

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 736  
PROPOSED COMMITTEE SUBSTITUTE H736-PCS30298-TC-9

Short Title: Amend Law Re: School Discipline.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REORGANIZE THE GENERAL STATUTES RELATING TO SCHOOL DISCIPLINE; PREVENT LITIGATION BY ADDING DEFINITIONS TO, AND CLARIFYING AMBIGUITIES IN, THE CURRENT LAW; CODIFY EXISTING CASE LAW; AND INCREASE LOCAL CONTROL AND FLEXIBILITY REGARDING DISCIPLINE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 115C-390 and G.S. 115C-391 are repealed.

**SECTION 2.** Article 27 of chapter 115C of the General Statutes is amended by adding the following new sections:

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

(a) In order to create and maintain a safe and orderly school environment conducive to learning, school administrators and teachers need adequate tools to maintain good discipline in schools. However, the General Assembly also recognizes that removal of students from school, while sometimes necessary, can exacerbate behavioral problems, diminish academic achievement, and hasten school dropout. School discipline must balance these interests to provide a safe and productive learning environment, to continually teach students to respect themselves, others, and property, and to conduct themselves in a manner that fosters their own learning and the learning of those around them.

(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 policies.

(2) Corporal punishment. – The intentional infliction of physical pain upon the body of a student as a disciplinary measure.

(3) 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.

(4) Expulsion. – The indefinite exclusion of a student from school enrollment for disciplinary purposes.

(5) Firearm. – Any of the following:



- 1           a.     A weapon, including a starter gun, which will or is designed to or  
2           may readily be converted to expel a projectile by the action of an  
3           explosive.  
4           b.     The frame or receiver of any such weapon.  
5           c.     Any firearm muffler or firearm silencer.  
6           The term shall not include an inoperable antique firearm, a BB gun, stun  
7           gun, air rifle, or air pistol.  
8           (6)    Long-term suspension. – The exclusion for more than 10 school days of a  
9           student from school attendance for disciplinary purposes from the school to  
10          which the student was assigned at the time of the disciplinary action. If the  
11          offense leading to the long-term suspension occurs before the final quarter of  
12          the school year, the exclusion shall be no longer than the remainder of the  
13          school year in which the offense was committed. If the offense leading to the  
14          long-term suspension occurs during the final quarter of the school year, the  
15          exclusion may include a period up to the remainder of the school year in  
16          which the offense was committed and the first semester of the following  
17          school year.  
18          (7)    Parent. – Includes a parent, legal guardian, legal custodian, or other  
19          caregiver adult who is acting in the place of a parent and is entitled to enroll  
20          the student in school under Article 25 of this Chapter.  
21          (8)    Destructive device. – An explosive, incendiary, or poison gas:  
22           a.     Bomb.  
23           b.     Grenade.  
24           c.     Rocket having a propellant charge of more than four ounces.  
25           d.     Missile having an explosive or incendiary charge of more than  
26           one-quarter ounce.  
27           e.     Mine.  
28           f.     Device similar to any of the devices listed in this subdivision.  
29          (9)    Principal. – Includes the principal and the principal's designee.  
30          (10)   Short-term suspension. – The exclusion of a student from school attendance  
31          for disciplinary purposes for up to 10 school days from the school to which  
32          the student was assigned at the time of the disciplinary action.  
33          (11)   Substantial evidence. – Such relevant evidence as a reasonable person might  
34          accept as adequate to support a conclusion; it is more than a scintilla or  
35          permissible inference.  
36          (12)   Superintendent. – Includes the superintendent and the superintendent's  
37          designee.  
38          (c)    Notwithstanding the provisions of this Article, the policies and procedures for the  
39          discipline of students shall be consistent with the requirements of the Gun Free Schools Act, 20  
40          U.S.C. § 7151, the Individuals with Disabilities Education Act (IDEA), 29 U.S.C. § 1400, et  
41          seq., section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq., and with other  
42          federal laws and regulations.  
43          **§ 115C-390.2. Discipline policies.**  
44           (a)    Local boards of education shall adopt policies to govern the conduct of students and  
45           establish procedures to be followed by school officials in disciplining students. These policies  
46           must be consistent with the provisions of this Article and the constitutions, statutes, and  
47           regulations of the United States and the State of North Carolina.  
48           (b)    Board policies shall include or provide for the development of a Code of Student  
49           Conduct that notifies students of the standards of behavior expected of them, conduct that may  
50           subject them to discipline, and the range of disciplinary measures that may be used by school  
51           officials.

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

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

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

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

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

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

26 (i) Each local board shall publish all policies, administrative procedures, or school  
27 rules mandated by this section and make them available to each student and his or her parent at  
28 the beginning of each school year and upon request.

29 (j) Local boards of education are encouraged to include in their safe schools plans,  
30 adopted pursuant to G.S. 115C-105.47, research-based behavior management programs that  
31 take positive approaches to improving student behaviors.

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

37 **"§ 115C-390.3. Reasonable force.**

38 (a) School personnel may use physical restraint only in accordance with  
39 G.S. 115C-391.1.

40 (b) School personnel may use reasonable force to control behavior or to remove a  
41 person from the scene in those situations when necessary for any of the following reasons:

42 (1) To correct students.

43 (2) To quell a disturbance threatening injury to others.

44 (3) To obtain possession of weapons or other dangerous objects on the person,  
45 or within the control, of a student.

46 (4) For self-defense.

47 (5) For the protection of persons or property.

48 (6) To maintain order on educational property, in the classroom, or at a  
49 school-related activity on or off educational property.

50 (c) Notwithstanding any other law, no officer or employee of the State Board of  
51 Education or of a local board of education shall be civilly liable for using reasonable force in

1 conformity with State law, State or local rules, or State or local policies regarding the control,  
2 discipline, suspension, and expulsion of students. Furthermore, the burden of proof is on the  
3 claimant to show that the amount of force used was not reasonable.

4 **"§ 115C-390.4. Corporal punishment.**

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

10 (b) To the extent that corporal punishment is permitted, the policies adopted for the  
11 administration of corporal punishment shall include at a minimum the following:

12 (1) Corporal punishment shall not be administered in a classroom with other  
13 students present.

14 (2) Only a teacher, principal, or assistant principal may administer corporal  
15 punishment and may do so only in the presence of a principal, assistant  
16 principal, or teacher who shall be informed beforehand and in the student's  
17 presence of the reason for the punishment.

18 (3) A school official shall provide the student's parent with notification that  
19 corporal punishment has been administered, and the official who  
20 administered the corporal punishment shall provide the student's parent a  
21 written explanation of the reasons and the name of the second school official  
22 who was present.

23 (4) The school shall maintain records of each administration of corporal  
24 punishment and the reasons for its administration.

25 (5) In no event shall excessive force be used in the administration of corporal  
26 punishment. Excessive force includes force that results in injury to the child  
27 that requires medical attention beyond simple first aid.

28 (6) Corporal punishment shall not be administered on a student who is a child  
29 with a disability as defined in G.S. 115C-106.3(1) or on a student with a  
30 disability who is covered under section 504 of the federal Rehabilitation Act  
31 of 1973, as amended, 29 U.S.C. § 704, whose parent has stated in writing  
32 that corporal punishment shall not be administered on that student. In school  
33 administrative units where corporal punishment is permitted, parents shall be  
34 given a form to make such an election at the beginning of the school year or  
35 when the student first enters the school during the year. If a parent has not  
36 submitted in writing that corporal punishment shall not be used on the  
37 student, then the form shall be presented to the parent at the first  
38 individualized education program or section 504 plan meeting held during  
39 the school year.

40 (c) Each local board of education shall report annually to the State Board of Education,  
41 in a manner prescribed by the State Board of Education, on the number of times that corporal  
42 punishment was administered. The report shall be in compliance with the federal Family  
43 Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and shall include the following:

44 (1) The number of students who received corporal punishment.

45 (2) The number of students who received corporal punishment who were also  
46 students with disabilities and were eligible to receive special education and  
47 related services under the federal Individuals with Disabilities Education  
48 Act, 20 U.S.C. § 1400, et seq.

49 (3) The grade level of the students who received corporal punishment.

50 (4) The race, gender, and ethnicity of the students who received corporal  
51 punishment.

1           (5) The reason for the administration of the corporal punishment for each  
2           student who received corporal punishment.

3 **"§ 115C-390.5. Short-term suspension.**

4           (a) The principal shall have authority to impose short-term suspension on a student who  
5 willfully engages in conduct that violates a provision of the Code of Student Conduct  
6 authorizing short-term suspension.

7           (b) If a student's short-term suspensions accumulate to more than 10 days in a semester,  
8 to the extent the principal has not already done so, he or she shall invoke the mechanisms  
9 provided for in the applicable safe schools plan adopted pursuant to G.S. 115C-105.47(b)(5)  
10 and (b)(6).

11           (c) A student subject to short-term suspension shall be provided the following:

12           (1) The opportunity to take textbooks home for the duration of the suspension.

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

16           (3) The opportunity to take any quarterly, semester, or grading period  
17 examinations missed during the suspension period.

18 **"§ 115C-390.6. Short-term suspension procedures.**

19           (a) Except as authorized in this section, no short-term suspension shall be imposed  
20 upon a student without first providing the student an opportunity for an informal hearing with  
21 the principal. The notice to the student of the charges may be oral or written, and the hearing  
22 may be held immediately after the notice is given. The student has the right to be present, to be  
23 informed of the charges and the basis for the accusations, and to make statements in defense or  
24 mitigation of the charges.

25           (b) The principal may impose a short-term suspension without providing the student an  
26 opportunity for a hearing if the presence of the student creates a direct and immediate threat to  
27 the safety of other students or staff, or substantially disrupts or interferes with the education of  
28 other students or the maintenance of discipline at the school. In such cases, the notice of the  
29 charges and informal hearing described in subsection (a) of this section shall occur as soon as  
30 practicable.

31           (c) The principal shall provide notice to the student's parent of any short-term  
32 suspension, including the reason for the suspension and a description of the alleged student  
33 conduct upon which the suspension is based. The notice shall be given by the end of the  
34 workday during which the suspension is imposed when reasonably possible, but in no event  
35 more than two days after the suspension is imposed. The notice shall be given by certified mail,  
36 telephone, facsimile, e-mail, or any other method reasonably designed to achieve actual notice.

37           (d) If English is the second language of the parent, the notice shall be provided in the  
38 parent's primary language, when the appropriate foreign language resources are readily  
39 available, and in English, and both versions shall be in plain language and shall be easily  
40 understandable.

41           (e) A student is not entitled to appeal the principal's decision to impose a short-term  
42 suspension to the superintendent or local board of education. Further, such a decision is not  
43 subject to judicial review.

44 **"§ 115C-390.7. Long-term suspension.**

45           (a) A principal may recommend to the superintendent the long-term suspension of any  
46 student who willfully engages in conduct that violates a provision of the Code of Student  
47 Conduct that authorizes long-term suspension. Only the superintendent has the authority to  
48 long-term suspend a student.

49           (b) Before the superintendent's imposition of a long-term suspension, the student must  
50 be provided an opportunity for a hearing consistent with G.S. 115C-390.8.

1       (c) If the student recommended for long-term suspension declines the opportunity for a  
2 hearing, the superintendent shall review the circumstances of the recommended long-term  
3 suspension. Following such review, the superintendent (i) may impose the suspension if it  
4 is consistent with board policies and appropriate under the circumstances, (ii) may impose  
5 another appropriate penalty authorized by board policy, or (iii) may decline to impose any  
6 penalty.

7       (d) If a teacher is assaulted or injured by a student and as a result the student is  
8 long-term suspended or reassigned to alternative education services, the student shall not be  
9 returned to that teacher's classroom unless the teacher consents.

10       (e) Disciplinary reassignment of a student to a full-time educational program that meets  
11 the academic requirements of the standard course of study established by the State Board of  
12 Education as provided in G.S. 115C-12 and provides the student with the opportunity to make  
13 timely progress towards graduation and grade promotion is not a long-term suspension  
14 requiring the due process procedures described in G.S. 115C-390.8.

15 **"§ 115C-390.8. Long-term suspension procedures.**

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

21           (1) A description of the incident and the student's conduct that led to the  
22 long-term suspension recommendation.

23           (2) A reference to the provisions of the Code of Student Conduct that the  
24 student is alleged to have violated.

25           (3) The specific process by which the parent may request a hearing to contest  
26 the decision, including the number of days within which the hearing must be  
27 requested.

28           (4) The process by which a hearing will be held, including, at a minimum, the  
29 procedures described in subsection (e) of this section.

30           (5) Notice that the parent is permitted to retain an attorney to represent the  
31 student in the hearing process.

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

35           (7) Notice that the parent has the right to review and obtain copies of the  
36 student's educational records before the hearing.

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

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

47           (1) The nature of the document, i.e., that it is a long-term suspension notice.

48           (2) The process by which the parent may request a hearing to contest the  
49 long-term suspension.

1           (3)    The identity and phone number of a school employee that the parent may  
2                   call to obtain assistance in understanding the English language information  
3                   included in the document.

4           (c)    No long-term suspension shall be imposed on a student until an opportunity for a  
5                   formal hearing is provided to the student. If a hearing is timely requested, it shall be held and a  
6                   decision issued before a long-term suspension is imposed, except as otherwise provided in this  
7                   subsection. The student and parent shall be given reasonable notice of the time and place of the  
8                   hearing.

9                   (1)    If no hearing is timely requested, the superintendent shall follow the  
10                   procedures described in G.S. 115C-390.7(c).

11                   (2)    If the student or parent requests a postponement of the hearing, or if the  
12                   hearing is requested beyond the time set for such request, the hearing shall  
13                   be scheduled, but the student shall not have the right to return to school  
14                   pending the hearing.

15                   (3)    If neither the student nor parent appears for the scheduled hearing, after  
16                   having been given reasonable notice of the time and place of the hearing, the  
17                   parent and student are deemed to have waived the right to a hearing and the  
18                   superintendent shall conduct the review required by G.S. 115C-390.7(c).

19           (d)    The formal hearing may be conducted by the local board of education, by the  
20                   superintendent, or by a person or group of persons appointed by the local board or  
21                   superintendent to serve as a hearing officer or hearing panel. Neither the board nor the  
22                   superintendent shall appoint any individual to serve as a hearing officer or on a hearing panel  
23                   who is under the direct supervision of the principal recommending suspension. If the hearing is  
24                   conducted by an appointed hearing officer or hearing panel, such officer or panel shall  
25                   determine the relevant facts and credibility of witnesses based on the evidence presented at the  
26                   hearing. Following the hearing, the superintendent or local board shall make a final decision  
27                   regarding the suspension. The superintendent or board shall adopt the hearing officer's or  
28                   panel's factual determinations unless they are not supported by substantial evidence in the  
29                   record.

30           (e)    Long-term suspension hearings shall be conducted in accordance with policies  
31                   adopted by the board of education. Such policies shall offer the student procedural due process  
32                   including, but not limited to, the following:

33                   (1)    The right to be represented at the hearing by counsel or, in the discretion of  
34                   the local board, a non-attorney advocate.

35                   (2)    The right to be present at the hearing, accompanied by his or her parents.

36                   (3)    The right of the student, parent, and the student's representative to review  
37                   before the hearing any audio or video recordings of the incident and,  
38                   consistent with federal and State student records laws and regulations, the  
39                   information supporting the suspension that may be presented as evidence at  
40                   the hearing, including statements made by witnesses related to the charges  
41                   consistent with subsection (h) of this section.

42                   (4)    The right of the student, parent, or the student's representative to question  
43                   witnesses appearing at the hearing.

44                   (5)    The right to present evidence on his or her own behalf, which may include  
45                   written statements or oral testimony, relating to the incident leading to the  
46                   suspension, as well as any of the factors listed in G.S. 115C-390.2(g).

47                   (6)    The right to have a record made of the hearing.

48                   (7)    The right to make his or her own audio recording of the hearing.

49                   (8)    The right to a written decision, based on substantial evidence presented at  
50                   the hearing, either upholding, modifying, or rejecting the principal's

1 recommendation of suspension and containing at least the following  
2 information:

- 3 a. The basis for the decision, including a reference to any policy or rule  
4 that the student is determined to have violated.  
5 b. Notice of what information will be included in the student's official  
6 record pursuant to G.S. 115C-402.  
7 c. The student's right to appeal the decision and notice of the  
8 procedures for such appeal.

9 (f) Following the issuance of the decision, the superintendent shall implement the  
10 decision by authorizing the student's return to school or by imposing the suspension reflected in  
11 the decision.

12 (g) Unless the decision was made by the local board, the student may appeal the  
13 decision to the local board in accordance with G.S. 115C-45(c) and policies adopted by the  
14 board. Notwithstanding the provisions of G.S. 115C-45(c), a student's appeal to the board of a  
15 decision upholding a long-term suspension shall be heard and a final written decision issued in  
16 not more than 30 calendar days following the request for such appeal.

17 (h) Nothing in this section shall compel school officials to release names or other  
18 information that could allow the student or his or her representative to identify witnesses when  
19 such identification could create a safety risk for the witness.

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

27 **§ 115C-390.9. Alternative education services.**

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

- 32 (1) The student exhibits violent behavior.  
33 (2) The student poses a threat to staff or other students.  
34 (3) The student substantially disrupts the learning process.  
35 (4) The student otherwise engaged in serious misconduct that makes the  
36 provision of alternative educational services not feasible.  
37 (5) Educationally appropriate alternative education services are not available in  
38 the local school administrative unit due to limited resources.  
39 (6) The student failed to comply with reasonable conditions for admittance into  
40 an alternative education program.

41 (b) If the superintendent declines to provide alternative education services to the  
42 suspended student, the student may seek review of such decision by the local board of  
43 education as permitted by G.S. 115C-45(c)(2). If the student seeks such review, the  
44 superintendent shall provide to the student and the local board, in advance of the board's  
45 review, a written explanation for the denial of services together with any documents or other  
46 information supporting the decision.

47 **§ 115C-390.10. 365-day suspension for gun possession.**

48 (a) All local boards of education shall develop and implement written policies and  
49 procedures, as required by the federal Gun Free Schools Act, 20 U.S.C. § 7151, requiring  
50 suspension for 365 calendar days of any student who is determined to have brought or been in  
51 possession of a firearm or destructive device on educational property, or to a school-sponsored

1 event off of educational property. A principal shall recommend to the superintendent the  
2 365-day suspension of any student believed to have violated board policies regarding weapons.  
3 The superintendent has the authority to suspend for 365 days a student who has been  
4 recommended for such suspension by the principal when such recommendation is consistent  
5 with board policies. Notwithstanding the foregoing, the superintendent may modify, in writing,  
6 the required 365-day suspension for an individual student on a case-by-case basis. The  
7 superintendent shall not impose a 365-day suspension if the superintendent determines that the  
8 student took or received the firearm or destructive device from another person at school or  
9 found the firearm or destructive device at school, provided that the student delivered or  
10 reported the firearm or destructive device as soon as practicable to a law enforcement officer or  
11 a school employee and had no intent to use such firearm or destructive device in a harmful or  
12 threatening way.

13 (b) The principal must report all incidents of firearms or destructive devices on  
14 educational property or at a school-sponsored event as required by G.S. 115C-288(g) and State  
15 Board of Education policy.

16 (c) Nothing in this provision shall apply to a firearm that was brought onto educational  
17 property for activities approved and authorized by the local board of education, provided that  
18 the local board of education has adopted appropriate safeguards to protect student safety.

19 (d) At the time the student and parent receive notice that the student is suspended for  
20 365 days under this section, the superintendent shall provide notice to the student and the  
21 student's parent of the right to petition the local board of education for readmission pursuant to  
22 G.S. 115C-390.12.

23 (e) The procedures described in G.S. 115C-390.8 apply to students facing a 365-day  
24 suspension pursuant to this section.

25 (f) Students who are suspended for 365 days pursuant to this section shall be  
26 considered for alternative educational services consistent with the provisions of  
27 G.S. 115C-390.9.

28 **"§ 115C-390.11. Expulsion.**

29 (a) Upon recommendation of the superintendent, a local board of education may expel  
30 any student 14 years of age or older whose continued presence in school constitutes a clear  
31 threat to the safety of other students or school staff. Prior to the expulsion of any student, the  
32 local board shall conduct a hearing to determine whether the student's continued presence in  
33 school constitutes a clear threat to the safety of other students or school staff. The student shall  
34 be given reasonable notice of the recommendation in accordance with G.S. 115C-390.8(a) and  
35 (b), as well as reasonable notice of the time and place of the scheduled hearing.

36 (1) The procedures described in G.S. 115C-390.8(e)(1)-(8) apply to students  
37 facing expulsion pursuant to this section, except that the decision to expel a  
38 student by the local board of education shall be based on clear and  
39 convincing evidence that the student's continued presence in school  
40 constitutes a clear threat to the safety of other students and school staff.

41 (2) A local board of education may expel any student subject to G.S. 14-208.18  
42 in accordance with the procedures of this section. Prior to ordering the  
43 expulsion of a student, the local board of education shall consider whether  
44 there are alternative education services that may be offered to the student. As  
45 provided by G.S. 14-208.18(f), if the local board of education determines  
46 that the student shall be provided educational services on school property,  
47 the student shall be under the supervision of school personnel at all times.

48 (3) At the time a student is expelled under this section, the student shall be  
49 provided notice of the right to petition for readmission pursuant to  
50 G.S. 115C-390.12.

1       **(b)** During the expulsion, the student is not entitled to be present on any property of the  
2 local school administrative unit and is not considered a student of the local board of education.  
3 Nothing in this section shall prevent a local board of education from offering access to some  
4 type of alternative educational services that can be provided to the student in a manner that  
5 does not create safety risks to other students and school staff.

6 **"§ 115C-390.12. Request for readmission.**

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

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

- 13       **a.** At the local board's discretion, either the superintendent or the local  
14 board itself shall consider and decide on petitions for readmission. If  
15 the decision maker is the superintendent, the superintendent shall  
16 offer the student an opportunity for an in-person meeting. If the  
17 decision maker is the local board of education, the board may offer  
18 the student an in-person meeting or may make a determination based  
19 on the records submitted by the student and the superintendent.  
20       **b.** The student shall be readmitted if the student demonstrates to the  
21 satisfaction of the board or superintendent that the student's presence  
22 in school no longer constitutes a threat to the safety of other students  
23 or staff.  
24       **c.** A superintendent's decision not to readmit the student may be  
25 appealed to the local board of education pursuant to G.S. 115C-45(c).  
26 The superintendent shall notify the parents of the right to appeal.  
27       **d.** There is no right to judicial review of the board's decision not to  
28 readmit a 365-day suspended student.  
29       **e.** A decision on readmission under this subsection shall be issued  
30 within 30 days of the petition.

31       **(2)** The process for expelled students.

- 32       **a.** The board of education shall consider all petitions for readmission of  
33 expelled students, together with the recommendation of the  
34 superintendent on the matter, and shall rule on the request for  
35 readmission. The board shall consider the petition based on the  
36 records submitted by the student and the response by the  
37 administration and shall allow the parties to be heard in the same  
38 manner as provided by G.S. 115C-45(c).  
39       **b.** The student shall be readmitted if the student demonstrates to the  
40 satisfaction of the board or superintendent that his or her presence in  
41 a school no longer constitutes a clear threat to the safety of other  
42 students or staff.  
43       **c.** A decision by a board of education to deny readmission of an  
44 expelled student is not subject to judicial review.  
45       **d.** An expelled student may subsequently request readmission not more  
46 often than every six months. The local board of education is not  
47 required to consider subsequent readmission petitions filed sooner  
48 than six months after the previous petition was filed.  
49       **e.** A decision on readmission under this section shall be issued within  
50 30 days of the petition.

1       (b) If a student is readmitted under this section, the board and the superintendent have  
2 the right to assign the student to any program within the school system and to place reasonable  
3 conditions on the readmission.

4       (c) If a teacher was assaulted or injured by a student, and as a result the student was  
5 expelled, the student shall not be returned to that teacher's classroom following readmission  
6 unless the teacher consents."

7       **SECTION 3.** G.S. 115C-391.1(i) reads as rewritten:

8       "(i) Nothing in this section modifies the rights of school personnel to use reasonable  
9 force as permitted under ~~G.S. 115C-390~~ G.S. 115C-390.3 or modifies the rules and procedures  
10 governing discipline under ~~G.S. 115C-391(a)~~ G.S. 115C-390.1 through G.S. 115C-390.12."

11       **SECTION 4.** G.S. 115C-12(27) reads as rewritten:

12       "(27) Reporting Dropout Rates, Corporal Punishment, Suspensions, Expulsions,  
13 and Alternative Placements. – The State Board shall report by March 15 of  
14 each year to the Joint Legislative Education Oversight Committee on the  
15 numbers of students who have dropped out of school, been subjected to  
16 corporal punishment, been suspended, been expelled, been reassigned for  
17 disciplinary purposes, or been placed in an ~~approved~~ alternative  
18 program-education services. The data shall be reported in a disaggregated  
19 manner ~~and~~, reflecting the local school administrative unit, race, gender,  
20 grade level, ethnicity, and disability status of each affected student. Such  
21 data shall be readily available to the public. The State Board shall not  
22 include students that have been expelled from school when calculating the  
23 dropout rate. The Board shall maintain a separate record of the number of  
24 students who are expelled from school and the reasons for the expulsion."

25       **SECTION 5.** G.S. 115C-45(c)(1) reads as rewritten:

26       "(1) The discipline of a student under ~~G.S. 115C-391(e), (d), (d1), (d2), (d3), or~~  
27 ~~(d4);~~ G.S. 115C-390.1 through G.S. 115C-390.12;".

28       **SECTION 6.** G.S. 115C-105.47(b)(6) reads as rewritten:

29       "(6) Mechanisms for assessing the needs of disruptive and disorderly students  
30 and students who are at risk of academic failure, and providing them with  
31 services to assist them in achieving academically and in modifying their  
32 ~~behavior,~~ behavior, including any positive behavior management or positive  
33 behavior support programs that have been adopted, and removing them from  
34 the classroom when necessary."

35       **SECTION 7.** G.S. 115C-105.47(b)(13)b. reads as rewritten:

36       "(13) Direction to school improvement teams within the local school  
37 administrative unit to consider the special conditions at their schools and to  
38 incorporate into their school improvement plans the appropriate components  
39 of the local plan for:  
40       a. maintaining safe and orderly schools; and  
41       b. addressing the needs of students who are at risk of academic failure  
42 or who are disruptive or ~~both,~~ both, and including the components of  
43 any positive behavior management or positive behavior support  
44 programs that have been adopted."

45       **SECTION 8.** G.S. 115C-238.29B(b)(11) reads as rewritten:

46       "(11) The procedures by which students can be excluded from the charter school  
47 and returned to a public school. Notwithstanding any law to the contrary,  
48 any local board may refuse to admit any student who is suspended or  
49 expelled from a charter school due to actions that would lead to suspension  
50 or expulsion from a public school under ~~G.S. 115C-391~~ G.S. 115C-390.5

1 through G.S. 115C-390.11 until the period of suspension or expulsion has  
2 expired."

3 **SECTION 9.** G.S. 115C-238.29F(g)(7) reads as rewritten:

4 "(7) Notwithstanding any law to the contrary, a charter school may refuse  
5 admission to any student who has been expelled or suspended from a public  
6 school under ~~G.S. 115C-391~~ G.S. 115C-390.5 through G.S. 115C-390.11  
7 until the period of suspension or expulsion has expired."

8 **SECTION 10.** G.S. 115C-276(r) reads as rewritten:

9 "(r) To Maintain Student Discipline. – The superintendent shall maintain student  
10 discipline in accordance with Article 27 of this Chapter and shall keep data on each student to  
11 whom corporal punishment was administered, who was suspended for more than 10 days~~days,~~  
12 who was reassigned for disciplinary reasons, or who was expelled. This data shall include the  
13 race, gender, age, grade level, ethnicity, and age disability status of each student, the duration of  
14 suspension for each student, whether ~~an~~ alternative education ~~was considered or~~ services were  
15 provided for each student, and whether a student had multiple ~~suspensions.~~ suspensions in that  
16 academic year."

17 **SECTION 11.** G.S. 115C-288(e) reads as rewritten:

18 "(e) To Discipline Students and to Assign Duties to Teachers with Regard to the  
19 Discipline, General Well-being, and Medical Care of Students. – The principal shall have  
20 authority to exercise discipline over the pupils of the school under policies adopted by the local  
21 board of education ~~as prescribed by G.S. 115C-391(a).~~ in accordance with G.S. 115C-390.1  
22 through G.S. 115C-390.12. The principal ~~shall~~ may use reasonable force ~~to discipline students~~  
23 ~~under G.S. 115C-390~~ pursuant to G.S. 115C-390.3 and may suspend ~~or dismiss pupils~~  
24 ~~under students G.S. 115C-391,~~ pursuant to G.S. 115C-390.5. The principal shall assign duties to  
25 teachers with regard to the general well-being and the medical care of students under  
26 G.S. 115C-307 and Article 26A of this Chapter."

27 **SECTION 12.** G.S. 115C-366 reads as rewritten:

28 "**§ 115C-366. Assignment of student to a particular school.**

29 ...

30 (a5) Notwithstanding any other law, a local board may deny admission to or place  
31 reasonable conditions on the admission of a student who has been suspended from a school  
32 under ~~G.S. 115C-391~~ 115C-390.5 through G.S. 115C-390.10 or who has been suspended from  
33 a school for conduct that could have led to a suspension from a school within the local school  
34 administrative unit where the student is seeking admission until the period of suspension has  
35 expired. Also, a local board may deny admission to or place reasonable conditions on the  
36 admission of a student who has been expelled from a school under ~~G.S. 115C-391~~ 115C-390.11  
37 or who has been expelled from a school for behavior that indicated the student's continued  
38 presence in school constituted a clear threat to the safety of other students or ~~employees~~ staff as  
39 found by clear and convincing evidence, or who has been convicted of a felony in this or any  
40 other state. If the local board denies admission to a student who has been expelled or convicted  
41 of a felony, the student may request the local board to reconsider that decision in accordance  
42 with ~~G.S. 115C-391(d).~~ 115C-390.12. When a student who has been identified as eligible to  
43 receive special education and related services under the Individuals with Disabilities Education  
44 ~~Improvement~~ Act, 20 U.S.C. § 1400, et seq., is denied admission under this subsection, the  
45 local board shall provide educational services to the student to the same extent it would if the  
46 student were enrolled in the local school administrative unit at the time of the suspension or  
47 expulsion, as required by G.S. 115C-107.1(a)(3).

48 ...

49 (h) The following definitions apply in this section:

50 ...

- 1 (3) Educational decisions. – Decisions or actions recommended or required by  
2 the school concerning the student's academic course of study, extracurricular  
3 activities, and conduct. These decisions or actions include enrolling the  
4 student, receiving and responding to notices of discipline under  
5 G.S. ~~115C-391~~, ~~115C-390.5~~ through G.S. 115C-390.12, attending  
6 conferences with school personnel, granting permission for school-related  
7 activities, granting permission for emergency medical care, receiving and  
8 taking appropriate action in connection with student records, and any other  
9 decisions or actions recommended or required by the school in connection to  
10 that student.

11 ...."

12 **SECTION 13.** G.S. 115C-402(b) reads as rewritten:

13 "(b) The official record shall contain, as a minimum, adequate identification data  
14 including date of birth, attendance data, grading and promotion data, and such other factual  
15 information as may be deemed appropriate by the local board of education having jurisdiction  
16 over the school wherein the record is maintained. Each student's official record also shall  
17 include notice of any long-term suspension for a period of more than 10 days or of any  
18 expulsion under imposed pursuant to G.S. ~~115C-391~~ ~~115C-390.7~~ through G.S. 115C-390.11  
19 and the conduct for which the student was suspended or expelled. The superintendent or the  
20 superintendent's designee shall expunge from the record the notice of suspension or expulsion  
21 if the following criteria are met:

- 22 (1) One of the following persons makes a request for expungement:  
23 a. The student's parent, legal guardian, or custodian.  
24 b. The student, if the student is at least 16 years old or is emancipated.  
25 (2) The student either graduates from high school or is not expelled or  
26 suspended again during the two-year period commencing on the date of the  
27 student's return to school after the expulsion or suspension.  
28 (3) The superintendent or the superintendent's designee determines that the  
29 maintenance of the record is no longer needed to maintain safe and orderly  
30 schools.  
31 (4) The superintendent or the superintendent's designee determines that the  
32 maintenance of the record is no longer needed to adequately serve the child."

33 **SECTION 14.** G.S. 14-208.18(f) reads as rewritten:

34 "(f) A person subject to subsection (a) of this section who is eligible under  
35 G.S. 115C-378 to attend public school may be present on school property if permitted by the  
36 local board of education pursuant to G.S. ~~115C-391(d)(2)~~ ~~115C-390.11(a)(2)~~."

37 **SECTION 15.** G.S. 20-11(n1)d.2. reads as rewritten:

- 38 "2. The bringing, possession, or use on school property of a  
39 weapon or firearm that resulted in disciplinary action under  
40 G.S. ~~115C-391(d1)~~ ~~115C-390.10~~ or that could have resulted  
41 in that disciplinary action if the conduct had occurred in a  
42 public school."

43 **SECTION 16.** This act is effective when it becomes law and applies beginning  
44 with the 2011-2012 school year.