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HOUSE BILL 736
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PROPOSED SENATE COMMITTEE SUBSTITUTE H736-PCS50367-RQ-20

Short Title: Amend Law Re: School Discipline.

(Public)

Sponsors:

Referred to:

April 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO REORGANIZE THE GENERAL STATUTES RELATING TO SCHOOL
3 DISCIPLINE; PREVENT LITIGATION BY ADDING DEFINITIONS TO, AND
4 CLARIFYING AMBIGUITIES IN, THE CURRENT LAW; CODIFY EXISTING CASE
5 LAW; AND INCREASE LOCAL CONTROL AND FLEXIBILITY REGARDING
6 DISCIPLINE.

7 The General Assembly of North Carolina enacts:

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 G.S. 115C-390 and G.S. 115C-391 are repealed.

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

11 "**§ 115C-390.1. State policy and definitions.**

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

20 (b) The following definitions apply in this Article:

- 21 (1) Alternative education services. – Part or full-time programs, wherever
22 situated, providing direct or computer-based instruction that allow a student
23 to progress in one or more core academic courses. Alternative education
24 services include programs established by the local board of education in
25 conformity with G.S. 115C-105.47A and local board of education policies.
26 (2) Corporal punishment. – The intentional infliction of physical pain upon the
27 body of a student as a disciplinary measure.
28 (3) Educational property. – Any school building or bus, school campus,
29 grounds, recreational area, athletic field, or other property under the control
30 of any local board of education or charter school.



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- 1 (4) Expulsion. – The indefinite exclusion of a student from school enrollment
2 for disciplinary purposes.
- 3 (5) Firearm. – Any of the following:
4 a. A weapon, including a starter gun, which will or is designed to or
5 may readily be converted to expel a projectile by the action of an
6 explosive.
7 b. The frame or receiver of any such weapon.
8 c. Any firearm muffler or firearm silencer.
9 The term shall not include an inoperable antique firearm, a BB gun, stun
10 gun, air rifle, or air pistol.
- 11 (6) Long-term suspension. – The exclusion for more than 10 school days of a
12 student from school attendance for disciplinary purposes from the school to
13 which the student was assigned at the time of the disciplinary action. If the
14 offense leading to the long-term suspension occurs before the final quarter of
15 the school year, the exclusion shall be no longer than the remainder of the
16 school year in which the offense was committed. If the offense leading to the
17 long-term suspension occurs during the final quarter of the school year, the
18 exclusion may include a period up to the remainder of the school year in
19 which the offense was committed and the first semester of the following
20 school year.
- 21 (7) Parent. – Includes a parent, legal guardian, legal custodian, or other
22 caregiver adult who is acting in the place of a parent and is entitled to enroll
23 the student in school under Article 25 of this Chapter.
- 24 (8) Destructive device. – An explosive, incendiary, or poison gas:
25 a. Bomb.
26 b. Grenade.
27 c. Rocket having a propellant charge of more than four ounces.
28 d. Missile having an explosive or incendiary charge of more than
29 one-quarter ounce.
30 e. Mine.
31 f. Device similar to any of the devices listed in this subdivision.
- 32 (9) Principal. – Includes the principal and the principal's designee.
- 33 (10) School official. – A superintendent or any other central office administrator
34 to whom the superintendent has delegated duties under this Article and any
35 principal or assistant principal.
- 36 (11) School personnel. – Any of the following:
37 a. An employee of a local board of education.
38 b. Any person working on school grounds or at a school function under
39 a contract or written agreement with the public school system to
40 provide educational or related services to students.
41 c. Any person working on school grounds or at a school function for
42 another agency providing educational or related services to students."
- 43 (12) Short-term suspension. – The exclusion of a student from school attendance
44 for disciplinary purposes for up to 10 school days from the school to which
45 the student was assigned at the time of the disciplinary action.
- 46 (13) Substantial evidence. – Such relevant evidence as a reasonable person might
47 accept as adequate to support a conclusion; it is more than a scintilla or
48 permissible inference.
- 49 (14) Superintendent. – Includes the superintendent and the superintendent's
50 designee.

1 (c) Notwithstanding the provisions of this Article, the policies and procedures for the
2 discipline of students shall be consistent with the requirements of the Gun Free Schools Act, 20
3 U.S.C. § 7151, the Individuals with Disabilities Education Act (IDEA), 29 U.S.C. § 1400, et
4 seq., section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq., and with other
5 federal laws and regulations.

6 **"§ 115C-390.2. Discipline policies.**

7 (a) Local boards of education shall adopt policies to govern the conduct of students and
8 establish procedures to be followed by school officials in disciplining students. These policies
9 must be consistent with the provisions of this Article and the constitutions, statutes, and
10 regulations of the United States and the State of North Carolina.

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

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

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

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

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

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

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

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

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

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

51 **"§ 115C-390.3. Reasonable force.**

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

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

5 (1) To correct students.

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

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

9 (4) For self-defense.

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

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

13 (c) Notwithstanding any other law, no officer or employee of the State Board of
14 Education or of a local board of education shall be civilly liable for using reasonable force in
15 conformity with State law, State or local rules, or State or local policies regarding the control,
16 discipline, suspension, and expulsion of students. Furthermore, the burden of proof is on the
17 claimant to show that the amount of force used was not reasonable.

18 **§ 115C-390.4. Corporal punishment.**

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

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

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

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

32 (3) A school person shall provide the student's parent with notification that
33 corporal punishment has been administered, and the person who
34 administered the corporal punishment shall provide the student's parent a
35 written explanation of the reasons and the name of the second person who
36 was present.

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

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

42 (6) Corporal punishment shall not be administered on a student who is a child
43 with a disability as defined in G.S. 115C-106.3(1) or on a student with a
44 disability who is covered under section 504 of the federal Rehabilitation Act
45 of 1973, as amended, 29 U.S.C. § 704, whose parent has stated in writing
46 that corporal punishment shall not be administered on that student. In school
47 administrative units where corporal punishment is permitted, parents shall be
48 given a form to make such an election at the beginning of the school year or
49 when the student first enters the school during the year. If a parent has not
50 submitted in writing that corporal punishment shall not be used on the
51 student, then the form shall be presented to the parent at the first

1 individualized education program or section 504 plan meeting held during
2 the school year.

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

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

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

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

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

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

17 **§ 115C-390.5. Short-term suspension.**

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

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

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

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

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

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

32 **§ 115C-390.6. Short-term suspension procedures.**

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

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

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

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

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

10 **"§ 115C-390.7. Long-term suspension.**

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

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

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

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

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

31 **"§ 115C-390.8. Long-term suspension procedures.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (8) The right to a written decision, based on substantial evidence presented at
15 the hearing, either upholding, modifying, or rejecting the principal's
16 recommendation of suspension and containing at least the following
17 information:

18 a. The basis for the decision, including a reference to any policy or rule
19 that the student is determined to have violated.

20 b. Notice of what information will be included in the student's official
21 record pursuant to G.S. 115C-402.

22 c. The student's right to appeal the decision and notice of the
23 procedures for such appeal.

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

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

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

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

42 **"§ 115C-390.9. Alternative education services.**

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

47 (1) The student exhibits violent behavior.

48 (2) The student poses a threat to staff or other students.

49 (3) The student substantially disrupts the learning process.

50 (4) The student otherwise engaged in serious misconduct that makes the
51 provision of alternative educational services not feasible.

1 (5) Educationally appropriate alternative education services are not available in
2 the local school administrative unit due to limited resources.

3 (6) The student failed to comply with reasonable conditions for admittance into
4 an alternative education program.

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

11 **"§ 115C-390.10. 365-day suspension for gun possession.**

12 (a) All local boards of education shall develop and implement written policies and
13 procedures, as required by the federal Gun Free Schools Act, 20 U.S.C. § 7151, requiring
14 suspension for 365 calendar days of any student who is determined to have brought or been in
15 possession of a firearm or destructive device on educational property, or to a school-sponsored
16 event off of educational property. A principal shall recommend to the superintendent the
17 365-day suspension of any student believed to have violated board policies regarding weapons.
18 The superintendent has the authority to suspend for 365 days a student who has been
19 recommended for such suspension by the principal when such recommendation is consistent
20 with board policies. Notwithstanding the foregoing, the superintendent may modify, in writing,
21 the required 365-day suspension for an individual student on a case-by-case basis. The
22 superintendent shall not impose a 365-day suspension if the superintendent determines that the
23 student took or received the firearm or destructive device from another person at school or
24 found the firearm or destructive device at school, provided that the student delivered or
25 reported the firearm or destructive device as soon as practicable to a law enforcement officer or
26 a school employee and had no intent to use such firearm or destructive device in a harmful or
27 threatening way.

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

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

34 (d) At the time the student and parent receive notice that the student is suspended for
35 365 days under this section, the superintendent shall provide notice to the student and the
36 student's parent of the right to petition the local board of education for readmission pursuant to
37 G.S. 115C-390.12.

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

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

43 **"§ 115C-390.11. Expulsion.**

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

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

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

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

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

21 **"§ 115C-390.12. Request for readmission.**

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

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

28 a. At the local board's discretion, either the superintendent or the local
29 board itself shall consider and decide on petitions for readmission. If
30 the decision maker is the superintendent, the superintendent shall
31 offer the student an opportunity for an in-person meeting. If the
32 decision maker is the local board of education, the board may offer
33 the student an in-person meeting or may make a determination based
34 on the records submitted by the student and the superintendent.

35 b. The student shall be readmitted if the student demonstrates to the
36 satisfaction of the board or superintendent that the student's presence
37 in school no longer constitutes a threat to the safety of other students
38 or staff.

39 c. A superintendent's decision not to readmit the student may be
40 appealed to the local board of education pursuant to G.S. 115C-45(c).
41 The superintendent shall notify the parents of the right to appeal.

42 d. There is no right to judicial review of the board's decision not to
43 readmit a 365-day suspended student.

44 e. A decision on readmission under this subsection shall be issued
45 within 30 days of the petition.

46 (2) The process for expelled students.

47 a. The board of education shall consider all petitions for readmission of
48 expelled students, together with the recommendation of the
49 superintendent on the matter, and shall rule on the request for
50 readmission. The board shall consider the petition based on the
51 records submitted by the student and the response by the

1 administration and shall allow the parties to be heard in the same
2 manner as provided by G.S. 115C-45(c).

3 b. The student shall be readmitted if the student demonstrates to the
4 satisfaction of the board or superintendent that his or her presence in
5 a school no longer constitutes a clear threat to the safety of other
6 students or staff.

7 c. A decision by a board of education to deny readmission of an
8 expelled student is not subject to judicial review.

9 d. An expelled student may subsequently request readmission not more
10 often than every six months. The local board of education is not
11 required to consider subsequent readmission petitions filed sooner
12 than six months after the previous petition was filed.

13 e. A decision on readmission under this section shall be issued within
14 30 days of the petition.

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

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

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

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

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

26 "(27) Reporting Dropout Rates, Corporal Punishment, Suspensions, Expulsions,
27 and Alternative Placements. – The State Board shall report by March 15 of
28 each year to the Joint Legislative Education Oversight Committee on the
29 numbers of students who have dropped out of school, been subjected to
30 corporal punishment, been suspended, been expelled, been reassigned for
31 disciplinary purposes, or been placed in an provided alternative
32 program education services. The data shall be reported in a disaggregated
33 manner ~~and~~, reflecting the local school administrative unit, race, gender,
34 grade level, ethnicity, and disability status of each affected student. Such
35 data shall be readily available to the public. The State Board shall not
36 include students that have been expelled from school when calculating the
37 dropout rate. The Board shall maintain a separate record of the number of
38 students who are expelled from school and the reasons for the expulsion."

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

40 "(1) The discipline of a student under ~~G.S. 115C-391(e), (d), (d1), (d2), (d3), or~~
41 ~~(d4)~~; G.S. 115C-390.7, 115C-390.10, or 115C-390.11;"

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

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

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

50 "(13) Direction to school improvement teams within the local school
51 administrative unit to consider the special conditions at their schools and to

1 incorporate into their school improvement plans the appropriate components
2 of the local plan for:

- 3 a. maintaining safe and orderly schools; and
- 4 b. addressing the needs of students who are at risk of academic failure
5 or who are disruptive or ~~both~~, both, and including the components of
6 any positive behavior management or positive behavior support
7 programs that have been adopted."

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

9 "(11) The procedures by which students can be excluded from the charter school
10 and returned to a public school. Notwithstanding any law to the contrary,
11 any local board may refuse to admit any student who is suspended or
12 expelled from a charter school due to actions that would lead to suspension
13 or expulsion from a public school under ~~G.S. 115C-391~~ G.S. 115C-390.5
14 through G.S. 115C-390.11 until the period of suspension or expulsion has
15 expired."

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

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

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

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

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

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

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

41 "**§ 115C-366. Assignment of student to a particular school.**

42 ...

43 (a5) Notwithstanding any other law, a local board may deny admission to or place
44 reasonable conditions on the admission of a student who has been suspended from a school
45 under ~~G.S. 115C-391~~ 115C-390.5 through G.S. 115C-390.10 or who has been suspended from
46 a school for conduct that could have led to a suspension from a school within the local school
47 administrative unit where the student is seeking admission until the period of suspension has
48 expired. Also, a local board may deny admission to or place reasonable conditions on the
49 admission of a student who has been expelled from a school under ~~G.S. 115C-391~~ 115C-390.11
50 or who has been expelled from a school for behavior that indicated the student's continued
51 presence in school constituted a clear threat to the safety of other students or ~~employees~~ staff as

1 found by clear and convincing evidence, or who has been convicted of a felony in this or any
 2 other state. If the local board denies admission to a student who has been expelled or convicted
 3 of a felony, the student may request the local board to reconsider that decision in accordance
 4 with ~~G.S. 115C-391(d)~~, 115C-390.12. When a student who has been identified as eligible to
 5 receive special education and related services under the Individuals with Disabilities Education
 6 ~~Improvement~~ Act, 20 U.S.C. § 1400, et seq., is denied admission under this subsection, the
 7 local board shall provide educational services to the student to the same extent it would if the
 8 student were enrolled in the local school administrative unit at the time of the suspension or
 9 expulsion, as required by G.S. 115C-107.1(a)(3).

10 ...
 11 (h) The following definitions apply in this section:

- 12 ...
 13 (3) Educational decisions. – Decisions or actions recommended or required by
 14 the school concerning the student's academic course of study, extracurricular
 15 activities, and conduct. These decisions or actions include enrolling the
 16 student, receiving and responding to notices of discipline under
 17 G.S. ~~115C-391~~, 115C-390.5 through G.S. 115C-390.12, attending
 18 conferences with school personnel, granting permission for school-related
 19 activities, granting permission for emergency medical care, receiving and
 20 taking appropriate action in connection with student records, and any other
 21 decisions or actions recommended or required by the school in connection to
 22 that student.

23"

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

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

- 34 (1) One of the following persons makes a request for expungement:
 35 a. The student's parent, legal guardian, or custodian.
 36 b. The student, if the student is at least 16 years old or is emancipated.
 37 (2) The student either graduates from high school or is not expelled or
 38 suspended again during the two-year period commencing on the date of the
 39 student's return to school after the expulsion or suspension.
 40 (3) The superintendent or the superintendent's designee determines that the
 41 maintenance of the record is no longer needed to maintain safe and orderly
 42 schools.
 43 (4) The superintendent or the superintendent's designee determines that the
 44 maintenance of the record is no longer needed to adequately serve the child."

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

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

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

- 50 "2. The bringing, possession, or use on school property of a
 51 weapon or firearm that resulted in disciplinary action under

1 G.S. ~~115C-391(d1)~~115C-390.10 or that could have resulted
2 in that disciplinary action if the conduct had occurred in a
3 public school."

4 **SECTION 16.** If House Bill 200, 2011 Regular Session, becomes law, then
5 Sections 6 and 7 of this act are deleted.

6 **SECTION 17.** This act is effective when it becomes law and applies beginning
7 with the 2011-2012 school year.