

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 794*

Short Title: Modify Teacher Career Status Law. (Public)

Sponsors: Representatives Cotham, M. Alexander, Keever, and Johnson (Primary Sponsors).

For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: State Personnel.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE LAW RELATING TO CAREER STATUS FOR PUBLIC SCHOOL TEACHERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-325 reads as rewritten:

"§ 115C-325. System of employment for public school teachers.

(a) Definition of Terms. – As used in this section unless the context requires otherwise:

...

(1d) ~~"Case manager" means a person selected under G.S. 115C-325(h)(7).~~

...

(4c) "Hearing officer" means a person selected under G.S. 115C-325(h)(7).

...

(e) (3) Inadequate Performance. – In determining whether the professional performance of a career employee is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Failure to notify a career employee of an inadequacy or deficiency in his performance shall be conclusive evidence of satisfactory performance. Inadequate performance for a teacher as defined in G.S. 115C-325(a)(6) shall mean (i) the failure to perform at a proficient level on any standard of the evaluation instrument or (ii) otherwise performing in a manner that is below standard. However, for a probationary teacher who has not yet earned a Professional Standards II license, a performance rating below proficient may or may not be deemed adequate at that state of development by a superintendent or designee.

...

(h) Procedure for Dismissal or Demotion of Career Employee.

(1) a. A career employee may not be dismissed, demoted, or reduced to part-time employment except upon the superintendent's recommendation.

b. G.S. 115C-325(f2) shall apply to the demotion of a career school administrator.



- 1 (2) Before recommending to a board the dismissal or demotion of the career
2 employee, the superintendent shall give written notice to the career
3 employee by certified mail or personal delivery of his intention to make such
4 recommendation and shall set forth as part of his recommendation the
5 grounds upon which he believes such dismissal or demotion is justified. The
6 superintendent also shall meet with the career employee and give him
7 written notice of the charges against him, an explanation of the basis for the
8 charges, and an opportunity to respond if the career employee has not done
9 so under G.S. 115C-325(f)(1). The notice shall include a statement to the
10 effect that if the career employee within 14 days after the date of receipt of
11 the notice requests a review, he ~~or she shall be entitled~~ may request to have
12 the grounds for the proposed recommendations of the superintendent
13 reviewed by ~~a case manager, an impartial hearing officer appointed by the~~
14 Department of Public Instruction as provided for in G.S. 115C-325(h1). A
15 copy of G.S. 115C-325 ~~and a current list of case managers~~ shall also be sent
16 to the career employee. If the career employee does not request a hearing
17 ~~with a case manager before a hearing officer~~ within the 14 days provided,
18 the superintendent may submit his recommendation to the board.
- 19 (3) Within the 14-day period after receipt of the notice, the career employee
20 may file with the superintendent a written request for either (i) a hearing on
21 the grounds for the superintendent's proposed recommendation by a ~~case~~
22 ~~manager hearing officer~~ or (ii) a hearing within 10 days before the board on
23 the superintendent's recommendation. If the career employee requests an
24 immediate hearing before the board, he forfeits his right to a hearing by a
25 ~~case manager hearing officer~~. If no request is made within that period, the
26 superintendent may file his recommendation with the board. The board, if it
27 sees fit, may by resolution (i) reject the superintendent's recommendation or
28 (ii) accept or modify the superintendent's recommendation and dismiss,
29 demote, reinstate, or suspend the employee without pay. If a request for
30 review is made, the superintendent shall not file his recommendation for
31 dismissal with the board until a report of the ~~case manager hearing officer~~ is
32 filed with the superintendent. Failure of the hearing officer to submit the
33 report as required by G.S. 115C-325(i1)(2) shall entitle the career employee
34 to a hearing before the board under the same procedures as provided in
35 G.S.115C-325(j).
- 36 (4) Repealed by Session Laws 1997, c. 221, s. 13(a).
- 37 (5) ~~If the career employee elects to request a hearing by a case manager, the~~
38 ~~career employee and superintendent shall each have the right to eliminate up~~
39 ~~to one third of the names on the approved list of case managers. The career~~
40 ~~employee shall specify those case managers who are not acceptable in the~~
41 ~~career employee's request for a review of the superintendent's proposed~~
42 ~~recommendation under G.S. 115C 325(h)(3). The superintendent and career~~
43 ~~employee may jointly select a person to serve as case manager. The person~~
44 ~~need not be on the master list of case managers maintained by the~~
45 ~~Superintendent of Public Instruction.~~
- 46 (6) If a career employee requests a review by a ~~case manager, hearing officer,~~
47 the superintendent shall notify the Superintendent of Public Instruction
48 within ~~two days~~ five days of his or her receipt of the request. ~~The notice~~
49 ~~shall contain a list of the case managers the career employee and the~~
50 ~~superintendent have eliminated from the master list or the name of a person,~~

- 1 if any, jointly selected. Failure to exercise the right to eliminate names from
2 the master list shall constitute a waiver of that right.
- 3 (7) ~~The~~ Within five work days of being notified of the request for a hearing
4 before a hearing officer, the Superintendent of Public Instruction shall
5 selectsubmit to both parties a list of hearing officers trained and approved by
6 the Department of Public Instruction, ease manager within three days of
7 receiving notice from the superintendent. Within five work days of receiving
8 the list, the parties may jointly select a hearing officer from that list, or, if the
9 parties cannot agree to a hearing officer, each party may strike up to
10 one-third of the names on the list and submit their strikeout list to the
11 Superintendent of Public Instruction. The Superintendent of Public
12 Instruction shall then appoint a hearing officer from those individuals
13 remaining on the list. designate the person jointly selected by the parties to
14 serve as case manager provided the person agrees to serve as case manager
15 and can meet the requirements for time frames for the hearing and report as
16 provided in G.S. 115C-325(i1)(1). If a case manager was not jointly selected
17 or if the case manager is not available, the Superintendent of Public
18 Instruction shall select a case manager from the master list. Further, the
19 parties may jointly agree on another hearing officer not on the Department of
20 Public Instruction's list, provided that individual is available to proceed in a
21 timely manner and is willing to accept the terms of appointment required by
22 the State Board of Education. No person eliminated by the career employee
23 or superintendent shall be designated ease manager, as the hearing officer for
24 that case.
- 25 (8) ~~The superintendent and career employee shall provide each other serve a~~
26 ~~copy to the other party of all documents with copies of all documents~~
27 ~~submitted to the Superintendent of Public Instruction and/or to the~~
28 ~~designated ease manager, hearing officer and include a signed certificate of~~
29 ~~service similar to that required in court pleadings.~~
- 30 (h1) ~~Case Managers; Hearing Officers; Qualifications; Training; Compensation.~~
- 31 (1) Each year the State Board of Education shall select and maintain a master
32 list of no more than ~~42~~ 15 ~~qualified ease managers, hearing officers.~~ The
33 State Board shall remove a hearing officer from the list who has failed to
34 conduct a hearing or prepare a report within the time specified in
35 G.S. 115C-325(i1) or who has failed to submit a supplemental report in
36 accordance with G.S. 115C-325(i1)(4) or (j1)(2). A hearing officer shall also
37 be removed from the list for failure to meet the terms and conditions of
38 engagement established by the State Board. Additionally, if a hearing officer
39 is not appointed to a case within a two-year period due to repeated strikes
40 from the list by either party as provided in G.S. 115C-325(h)(6), the State
41 Board may remove the hearing officer from the master list.
- 42 (2) ~~Persons selected by the State Board as ease managers, hearing officers shall~~
43 ~~be be: (i) certified as a North Carolina Superior Court mediator; (ii) a~~
44 ~~member of the American Arbitration Association's roster of arbitrators and~~
45 ~~mediators; or (iii) have comparable certification in alternative dispute~~
46 ~~resolution. Case managers, members in good standing of the North Carolina~~
47 ~~State Bar who have demonstrated experience and expertise in the areas of~~
48 ~~education law, due process, administrative law, or employment law within~~
49 ~~the last five years. The State Board shall give special consideration in its~~
50 ~~selection to persons jointly endorsed by the largest of each statewide~~
51 ~~organization representing teachers, school administrators, and local boards~~

1 of education. Following State Board selection, hearing officers must
2 complete a special training course approved by the State Board of
3 ~~Education.~~Education that includes training on the teacher evaluation
4 instrument and performance standards before they are qualified to hear
5 teacher dismissal or demotion cases.

6 (3) The State Board of Education shall determine the compensation for a ~~case~~
7 ~~manager.~~hearing officer. The State Board shall pay the hearing officer's ~~case~~
8 ~~manager's~~ compensation and ~~reimbursement for~~authorized expenses.

9 (i) Repealed by Session Laws 1997, c. 221, s. 13(a).

10 (i1) Report of ~~Case Manager;~~Hearing Officer; Superintendent's Recommendation.

11 (1) The ~~case manager~~ hearing officer shall complete the hearing held in
12 accordance with G.S. 115C-325(j) and prepare the report within ~~40-90~~ 90 days
13 from the time of the designation. This time period may be extended only for
14 extraordinary cause and upon written agreement by both parties. ~~The case~~
15 ~~manager may extend the period of time by up to five additional days if the~~
16 ~~case manager informs the superintendent and the career employee that~~
17 ~~justice requires that a greater time be spent in connection with the~~
18 ~~investigation and the preparation of the report. Furthermore, the~~
19 ~~superintendent and the career employee may agree to an extension of more~~
20 ~~than five days.~~The State Board of Education shall determine an appropriate
21 reduction in compensation to the hearing officer for failure to submit a
22 timely report to the superintendent within the maximum 90-day period set
23 forth in this subdivision, except upon a showing of good cause by the
24 hearing officer.

25 (2) The ~~case manager~~ hearing officer shall make all necessary findings of fact,
26 based upon the preponderance of the evidence, on all issues related to each
27 and every ground for dismissal and on all relevant matters related to the
28 question of whether the superintendent's recommendation is justified. The
29 hearing officer shall not make a recommendation as to conclusions of law or
30 the disposition of the case. ~~The case manager also shall make a~~
31 ~~recommendation as to whether the findings of fact substantiate the~~
32 ~~superintendent's grounds for dismissal.~~ The case managerhearing officer
33 shall deliver copies of the report to the superintendent and the career
34 employee.

35 (3) Within ~~two~~ five work days after receiving the ~~case manager's~~ hearing
36 officer's report, the superintendent shall decide whether to submit a written
37 recommendation to the local board for dismissal, demotion, or disciplinary
38 suspension without pay to the board or to drop the charges against the career
39 employee. The superintendent shall notify the career employee, in writing,
40 of the decision.

41 (4) If the superintendent contends that the ~~case manager's~~ hearing officer's
42 report fails to address a critical factual issue, the superintendent shall within
43 ~~three days~~ five work days' receipt of the ~~case manager's~~ hearing officer's
44 report, request in writing with a copy to the career employee that the ~~case~~
45 ~~manager~~ hearing officer prepare a supplement to the report. The
46 superintendent shall specify what critical factual issue the superintendent
47 contends the ~~case manager~~ hearing officer failed to address. If the ~~case~~
48 ~~manager~~ hearing officer determines that the report failed to address a critical
49 factual issue, the ~~case manager~~ hearing officer shall prepare a
50 supplement to the report to address the issue and deliver the supplement to
51 both parties before the board hearing. In no event shall the hearing officer

1 take more than 30 days to provide a supplemental report. If the hearing
2 officer fails to submit a timely supplemental report, the superintendent shall
3 report the hearing officer to the State Board. The State Board shall determine
4 an appropriate reduction in compensation to the hearing officer for failure to
5 submit a timely supplemental report to both parties, except upon a showing
6 of good cause by the hearing officer. The failure of the ~~ease manager~~ hearing
7 officer to prepare a supplemental report or to address a critical factual issue
8 shall not constitute a basis for appeal.

9 (j) ~~Hearing by a Case Manager.~~ Hearing Officer. – The following provisions shall apply
10 to a hearing conducted by the ~~ease manager~~ hearing officer.

11 (1) The hearing shall be private.

12 (2) The hearing shall be conducted in accordance with reasonable rules and
13 regulations adopted by the State Board of Education to govern such ease
14 manager hearings.

15 (3) At the hearing the career employee and the superintendent or the
16 superintendent's designee shall have the right to be present and to be heard,
17 to be represented by counsel and to present through witnesses any competent
18 testimony relevant to the issue of whether grounds for dismissal or demotion
19 exist or whether the procedures set forth in G.S. 115C-325 have been
20 followed.

21 (4) Rules of evidence shall not apply to a hearing conducted by a ~~ease manager~~
22 ~~and the ease manager~~ hearing officer. The hearing officer may give
23 probative effect to evidence that is of a kind commonly relied on by
24 reasonably prudent persons in the conduct of serious affairs.

25 (5) At least five days before the hearing, the superintendent shall provide to the
26 career employee a list of witnesses the superintendent intends to present, a
27 brief statement of the nature of the testimony of each witness and a copy of
28 any documentary evidence the superintendent intends to present. At least
29 three days before the hearing, the career employee shall provide to the
30 superintendent a list of witnesses the career employee intends to present, a
31 brief statement of the nature of the testimony of each witness and a copy of
32 any documentary evidence the career employee intends to present.
33 Additional witnesses or documentary evidence may not be presented except
34 upon a finding by the ~~ease manager~~ hearing officer that the new evidence is
35 critical to the matter at issue and the party making the request could not,
36 with reasonable diligence, have discovered and produced the evidence
37 according to the schedule provided in this subdivision.

38 (5a) The hearing shall be completed within three work days after
39 commencement, unless extended by the hearing officer on a showing of
40 extraordinary cause. Neither party shall have more than eight hours to
41 present its case in chief, which does not include cross examination of
42 witnesses, rebuttal evidence, or arguments of counsel.

43 (6) The ~~ease manager~~ hearing officer may ~~subpoena~~ issue subpoenas, at his or
44 her discretion or upon written application by either party, and swear
45 witnesses and may require them to give testimony and to produce records
46 and documents relevant to the grounds for dismissal.

47 (7) The ~~ease manager~~ hearing officer shall decide all procedural issues,
48 including limiting cumulative evidence, necessary for a fair and efficient
49 hearing.

50 (8) The superintendent shall provide for making a transcript of the hearing. If
51 the career employee contemplates a hearing before the board or to appeal the

- 1 board's decision to a court of law, the career employee may request and shall
2 receive at no charge a transcript of the proceedings before the ~~ease manager-~~
3 hearing officer.
- 4 (j1) Board Determination.
- 5 (1) Within ~~two~~five work days after receiving the superintendent's notice of
6 intent to recommend the career employee's dismissal to the board, the career
7 employee shall decide whether to request a hearing before the board and
8 shall notify the superintendent, in writing, of the decision. If the career
9 employee can show that the request for a hearing was postmarked within the
10 time provided, the career employee shall not forfeit the right to a board
11 hearing. Within ~~two~~five work days after receiving the career employee's
12 request for a board hearing, the superintendent shall request that a transcript
13 of the ~~ease manager~~ hearing be made. Within ~~two~~five work days of
14 receiving a copy of the transcript, the superintendent shall submit to the
15 board the written recommendation and shall provide a copy of the
16 recommendation to the career employee. The superintendent's
17 recommendation shall state the grounds for the recommendation and shall be
18 accompanied by a copy of the ~~ease manager's~~ hearing officer's report and a
19 copy of the transcript of the ~~ease manager~~ hearing.
- 20 (2) If the career employee contends that the ~~ease manager's~~ hearing officer's
21 report fails to address a critical factual issue the career employee shall, at the
22 same time he notifies the superintendent of a request for a board hearing
23 pursuant to G.S. 115C-325(j1)(1), request in writing with a copy to the
24 superintendent that the ~~ease manager~~ hearing officer prepare a supplement to
25 the ~~ease manager's~~ hearing officer's report. The career employee shall
26 specify the critical factual issue he contends the ~~ease manager~~ hearing
27 officer failed to address. If the ~~ease manager~~ hearing officer determines that
28 the report failed to address a critical factual issue, the ~~ease manager~~ may
29 hearing officer shall prepare a supplement to the report to address the issue
30 and shall deliver the supplement to both parties before the board hearing. In
31 no event shall the hearing officer take more than 30 days to provide a
32 supplemental report. If the hearing officer fails to submit a timely
33 supplemental report, the superintendent shall report the hearing officer to the
34 State Board. The State Board shall determine an appropriate reduction in
35 compensation to the hearing officer for failure to submit a timely
36 supplemental report to both parties, except upon a showing of good cause by
37 the hearing officer. The failure of the ease manager hearing officer to
38 prepare a supplemental report or to address a critical factual issue shall not
39 constitute a basis for appeal.
- 40 (3) Within ~~two~~five work days after receiving the superintendent's
41 recommendation and before taking any formal action, the board shall set a
42 time and place for the hearing and shall notify the career employee by
43 certified mail or personal delivery of the date, time, and place of the hearing.
44 The time specified shall not be less than ~~seven~~10 ~~nor~~nor more than ~~30~~40
45 days after the board has notified the career employee, unless both parties
46 agree to an extension. If the career employee did not request a hearing, the
47 board may, by resolution, reject the superintendent's decision, or accept or
48 modify the decision and dismiss, demote, reinstate, or suspend the career
49 employee without pay.
- 50 (4) If the career employee requests a board hearing, it shall be conducted in
51 accordance with G.S. 115C-325(j2).

(5) The board shall make a determination and may (i) reject the superintendent's recommendation or (ii) accept or modify the recommendation and dismiss, demote, reinstate, or suspend the employee without pay.

(6) Within two days following the hearing, the board shall send a written copy of its findings and determination to the career employee and the superintendent.

...."

SECTION 2. G.S. 115C-333 reads as rewritten:

"§ 115C-333. Evaluation of ~~certified~~ licensed employees including certain superintendents; ~~action~~ mandatory improvement plans; State board notification upon dismissal of employees.

(a) Annual Evaluations; Low-Performing Schools. – Local school administrative units shall evaluate at least once each year all ~~certified~~ licensed employees assigned to a school that has been identified as ~~low performing, but has not received an assistance team.~~ low-performing. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of ~~an action~~ a mandatory improvement plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under G.S. 115C-325(a)(6), either the principal, the assistant principal who supervises the teacher, or an ~~assessment~~ assistance team assigned under ~~G.S. 115C-334~~ G.S. 115C-105.38 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), either the superintendent or the superintendent's designee shall conduct the evaluation.

Notwithstanding this subsection or any other law, all teachers in low-performing schools who have not attained career status shall be observed at least three times annually by the principal or the principal's designee and at least once annually by a teacher and shall be evaluated at least once annually by a principal. ~~All other employees defined as teachers under G.S. 115C-325(a)(6) who are assigned to schools that are not designated as low performing shall be evaluated annually unless a local board adopts rules that allow specified categories of teachers with career status to be evaluated more or less frequently. Local boards also may adopt rules requiring the annual evaluation of noncertified employees.~~ This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school under G.S. 115C-105.38.

A local board shall use the performance standards and criteria adopted by the State Board unless the board develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board. All other provisions of this section shall apply if a local board uses an evaluation other than one adopted by the State Board.

(b) Mandatory Improvement Action Plans. –

(1) A mandatory improvement plan is an instrument designed to improve a teacher's performance or the performance of any certified/licensed employee in a low-performing school by providing the individual with notice of specific performance areas that have substantial deficiencies and a set of strategies, including the specific support to be provided to the individual, so that the individual, within a reasonable period of time, should satisfactorily resolve such deficiencies. The mandatory improvement plan will be utilized only if the superintendent or superintendent's designee determines that an individual, monitored, or directed growth plan will not satisfactorily address the deficiencies.

~~(1)(2)~~ (2) If a ~~licensed~~ certified employee in a low-performing school receives an ~~unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties,~~ a rating on any standard on

1 an evaluation that is below proficient or otherwise represents unsatisfactory
2 or below standard performance in an area that the teacher was expected to
3 demonstrate, the individual or team that conducted the evaluation shall
4 recommend to the superintendent that: (i) the employee receive an ~~action~~ a
5 mandatory improvement plan designed to improve the employee's
6 performance; or (ii) the superintendent recommend to the local board that
7 the employee be dismissed or demoted. If the individual or team that
8 conducted the evaluation elects not to make either of the above
9 recommendations, the said individual or team shall notify the superintendent
10 of this decision. The superintendent shall determine whether to develop an
11 action—a mandatory improvement plan or to recommend a dismissal
12 proceeding. ~~Action~~ Mandatory improvement plans shall be developed by the
13 person who evaluated the employee or the employee's supervisor unless the
14 evaluation was conducted by an assistance team or an assessment team. If
15 the evaluation was conducted by an assistance team or an assessment team,
16 that team shall develop the ~~action~~ mandatory improvement plan in
17 collaboration with the employee's supervisor. ~~Action~~ Mandatory
18 improvement plans shall be designed to be completed within 90 instructional
19 days or before the beginning of the next school year. The State Board shall
20 develop guidelines that include strategies to assist local boards in evaluating
21 certified licensed employees and developing effective ~~action~~ mandatory
22 improvement plans within the time allotted under this section. Local boards
23 may adopt policies for the development and implementation of ~~action~~
24 mandatory improvement plans and policies for the implementation of
25 monitored and directed growth plans, or professional development plans for
26 employees who do not require action plans under this section.

27 (2) ~~Local boards shall adopt policies to require action plans for all certified~~
28 ~~employees who receive a below standard or unsatisfactory rating on an~~
29 ~~evaluation in the event the superintendent does not recommend dismissal,~~
30 ~~demotion, or nonrenewal.~~

31 (c) ~~Reevaluation. Reassessment of Employee in a Low-Performing School. – After the~~
32 ~~expiration of the time period for the mandatory improvement plan~~ Upon completion of an action
33 ~~plan~~ under subdivision (1) of subsection (b)(2) of this section, the superintendent, the
34 superintendent's designee, or the ~~assessment~~ assistance team shall ~~evaluate~~ assess the
35 performance of the employee of the low-performing school a second time. If the
36 superintendent, superintendent's designee, or assistance team determines that the employee has
37 failed to become proficient in any of the performance standards articulated in the mandatory
38 improvement plan or demonstrate sufficient improvement toward such standards, If on the
39 second evaluation the employee receives one unsatisfactory or more than one below standard
40 rating on any function that is related to the employee's instructional duties, the superintendent
41 shall recommend that the employee be dismissed or demoted under G.S. 115C-325. The results
42 of the second ~~evaluation~~ assessment shall constitute substantial evidence of the employee's
43 inadequate performance.

44 (d) State Board Notification. – If a local board dismisses an employee of a
45 low-performing school for any reason except a reduction in force under G.S. 115C-325(e)(1).
46 G.S. 115C-325(e)(1)L., it shall notify the State Board of the action, and the State Board annually
47 shall provide to all local boards the names of those individuals. If a local board hires one of
48 these individuals, within 60 days the superintendent or the superintendent's designee shall
49 observe the employee, develop an ~~action~~ a mandatory improvement plan to assist the employee,
50 and submit the plan to the State Board. The State Board shall review the ~~action~~ mandatory
51 improvement plan and may provide comments and suggestions to the superintendent. If on the

1 next evaluation the employee receives a rating on any standard that was identified as an area of
2 concern on the mandatory improvement plan that is again below proficient or otherwise
3 represents unsatisfactory or below standard performance,~~an unsatisfactory or below standard~~
4 ~~rating on any function that is related to the employee's instructional duties,~~ the local board shall
5 notify the State Board and the State Board shall initiate a proceeding to revoke the employee's
6 ~~certificate license~~ under G.S. 115C-296(d). If on ~~the~~ this next evaluation the employee receives
7 at least a satisfactory-proficient rating on all of the performance standards functions that were
8 identified as areas of concern on the mandatory improvement plan, related to the employee's
9 ~~instructional duties,~~ the local board shall notify the State Board that the employee is in good
10 standing and the State Board shall not continue to provide the individual's name to local boards
11 under this subsection unless the employee is subsequently dismissed under G.S. 115C-325
12 except for a reduction in force.

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

22 (f) Local Board Evaluation of Certain Superintendents. – Each year the local board of
23 education shall evaluate the superintendent employed by the local school administrative unit
24 and report to the State Board the results of that evaluation if during that year the State Board
25 designated as low-performing:

- 26 (1) One or more schools in a local school administrative unit that has no more
27 than 10 schools.
- 28 (2) Two or more schools in a local school administrative unit that has no more
29 than 20 schools.
- 30 (3) Three or more schools in a local school administrative unit that has more
31 than 20 schools."

32 **SECTION 3.** Chapter 115C of the General Statutes is amended by adding a new
33 section to read:

34 **"§ 115C-333.1. Evaluation of teachers in schools not identified as low-performing;**
35 **mandatory improvement plans; State Board notification upon dismissal of**
36 **teachers.**

37 (a) Annual Evaluations. – All teachers who are assigned to schools that are not
38 designated as low-performing and who have not attained career status shall be observed at least
39 three times annually by the principal or the principal's designee and at least once annually by a
40 teacher and shall be evaluated at least once annually by a principal. All teachers with career
41 status who are assigned to schools that are not designated as low-performing shall be evaluated
42 annually unless a local board adopts rules that allow teachers with career status to be evaluated
43 more or less frequently. Local boards also may adopt rules requiring the annual evaluation of
44 nonlicensed employees. A local board shall use the performance standards and criteria adopted
45 by the State Board unless the board develops an alternative evaluation that is properly validated
46 and that includes standards and criteria similar to those adopted by the State Board. All other
47 provisions of this section shall apply if a local board uses an evaluation other than one adopted
48 by the State Board.

49 (b) Mandatory Improvement Plans for Teachers. – If, in an observation report or
50 year-end evaluation, a teacher receives a rating that is below proficient or otherwise represents
51 unsatisfactory or below standard performance on any standard that the teacher was expected to

1 demonstrate, the principal may place the teacher on a mandatory improvement plan as defined
2 in G.S. 115C-333(b)(1). If at any time a teacher engages in inappropriate conduct or performs
3 inadequately to such a degree that such conduct or performance causes substantial harm to the
4 educational environment, and immediate dismissal or demotion is not appropriate, then the
5 principal may immediately institute a mandatory improvement plan regardless of any ratings on
6 previous evaluations. The principal shall document the exigent reason for immediately
7 instituting such a plan. The mandatory improvement plan shall be developed by the principal in
8 consultation with the teacher. The teacher shall have five instructional days from receipt of the
9 proposed mandatory improvement plan to request a modification of such plan before it is
10 implemented, and the principal shall consider such suggested modifications before finalizing
11 the plan. The teacher shall have at least 60 instructional days to complete the mandatory
12 improvement plan. The State Board shall develop guidelines that include strategies to assist
13 local boards in evaluating teachers and developing effective mandatory improvement plans.
14 Local boards may adopt policies for the implementation of mandatory improvement plans
15 under this section.

16 (c) Observation by a Qualified Observer. –

- 17 (1) The term "qualified observer" as used in this section is any administrator or
18 teacher who is licensed by the North Carolina Department of Public
19 Instruction and working in North Carolina; any employee of the North
20 Carolina Department of Public Instruction who is trained in evaluating
21 licensed employees; or any instructor or professor who teaches in an
22 accredited North Carolina school of education and holds an educator's
23 license.
- 24 (2) The local board of education shall create a list of qualified observers who are
25 employed by that board and available to do observations of employees on
26 mandatory improvement plans. This list shall be limited to names of
27 administrators and teachers selected by the school improvement teams in the
28 school system. The school improvement teams shall strive to select
29 administrators and teachers with excellent reputations for competence and
30 fairness.
- 31 (3) Any teacher, other than a teacher assigned to a school designated as
32 low-performing, who has been placed on a mandatory improvement plan
33 shall have a right to be observed by a qualified observer in the area or areas
34 of concern identified in the mandatory improvement plan. The affected
35 teacher and the principal shall jointly choose the qualified observer within
36 20 instructional days after the commencement of the mandatory
37 improvement plan. If the teacher and the principal cannot agree on a
38 qualified observer within this time period, they each shall designate a person
39 from the list of qualified observers created pursuant to subdivision (2) of this
40 subsection and these two designated persons shall choose a qualified
41 observer within five instructional days of their designation. The qualified
42 observer shall draft a written report assessing the teacher in the areas of
43 concern identified in the mandatory improvement plan. The report shall be
44 submitted to the principal before the end of the mandatory improvement plan
45 period. If a teacher or administrator from the same school district is selected
46 to serve as the qualified observer, the administration of the school district
47 must provide such qualified observer with the time necessary to conduct the
48 observation and prepare a report. If someone who is not employed by the
49 same school district is selected to serve as the qualified observer, the teacher
50 who is the subject of the mandatory improvement plan will be responsible
51 for any expenses related to the observations and/or reports prepared by the

1 qualified observer. The qualified observer will not unduly disrupt the
2 classroom when conducting an observation.

3 (4) No local board of education or employee of a local board of education shall
4 discharge, threaten, or otherwise retaliate against another employee of the
5 board regarding that employee's compensation, terms, conditions, location,
6 or privileges of employment because of the employee's service or
7 completion of a report as an objective observer pursuant to this subsection,
8 unless the employee's report contained material information that the
9 employee knew was false.

10 (d) Reassessment of the Teacher. – Upon completion of a mandatory improvement plan
11 under subdivision (b)(1) of this section, the principal shall assess the performance of the
12 teacher a second time. The principal shall also review and consider any report provided by the
13 qualified observer under subdivision (b)(2) of this section if one has been submitted before the
14 end of the mandatory improvement plan period. If, after the second assessment of the teacher
15 and consideration of any report from the qualified observer, the superintendent or
16 superintendent's designee determines that the teacher has failed to become proficient in any of
17 the performance standards identified as deficient in the mandatory improvement plan or
18 demonstrate sufficient improvement towards such standards, the superintendent may
19 recommend that the teacher be dismissed or demoted under G.S. 115C-325. The results of the
20 second assessment produced pursuant to the terms of this subsection shall constitute substantial
21 evidence of the teacher's inadequate performance.

22 (e) Dismissal Proceedings Without a Mandatory Improvement Plan. – The absence of a
23 mandatory improvement plan as described in this section shall not prohibit a superintendent
24 from initiating a dismissal proceeding against a career employee under the provisions of
25 G.S. 115C-325. However, the superintendent shall not be entitled to the "substantial evidence"
26 provision in subsection (d) of this section if such mandatory improvement plan is not utilized.

27 (f) State Board Notification. – If a local board dismisses a teacher for any reason except
28 a reduction in force under G.S. 115C-325(e)(1)l., it shall notify the State Board of the action,
29 and the State Board annually shall provide to all local boards the names of those teachers. If a
30 local board hires one of these teachers, within 60 days the superintendent or the
31 superintendent's designee shall observe the teacher, develop a mandatory improvement plan to
32 assist the teacher, and submit the plan to the State Board. The State Board shall review the
33 mandatory improvement plan and may provide comments and suggestions to the
34 superintendent. If on the next evaluation the teacher receives a rating on any standard that was
35 an area of concern on the mandatory improvement plan that is again below proficient or a
36 rating that otherwise represents unsatisfactory or below standard performance, the local board
37 shall notify the State Board, and the State Board shall initiate a proceeding to revoke the
38 teacher's license under G.S. 115C-296(d). If on the next evaluation the teacher receives at least
39 a proficient rating on all of the overall performance standards that were areas of concern on the
40 mandatory improvement plan, the local board shall notify the State Board that the teacher is in
41 good standing and the State Board shall not continue to provide the teacher's name to local
42 boards under this subsection unless the teacher is subsequently dismissed under G.S. 115C-325
43 except for a reduction in force. If, however, on this next evaluation the teacher receives a
44 "developing" rating on any standards that were areas of concern on the mandatory improvement
45 plan, the teacher shall have one more year to bring the rating to proficient. If, by the end of this
46 second year, the teacher is not proficient in all standards that were areas of concern on the
47 mandatory improvement plan, the local board shall notify the State Board, and the State Board
48 shall initiate a proceeding to revoke the teacher's license under G.S. 115C-296(d).

49 (g) Civil Immunity. – There shall be no liability for negligence on the part of the State
50 Board of Education or a local board of education, or their employees, arising from any action
51 taken or omission by any of them in carrying out the provisions of this section. The immunity

1 established by this subsection shall not extend to gross negligence, wanton conduct, or
2 intentional wrongdoing that would otherwise be actionable. The immunity established by this
3 subsection shall be deemed to have been waived to the extent of indemnification by insurance,
4 indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the
5 extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of
6 Chapter 143 of the General Statutes."

7 **SECTION 4.** G.S. 115C-288 reads as rewritten:

8 **"§ 115C-288. Powers and duties of principal.**

9 ...

10 (i) To Evaluate ~~Certified~~Licensed Employees and Develop ~~Action~~Mandatory
11 Improvement Plans. – Each school year, the principal assigned to a low-performing school that
12 has not received an assistance team shall provide for the evaluation of all ~~certified~~licensed
13 employees assigned to the school. The principal also shall develop ~~action~~mandatory
14 improvement plans as provided under G.S. 115C-333(b) and shall monitor an employee's
15 progress under ~~an action~~a mandatory improvement plan.

16"

17 **SECTION 5.** G.S. 115C-334 reads as rewritten:

18 **"§ 115C-334. Assessment teams.**

19 The State Board shall develop guidelines for local boards to use to create assessment teams.
20 A local board shall assign an assessment team to every low-performing school in the local
21 school administrative unit that has not received an assistance team. Local boards shall ensure
22 that assessment team members are trained in the proper administration of the employee
23 evaluation used by the local school administrative unit. If service on an assessment team is an
24 additional duty for an employee of a local board, the board may pay the employee for that
25 additional work.

26 Assessment teams shall have the following duties:

- 27 (1) Conduct evaluations of ~~certified~~licensed employees in low-performing
28 schools;
- 29 (2) Provide technical assistance and training to principals, assistant principals,
30 superintendents, and superintendents' designees who conduct evaluations of
31 ~~certified~~licensed employees;
- 32 (3) Develop ~~action~~mandatory improvement plans for ~~certified~~licensed
33 employees; and
- 34 (4) Assist principals, assistant principals, superintendents, and superintendents'
35 designees in the development and implementation of ~~action~~mandatory
36 improvement plans."

37 **SECTION 6.** G.S. 115C-335 reads as rewritten:

38 **"§ 115C-335. Development of performance standards and criteria for ~~certified~~licensed**
39 **employees; training and remediation programs.**

40 ...

41 (b) Training. – The State Board, in collaboration with the Board of Governors of The
42 University of North Carolina, shall develop programs designed to train principals and
43 superintendents in the proper administration of the employee evaluations developed by the
44 State Board. The Board of Governors shall use the professional development programs for
45 public school employees that are under its authority to make this training available to all
46 principals and superintendents at locations that are geographically convenient to local school
47 administrative units. The programs shall include methods to determine whether an employee's
48 performance has improved student learning, the development and implementation of
49 appropriate ~~action~~professional growth and mandatory improvement plans, the process for
50 contract nonrenewal, and the dismissal process under G.S. 115C-325. The Board of Governors
51 shall ensure that the subject matter of the training programs is incorporated into the masters in

1 school administration programs offered by the constituent institutions. The State Board, in
2 collaboration with the Board of Governors, also shall develop in-service programs for ~~certified~~
3 licensed public school employees that may be included in ~~an act~~ a mandatory improvement
4 plan created under G.S. 115C-333(b). The Board of Governors shall use the professional
5 development programs for public school employees that are under its authority to make this
6 training available at locations that are geographically convenient to local school administrative
7 units."

8 **SECTION 7.** This act is effective when it becomes law.