's conduct otherwise violates the Code of Student Conduct and
26 the conduct has or is reasonably expected to have a direct and immediate impact on the orderly
27 and efficient operation of the schools or the safety of individuals in the school environment.

28 (d) Board policies shall not allow students to be long-term suspended or expelled from
29 school solely for truancy or tardiness offenses and shall not allow short-term suspension of more
30 than two days for such offenses.

31 (e) Board policies shall not impose mandatory long-term suspensions or expulsions for
32 specific violations unless otherwise provided in State or federal law.

33 (f) Board policies shall minimize the use of long-term suspension and expulsion by
34 restricting the availability of long-term suspension or expulsion to those violations deemed to be
35 serious violations of the board's Code of Student Conduct that either threaten the safety of
36 students, staff, or school visitors or threaten to substantially disrupt the educational environment.
37 Examples of conduct that would not be deemed to be a serious violation include the use of
38 inappropriate or disrespectful language, noncompliance with a staff directive, dress code
39 violations, and minor physical altercations that do not involve weapons or injury. The principal
40 may, however, in his or her discretion, determine that aggravating circumstances justify treating
41 a minor violation as a serious violation.

42 (g) Board policies shall not prohibit the superintendent and principals from considering
43 the student's intent, disciplinary and academic history, the potential benefits to the student of
44 alternatives to suspension, and other mitigating or aggravating factors when deciding whether to
45 recommend or impose long-term suspension.

46 (h) Board policies shall include the procedures to be followed by school officials in
47 suspending, expelling, or administering corporal punishment to any student, which shall be
48 consistent with this Article.

49 (i) Each ~~local~~ board shall publish all policies, administrative procedures, or school rules
50 mandated by this section and make them available to each student and his or her parent at the
51 beginning of each school year and upon request. This information shall include the full range of

1 responses to violations of disciplinary rules, including responses that do not remove a student
2 from the classroom or school building. Public school unit boards may require students and
3 parents or guardians to sign an acknowledgement that they have received a copy of such policies,
4 procedures, or rules.

5 (j) ~~Local boards of education~~ Public school unit boards are encouraged to include in their
6 safe schools plans, adopted pursuant to G.S. 115C-105.47, research-based behavior management
7 programs that take positive approaches to improving student behaviors.

8 (k) School officials are encouraged to use a full range of responses to violations of
9 disciplinary rules, such as conferences, counseling, peer mediation, behavior contracts,
10 instruction in conflict resolution and anger management, detention, academic interventions,
11 community service, and other similar tools that do not remove a student from the classroom or
12 school building.

13 (l) Board policies shall state that absences under G.S. 130A-440 shall not be suspensions.
14 A student subject to an absence under G.S. 130A-440 shall be provided the following:

15 (1) The opportunity to take textbooks and school-furnished digital devices home
16 for the duration of the absence.

17 (2) Upon request, the right to receive all missed assignments and, to the extent
18 practicable, the materials distributed to students in connection with the
19 assignment.

20 (3) The opportunity to take any quarterly, semester, or grading period
21 examinations missed during the absence period.

22 (m) Except as provided in subsection (f) of this section, nothing in this section or any
23 section of this Chapter shall be construed as regulating a public school unit board's discretion to
24 devise, impose, and enforce personal appearance codes."

25 **SECTION 1.(c)** G.S. 115C-390.3 reads as rewritten:

26 "**§ 115C-390.3. Reasonable force.**

27 ...

28 (c) Notwithstanding any other law, no officer, member, or employee of the State Board
29 of Education, the Superintendent of Public Instruction, or of a ~~local board of education,~~ public
30 school unit board, individually or collectively, shall be civilly liable for using reasonable force
31 in conformity with State law, State or local rules, or State or local policies regarding the control,
32 discipline, suspension, and expulsion of students. Furthermore, the burden of proof is on the
33 claimant to show that the amount of force used was not reasonable.

34 (d) No school employee shall be reprimanded or dismissed for acting or failing to act to
35 stop or intervene in an altercation between students if the employee's actions are consistent with
36 ~~local board policies.~~ ~~Local boards of education~~ Public school unit boards shall adopt policies,
37 pursuant to their authority under G.S. 115C-47(18), or as otherwise provided by law, which
38 provide guidelines for an employee's response if the employee has personal knowledge or actual
39 notice of an altercation between students."

40 **SECTION 1.(d)** G.S. 115C-390.4 reads as rewritten:

41 "**§ 115C-390.4. Corporal punishment.**

42 (a) Each ~~local board of education~~ public school unit board shall determine whether
43 corporal punishment will be permitted in its public school administrative unit. Notwithstanding
44 a ~~local board of education's~~ board's prohibition on the use of corporal punishment, school
45 personnel may use physical restraint in accordance with federal law and G.S. 115C-391.1 and
46 reasonable force pursuant to G.S. 115C-390.3.

47 ...

48 (c) Each ~~local board of education~~ public school unit board shall report annually to the
49 State Board of Education, in a manner prescribed by the State Board of Education, on the number
50 of times that corporal punishment was administered. The report shall be in compliance with the

1 federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and shall include the
2 following:

3"

4 **SECTION 1.(e)** G.S. 115C-390.6 reads as rewritten:

5 **"§ 115C-390.6. Short-term suspension procedures.**

6 ...

7 (e) A student is not entitled to appeal the principal's decision to impose a short-term
8 suspension to the superintendent or ~~local board of education~~, public school unit board. Further,
9 such a decision is not subject to judicial review. Notwithstanding this subsection, the ~~local board~~
10 ~~of education~~, public school unit board, in its discretion, may provide students an opportunity for
11 a review or appeal of a short-term suspension to the superintendent or ~~local board of~~
12 ~~education~~, public school unit board."

13 **SECTION 1.(f)** G.S. 115C-390.8 reads as rewritten:

14 **"§ 115C-390.8. Long-term suspension procedures.**

15 (a) When a student is recommended by the principal for long-term suspension, the
16 principal shall give written notice to the student's parent. The notice shall be provided to the
17 student's parent by the end of the workday during which the suspension was recommended when
18 reasonably possible or as soon thereafter as practicable. The written notice shall provide at least
19 the following information:

20 ...

21 (6) The extent to which the ~~local board~~ policy permits the parent to have an
22 advocate, instead of an attorney, accompany the student to assist in the
23 presentation of his or her appeal.

24 ...

25 (8) A reference to the ~~local board~~ policy on the expungement of discipline records
26 as required by G.S. 115C-402.

27 (b) Written notice may be provided by certified mail, fax, e-mail, or any other written
28 method reasonably designed to achieve actual notice of the recommendation for long-term
29 suspension. When school personnel are aware that English is not the primary language of the
30 parent or guardian, the notice shall be written in both English and in the primary language of the
31 parent or guardian when the appropriate foreign language resources are readily available. All
32 notices described in this section shall be written in plain English, and shall include the following
33 information translated into the dominant non-English language used by residents within the ~~local~~
34 ~~school administrative unit~~, public school unit:

35 ...

36 (d) The formal hearing may be conducted by the ~~local board of education~~, public school
37 unit board, by the superintendent, or by a person or group of persons appointed by the ~~local board~~
38 or superintendent to serve as a hearing officer or hearing panel. Neither the board nor the
39 superintendent shall appoint any individual to serve as a hearing officer or on a hearing panel
40 who is under the direct supervision of the principal recommending suspension. If the hearing is
41 conducted by an appointed hearing officer or hearing panel, such officer or panel shall determine
42 the relevant facts and credibility of witnesses based on the evidence presented at the hearing.
43 Following the hearing, the superintendent or ~~local board~~ shall make a final decision regarding
44 the suspension. The superintendent or board shall adopt the hearing officer's or panel's factual
45 determinations unless they are not supported by substantial evidence in the record.

46 (e) Long-term suspension hearings shall be conducted in accordance with policies
47 adopted by the ~~board of education~~, public school unit board. Such policies shall offer the student
48 procedural due process including, but not limited to, the following:

49 ...

50 (g) Unless the decision was made by the ~~local board~~, the student may appeal the decision
51 to ~~the a local board of education~~ in accordance with G.S. 115C-45(c) and policies adopted by the

1 ~~board, public school unit board.~~ Notwithstanding the provisions of G.S. 115C-45(c), a student's
2 appeal to the board of a decision upholding a long-term suspension shall be heard and a final
3 written decision issued in not more than 30 calendar days following the request for such appeal.

4 ...

5 (i) A decision of the ~~local~~ board to uphold the long-term suspension of a student is
6 subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.
7 The action must be brought within 30 days of the ~~local~~ board's decision. A person seeking judicial
8 review shall file a petition in the superior court of the county where the ~~local~~ board made its
9 decision. Local rules notwithstanding, petitions for judicial review of a long-term suspension
10 shall be set for hearing in the first succeeding term of superior court in the county following the
11 filing of the certified copy of the official record."

12 **SECTION 1.(g)** G.S. 115C-390.9 reads as rewritten:

13 **"§ 115C-390.9. Alternative education services.**

14 (a) Students who are long-term suspended shall be offered alternative education services
15 unless the superintendent provides a significant or important reason for declining to offer such
16 services. The following may be significant or important reasons, depending on the circumstances
17 and the nature and setting of the alternative education services:

18 ...

19 (5) Educationally appropriate alternative education services are not available in
20 the ~~local school administrative~~ public school unit due to limited resources.

21 ...

22 (b) If the superintendent declines to provide alternative education services to the
23 suspended student, the student may seek review of such decision by the ~~local board of education~~
24 public school unit board as permitted by G.S. 115C-45(c)(2). If the student seeks such review,
25 the superintendent shall provide to the student and the ~~local~~ board, in advance of the board's
26 review, a written explanation for the denial of services together with any documents or other
27 information supporting the decision."

28 **SECTION 1.(h)** G.S. 115C-390.10 reads as rewritten:

29 **"§ 115C-390.10. 365-day suspension for gun possession.**

30 (a) All ~~local boards of education~~ public school unit boards shall develop and implement
31 written policies and procedures, as required by the federal Gun Free Schools Act, 20 U.S.C. §
32 7151, requiring suspension for 365 calendar days of any student who is determined to have
33 brought or been in possession of a firearm or destructive device on educational property, or to a
34 school-sponsored event off of educational property. A principal shall recommend to the
35 superintendent the 365-day suspension of any student believed to have violated board policies
36 regarding weapons. The superintendent has the authority to suspend for 365 days a student who
37 has been recommended for such suspension by the principal when such recommendation is
38 consistent with board policies. Notwithstanding the foregoing, the superintendent may modify,
39 in writing, the required 365-day suspension for an individual student on a case-by-case basis.
40 The superintendent shall not impose a 365-day suspension if the superintendent determines that
41 the student took or received the firearm or destructive device from another person at school or
42 found the firearm or destructive device at school, provided that the student delivered or reported
43 the firearm or destructive device as soon as practicable to a law enforcement officer or a school
44 employee and had no intent to use such firearm or destructive device in a harmful or threatening
45 way.

46 ...

47 (c) Nothing in this provision shall apply to a firearm that was brought onto educational
48 property for activities approved and authorized by the ~~local board of education, public school~~
49 unit board, provided that the ~~local board of education~~ public school unit board has adopted
50 appropriate safeguards to protect student safety.

1 (d) At the time the student and parent receive notice that the student is suspended for 365
 2 days under this section, the superintendent shall provide notice to the student and the student's
 3 parent of the right to petition the ~~local board of education~~ public school unit board for readmission
 4 pursuant to G.S. 115C-390.12.

5"

6 **SECTION 1.(i)** G.S. 115C-390.11 reads as rewritten:

7 **"§ 115C-390.11. Expulsion.**

8 (a) Upon recommendation of the superintendent, a ~~local board of education~~ public school
 9 unit board may expel any student 14 years of age or older whose continued presence in school
 10 constitutes a clear threat to the safety of other students or school staff. Prior to the expulsion of
 11 any student, the ~~local board~~ shall conduct a hearing to determine whether the student's continued
 12 presence in school constitutes a clear threat to the safety of other students or school staff. The
 13 student shall be given reasonable notice of the recommendation in accordance with G.S.
 14 115C-390.8(a) and (b), as well as reasonable notice of the time and place of the scheduled
 15 hearing.

- 16 (1) The procedures described in G.S. 115C-390.8(e)(1)-(8) apply to students
 17 facing expulsion pursuant to this section, except that the decision to expel a
 18 student by the ~~local board of education~~ public school unit board shall be based
 19 on clear and convincing evidence that the student's continued presence in
 20 school constitutes a clear threat to the safety of other students and school staff.
 21 (2) A ~~local board of education~~ public school unit board may expel any student
 22 subject to G.S. 14-208.18 in accordance with the procedures of this section.
 23 Prior to ordering the expulsion of a student, the ~~local board of education~~ public
 24 school unit board shall consider whether there are alternative education
 25 services that may be offered to the student. As provided by G.S. 14-208.18(f),
 26 if the ~~local board of education~~ public school unit board determines that the
 27 student shall be provided educational services on school property, the student
 28 shall be under the supervision of school personnel at all times.

29 ...

30 (b) During the expulsion, the student is not entitled to be present on any property of the
 31 ~~local school administrative~~ public school unit and is not considered a student of the ~~local board~~
 32 ~~of education~~ public school unit board. Nothing in this section shall prevent a ~~local board of~~
 33 ~~education~~ public school unit board from offering access to some type of alternative educational
 34 services that can be provided to the student in a manner that does not create safety risks to other
 35 students and school staff."

36 **SECTION 1.(j)** G.S. 115C-390.12 reads as rewritten:

37 **"§ 115C-390.12. Request for readmission.**

38 (a) All students suspended for 365 days or expelled may, after 180 calendar days from
 39 the date of the beginning of the student's suspension or expulsion, request in writing readmission
 40 to the ~~local school administrative~~ public school unit. The ~~local board of education~~ public school
 41 unit board shall develop and publish written policies and procedures for the readmission of all
 42 students who have been expelled or suspended for 365 days, which shall provide, at a minimum,
 43 the following process:

- 44 (1) The process for 365-day suspended students.

- 45 a. At the ~~local board's~~ discretion, either the superintendent or the ~~local~~
 46 board itself shall consider and decide on petitions for readmission. If
 47 the decision maker is the superintendent, the superintendent shall offer
 48 the student an opportunity for an in-person meeting. If the decision
 49 maker is the ~~local board of education~~ public school unit board, the
 50 board may offer the student an in-person meeting or may make a

- 1 determination based on the records submitted by the student and the
 2 superintendent.
 3 ...
 4 c. A superintendent's decision not to readmit the student may be appealed
 5 to the ~~local board of education~~ public school unit board pursuant to
 6 G.S. 115C-45(c). The superintendent shall notify the parents of the
 7 right to appeal.
 8 ...
 9 (2) The process for expelled students.
 10 a. The board ~~of education~~ shall consider all petitions for readmission of
 11 expelled students, together with the recommendation of the
 12 superintendent on the matter, and shall rule on the request for
 13 readmission. The board shall consider the petition based on the records
 14 submitted by the student and the response by the administration and
 15 shall allow the parties to be heard in the same manner as provided by
 16 G.S. 115C-45(c).
 17 ...
 18 c. A decision by a board ~~of education~~ to deny readmission of an expelled
 19 student is not subject to judicial review.
 20 d. An expelled student may subsequently request readmission not more
 21 often than every six months. The ~~local board of education~~ public
 22 school unit board is not required to consider subsequent readmission
 23 petitions filed sooner than six months after the previous petition was
 24 filed.
 25 ...
 26 (b) If a student is readmitted under this section, the board and the superintendent have the
 27 right to assign the student to any program within the ~~school system~~ public school unit and to
 28 place reasonable conditions on the readmission.
 29"
 30 **SECTION 1.(k) G.S. 115C-391.1 reads as rewritten:**
 31 **"§ 115C-391.1. Permissible use of seclusion and restraint.**
 32 ...
 33 (b) The following definitions apply in this section:
 34 ...
 35 (9) "School personnel" means:
 36 a. Employees of a ~~local board of education~~ public school unit board.
 37 b. Any person working on school grounds or at a school function under
 38 a contract or written agreement with the public school ~~system~~ unit to
 39 provide educational or related services to students.
 40 c. Any person working on school grounds or at a school function for
 41 another agency providing educational or related services to students.
 42 ...
 43 (j) Notice, Reporting, and Documentation.
 44 (1) Notice of procedures. – Each ~~local board of education~~ public school unit board
 45 shall provide copies of this section and all ~~local board~~ policies developed to
 46 implement this section to school personnel and parents or guardians at the
 47 beginning of each school year.
 48 ...
 49 (5) No ~~local board of education~~ public school unit board or employee of a ~~local~~
 50 ~~board of education~~ public school unit board shall discharge, threaten, or
 51 otherwise retaliate against another employee of the board regarding that

1 employee's compensation, terms, conditions, location, or privileges of
2 employment because the employee makes a report alleging a prohibited use
3 of physical restraint, mechanical restraint, aversive procedure, or seclusion,
4 unless the employee knew or should have known that the report was false.

5 (k) Nothing in this section shall be construed to create a private cause of action against
6 any local board of education, public school unit board, its agents or employees, or any institutions
7 of teacher education-educator preparation programs or their agents or employees or to create a
8 criminal offense."

9 **SECTION 2.(a)** Notwithstanding 25 NCAC 01C .0405, instructors with the North
10 Carolina Virtual Public School shall be exempt from the 12-month maximum limit for temporary
11 appointments.

12 **SECTION 2.(b)** The Department of Public Instruction, in consultation with the State
13 Board of Education, shall develop a plan for contracting and payment of instructors in
14 compliance with law for the North Carolina Virtual Public School that shall be implemented for
15 all instructors contracted beginning with the 2020 spring semester. The Department of Public
16 Instruction shall report on the plan to the Joint Legislative Education Oversight Committee no
17 later than October 15, 2019.

18 **SECTION 2.(c)** Subsection (a) of this section is effective when it becomes law and
19 expires June 14, 2020.

20 **SECTION 3.** This act is effective when it becomes law. Section 1 of this act applies
21 beginning with the 2020-2021 school year. G.S. 115C-390.2(a), as amended by this act, shall
22 apply to material changes to policies existing on July 1, 2020, or new policies adopted on or after
23 July 1, 2020.