



SENATE BILL 90: Children's Laws Omnibus.

2023-2024 General Assembly

Committee:	House Education - K-12. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	July 12, 2023
Introduced by:	Sens. Lazzara, Galey, Sawyer	Prepared by:	Kara McCraw, Drupti Chauhan, Brian Gwyn, and Samantha Yarborough Staff Attorneys
Analysis of:	PCS to Third Edition S90-CSTC-55		

OVERVIEW: SB 90 would require the governing bodies of public school units to adopt a policy requiring that searches of students be conducted in private by one school official and one adult witness who are the same sex as the student being searched.

The PCS would make the following changes:

- Section 1 would include a requirement for notification to parents of a student's search.
- Section 2 would make various changes to school discipline policy requirements.
- Section 3 would create the Standard Course of Study Advisory Commission to recommend academic standards to the State Board of Education.
- Section 4 would allow parents to request student reassignment to another school or local school administrative school unit.
- Section 5 would codify requirements for education on human growth and development in grades 4 and 5, and provide additional notifications to parents on how to opt students in or out of education related to human growth and development and reproductive health and safety education.
- Section 6 would establish new procedures for selection of both library books and instructional materials related to health and safety, require an instructional materials repository in each public school unit, and require detailed syllabi be made publicly available for all courses in public school units at the beginning of each semester.
- Section 7 would remove the affirmative defense for schools and public libraries for the crime of disseminating harmful materials to minors.
- Section 8 would require public libraries to restrict access to materials harmful to minors, require parental consent for minors' access to libraries, allow parents access to minors' library records.
- Section 9 would limit the ability of minors to consent to mental health care except when the minor believes themselves to be a danger to themselves or others, and create a limited exception for examination of minors without parental consent when abuse or neglect was suspected.

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Director



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- *Section 10 would establish a right to appeal to superior court for violations of the fundamental right to parent.*
- *Section 11 would require superintendent contracts to include terms that allow for dismissal or reductions in salary after 5 successful claims of violations of the fundamental right to parent.*
- *Section 12 would require parents to give consent to student participation in extracurricular activities.*
- *Section 13 would require parents to give consent to participation in a student well-being questionnaire or health screening form.*
- *Section 14 would require licensed school personnel to inform parents if they believe the child is at imminent risk of suicide or is self-identifying as a gender different from the student's biological sex.*
- *Section 15 would clarify that referring to and raising a juvenile in a manner consistent with the child's biological sex, including related mental health or medical decisions, would not by itself be considered abuse or neglect.*
- *Section 16 would clarify that charter schools are not state actors, subject to certain confirmations related to the Teachers' and State Employees' Retirement System.*

PART I. SEARCHES OF STUDENTS

CURRENT LAW: Article 27 of Chapter 115C of the General Statutes establishes requirements regarding student discipline for public school units. G.S. 115C-390.2 requires the governing bodies of public school units to adopt policies governing the conduct of students and establishing discipline procedures that are consistent with federal and State law.

BILL ANALYSIS: This section would require policies governing searches of students to be consistent with the provisions of Article 27 of Chapter 115C and the constitutions, statutes, and regulations of the United States and the State. It would require that all searches performed by school officials be executed using narrowly tailored methods that are as minimally intrusive as possible. It would also require that parents be notified when a search was performed on their child.

Each governing body would be required to adopt a policy that all searches of students be conducted in private by one school official and one adult witness who are the same sex as the student being searched.

This section would be effective when it becomes law and would apply beginning with the 2023-2024 school year.

BACKGROUND: The US Supreme Court has held that the Fourth Amendment prohibition on unreasonable searches and seizures applies to searches conducted by public school officials and developed a two-pronged reasonableness test to determine the legality of the search. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). For a search of a student by a school official to be legal, *T.L.O.* requires that searches be (i) justified at the inception (based on reasonable suspicion that the search will turn up evidence of a violation of a law or school rule) and (ii) permissible in scope (reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction).

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PART II: SCHOOL DISCIPLINE POLICY REQUIREMENTS

CURRENT LAW: Article 27 of Chapter 115C of the General Statutes establishes requirements regarding student discipline for public school units.

G.S. 115C-390.2 requires the governing bodies of public school units to adopt policies governing the conduct of students and establishing discipline procedures that are consistent with federal and State law.

G.S. 115C-390.2(f) requires the policies to restrict the use of long-term suspension or expulsion to address only serious violations of the unit's Code of Student Conduct. Under this statute, the following are not serious violations: (i) the use of inappropriate or disrespectful language, (ii) noncompliance with a staff directive, (iii) dress code violations, and (iv) minor physical altercations that do not involve weapons or injury. Principals may determine that aggravating circumstances exist that justify treating a violation as a serious violation.

G.S. 115C-390.2(k) encourages school officials to use a full range of responses to violations that do not remove a student from the classroom or school building.

BILL ANALYSIS: Section 2 would require governing bodies of public school units to use best practices when developing and enforcing discipline policies to avoid discriminating against students on the basis of race, ethnicity, national origin, gender, or disability.

The policies must include (i) the measures that will be taken to support a student during a suspension, including measures to mitigate learning loss and (ii) the procedures for in-school suspension. School officials would be encouraged to use in-school suspension instead of other punishment that would remove the student from the school building.

This section would also remove language in the statute providing examples of conduct that would not rise to the level of a serious violation of the governing body's Code of Student Conduct.

EFFECTIVE DATE: Section 2 would be effective when it becomes law and would apply beginning with the 2023-2024 school year.

PART III. STANDARD COURSE OF STUDY ADVISORY COMMISSION

CURRENT LAW: G.S. 115C-81.5 requires the State Board of Education (SBE) to adopt a standard course of study, providing, among other things, "a set of competencies, by grade level, for each curriculum area." G.S. 115C-12(9c) goes into more detail about the process the SBE must follow to develop content standards, including surveying parents, teachers, and the public, and ensuring the standards meet certain criteria.

Chapter 150B of the General Statutes is North Carolina's Administrative Procedure Act. Article 2A of Chapter 150B outlines the rulemaking process State agencies must follow.

BILL ANALYSIS: This section would establish the Standard Course of Study Advisory Commission (Commission) to involve stakeholders and make recommendations to the SBE regarding the standards and competencies of the standard course of study.

Commission Structure

The Commission would be located administratively within the Department of Public Instruction (DPI) but would exercise its powers independent of DPI.

The Commission would be made up of the following voting members:

- 12 members appointed by the General Assembly, including 6 recommended by the President Pro Tempore of the Senate and 6 recommended by the Speaker of the House of Representatives.

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- 6 members appointed by the Governor.
- Superintendent of Public Instruction or his or her designee.

The appointments by the General Assembly and the Governor would be subject to various categorical requirements.

Additionally, the following individuals, or their designees, would be nonvoting members:

- President of the North Carolina Community College System.
- President of The University of North Carolina.
- President of the North Carolina Chamber.

Members of the Commission would serve four-year terms that begin on July 1. No appointed member could serve more than 8 consecutive years. Vacancy appointments would be made by the General Assembly for the remainder of the term of office.

Commission Duties

The Commission would be required to do the following:

- Develop and recommend to the SBE the standard course of study in accordance with the following requirements:
 - Involve and survey parents, teachers, and the public to determine priorities and usefulness of standards.
 - Review available and relevant academic content standards that are rigorous, specific, sequenced, clear, focused, and measurable.
 - Ensure that the content standards for the core academic areas meet certain requirements.
 - Require high school course content standards to align with postsecondary knowledge and skills.
- Develop support materials to be made available to teachers and parents upon approval by the SBE.
- Provide recommendations as requested to the SBE related to alignment of State programs and support materials with the revised academic content standards for each core academic area.
- Report to the Joint Legislative Education Oversight Committee (JLEOC) and the SBE annually beginning December 1, 2024, on its activities during the preceding year, including any recommendations and findings regarding the process for revisions to the standard course of study.

Procedures for Adopting the Standard Course of Study

The standard course of study would be adopted using the following procedure:

- The Commission would be required to submit its recommendations that the SBE would be required to adopt (without making substantive changes) or reject.
- If the SBE rejects the recommendation, it would be required to state the reasons for rejection. The Commission could then amend the recommendation and resubmit it to the SBE for adoption (without substantive changes) or rejection.
- If the SBE rejects the original and amended recommendation by the Commission, the SBE could develop and adopt its own standard course of study, subject to review by the General Assembly.

Responsibilities of the SBE

The SBE would be required to develop and provide to the Commission a comprehensive plan to revise, on a regular basis, content standards and the standard course of study in the core academic areas of reading,

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writing, mathematics, science, history, geography, and civics. The plan must clearly designate by year the subjects for review by the Commission.

The SBE, in consultation with the Commission, would be required to develop and implement an ongoing process to align State programs and support materials with the revised academic content standards for each core academic area on a regular basis.

The SBE would be required to work with the Board of Governors of The University of North Carolina to ensure that teacher and school administrator degree programs, professional development, and other university activity in the State's public schools align with the SBE's priorities.

Review of the Standard Course of Study Developed by the SBE

If the SBE develops and adopts its own standard course of study after rejecting the Commissions' original and amended recommendations, the SBE would be required to submit a report of the proposed changes to JLEOC prior to implementation.

Changes that have been submitted to JLEOC could be implemented following the 31st legislative day after the SBE submits the change to JLEOC, except in the following situations:

- If a bill that specifically disapproves of the change is introduced in either house of the General Assembly by the 31st legislative day following the submission of the change to JLEOC, the change would become effective on the earlier of:
 - The day an unfavorable final action is taken on the bill.
 - The day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rules.
- If a bill that specifically disapproves of the change is enacted into law before the change becomes effective, the change could not be implemented.

Other Provisions

This section would exempt the standard course of study from the rulemaking requirements under Chapter 150B of the General Statutes.

Initial appointments to the Commission would be for terms beginning August 1, 2023, and would be divided between two-year and four-year terms so as to stagger future terms.

The Commission would be required to review the social studies standard course of study during the 2023-2024 school year and provide recommendations to the SBE no later than January 1, 2025.

This section would be effective when it becomes law and would apply to all standard courses of study implemented on or after that date.

PART IV: STUDENT REASSIGNMENT

CURRENT LAW: Article 25 of Chapter 115C provides for assignment of students in local school administrative units (LEAs). Students are assigned by local boards of education to a school in the LEA in which they are domiciled. Under certain exceptions, students may attend or be assigned to a school in another LEA. A parent may apply to have their child reassigned to another school in the LEA and is entitled to a hearing on the reassignment before the local board. The local board must consider a number of factors in making the final determination on reassignment, including the best interest of the child, the orderly and efficient administration of the public schools, the proper administration of the school to which reassignment is requested and the instruction, health, and safety of the pupils at that school. The local board's decision is final, but may be appealed to superior court.

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BILL ANALYSIS: Section 4 would change the standard for reassignment requests. A parent could request reassignment of the student to another school in that LEA or another LEA. The request would be required to be granted unless one of the following applied:

- The school was at capacity for that grade level.
- The student did not meet eligibility criteria for enrollment.
- The student was currently suspended or expelled from school.
- The reassignment was for athletic purposes in violation for interscholastic athletic rules.
- The reassignment would violate a court order.
- The student had already been reassigned twice that year.
- The reassignment would violate the student's individualized education program.

A student reassigned in this manner would not be guaranteed transportation to the new school, and would not be required to pay tuition at the new school. If a student attended school in another LEA, the per pupil share of the local current expense fund for that child would be sent to that LEA.

EFFECTIVE DATE: This section would become effective when it becomes law, and would apply to applications for reassignment submitted on or after that date.

PART V: SCHOOL HEALTH EDUCATION

CURRENT LAW: The State Board of Education (SBE) is required to (i) supervise the development and operation of the statewide comprehensive school health education program, including curriculum development; (ii) adopt objectives for the instruction of subject areas that are appropriate for each grade level; and (iii) approve textbooks and other materials incorporating the objectives that local school administrative units (LEAs) can purchase with State funds. The health education program includes age-appropriate instruction in various subject areas including growth and development, preventing sexually transmitted diseases, and reproductive health and safety education.

Each LEA must provide a reproductive health and safety education program beginning in the 7th grade and materials used for instruction must be age-appropriate. The instruction must include various information including teaching abstinence from sexual activity outside of marriage is the expected standard for all school-age children. Every school year, before students can participate in certain programs, including the reproductive health and safety education program, the parents of the students must be given an opportunity to review the objectives and materials and must be given the opportunity to consent or withhold their consent to their student's participation in the programs.

Each LEA must provide a comprehensive school health education program that meets the objectives established by the SBE and LEAs are allowed to expand on the subject areas to be included in the program and on the instructional objectives to be met.

BILL ANALYSIS:

Fourth and Fifth Grade Instruction. Section 5 directs each public school unit to provide a human growth and development program in grades four and five with age-appropriate materials. Information on gender identity, sexual activity, or sexuality cannot be provided. Information provided must be objective and based upon peer reviewed scientific research. The human growth and development program must do the following:

- 4th Grade: Students must be instructed in single sex student groups. Biological changes during puberty shall be summarized and students informed that individuals experience puberty at different rates.
- 5th Grade: Students must be instructed in single sex student groups with the following information provided:

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- Puberty is characterized by the secondary sex characteristics and onset of reproductive capacity.
- How to differentiate between accurate and inaccurate sources of information about puberty and development.
- Functions of the male and female reproductive systems.
- How societal influences can impact reproductive health behavioral choices and consequences.
- Normal weight gain and body changes during puberty.

No further expansions of these subject areas are allowed.

Each governing board of a public school unit must adopt a policy and provide a mechanism to allow parents to opt their children in or out of this instruction with notice provided on the public school unit's website and directly to parents in written and electronic form at the beginning of 4th and 5th grade and again at least 14 days prior to teaching the human growth and development program. The notice to the parents must include the following:

- A detailed description of the program's objectives, including any topics that the governing board determines that a reasonable parent in that community may wish to examine.
- All written and audio materials that will be used.
- The ways that a parent may review the objectives and materials of the program, including links to access the program repository.
- The option and process to opt the child in or out of the instruction or parts of the instruction.

Seventh Grade Instruction. Each governing board of a public school unit must adopt a policy to allow parents to opt their children in or out of reproductive health and safety education. Notice must be provided on the unit's website and directly to parents in written and electronic form at the beginning of 7th grade and again at least 14 days prior to teaching any of the following:

- Sexually transmitted diseases including how they are transmitted and the effectiveness and safety of federal Food and Drug Administration (FDA) approved methods of risk reduction and information on local resources for testing and medical care.
- Effectiveness and safety of FDA approved contraceptive methods in preventing pregnancy.
- Awareness of sexual assault, sexual abuse, and risk reduction including resources and reporting procedures.
- Sex trafficking prevention and awareness.
- A program that pertains to or is intended to impart information or promote discussion or understanding about the prevention of sexually transmitted diseases, including HIV/AIDS, or to the avoidance of out-of-wedlock pregnancy,
- A reproductive health and safety education program, whether developed by the State or by the governing body of the public school unit.

No further expansions of these subject areas are allowed. The notice to the parents must include the following:

- A detailed description of the program's objectives, including the following any topics that the governing board determines that a reasonable parent in that community may wish to examine.
- All written and audio materials that will be used.
- The ways that a parent may review the objectives and materials of the program, including links to access the program repository.
- The option and process to opt the child in or out of the instruction or parts of the instruction.

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The requirements of this section would apply to local school administrative units, charter schools, regional schools, and The University of North Carolina Laboratory Schools.

SECTION VI: INSTRUCTIONAL MATERIALS

CURRENT LAW: Part 3 of Article 8 of Chapter 115C provides for selection of instructional materials. Local boards of education (local boards) have authority to select and adopt textbooks and supplemental instructional materials for use within the local school administrative unit (LEA). Local boards may establish community media advisory committees to investigate and evaluate challenges to textbooks and supplementary instructional materials on the grounds that are educationally unsuitable, pervasively vulgar, or inappropriate to the age, maturity, or grade level of students.

G.S. 115C-81.30 allows parents the opportunity to review objectives and materials before students participate in a program that includes information on sexually transmitted diseases, avoidance of out-of-wedlock pregnancy, or reproductive health and safety programs.

Bill Analysis: Section 6 would make the following changes to the textbook statutes:

- Apply requirements for adoption of textbooks and other supplemental materials to all public school units.
- Require public hearings with notice to parents and opportunity to review proposed changes before adoption or modification of any health and safety instructional materials, including material related to reproductive health and safety, mental and emotional health, growth and development, and anti-bullying or anti-harassment.
- Require a new process for adoption of library books that includes establishment of certain minimum criteria for selection, a recommendation review process that designates the appropriate level of student content access for each item and the opportunity for parental review, and a requirement that books under consideration that receive ten letters of objections be reviewed and considered by the governing body prior to selection. The same criteria would also be applied to books available at book fairs.
- Require the creation of an instructional materials repository within the public school unit that provides in-person access to all current instructional and supplemental materials selected by the governing body for parental review.
- Require a detailed syllabus for each course be posted on a school's website prior to the start of the semester that details a summary of the course content and the instructional and supplemental materials that will be used.

SECTION VII: CLARIFY DEFENSES FOR MATERIAL HARMFUL TO MINORS

CURRENT LAW: G.S. 14-190.13 defines "harmful to minors" as the quality of any material (defined as a picture, drawing, video recording, film, or other visual depiction or representation not consisting entirely of written words) or performance that depicts sexually explicit nudity or sexual activity that, taken as a whole, has the following characteristics:

- When applying the contemporary community standards, the average adult would find that it has a predominant tendency to appeal to the prurient interest of minors in sex.
- When applying the contemporary community standards, the average adult would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors.
- The material or performance lacks serious literary, artistic, political, or scientific value for minors.

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G.S. 14-190.15 makes it a Class 1 misdemeanor to disseminate material harmful to minors by selling, furnishing, presenting, or distributing the material to a minor or allowing a minor to review or peruse the material. It is also a Class 1 misdemeanor to exhibit a harmful live performance to a minor. It is an affirmative defense to a prosecution of these offenses if the defendant is a parent or legal guardian of the minor, a school, church, museum, public library, governmental agency, medical clinic, or hospital carrying out its legitimate function, or an employee or agent of such an organization carrying out an employment duty.

BILL ANALYSIS: Section 7 would remove schools and public libraries from the list of organizations that have an affirmative defense to the offenses of disseminating harmful material to a minor and exhibiting a harmful performance to a minor. Employees or agents of schools and public libraries would also no longer have an affirmative defense to the offenses.

PART VIII. PUBLIC LIBRARY ACCESS FOR MINORS

CURRENT LAW: Chapter 125 of the General Statutes establishes requirements for public libraries. Library records, with some exceptions, are confidential.

BILL ANALYSIS: Section 8 would create an exception to library record confidentiality to allow parents to access the library records of their child. It would also require public libraries to do the following:

- Keep material harmful to minors in an age-restricted portion of the library inaccessible to minors.
- Lend books to minors only with written prior consent of the minor's parents, which could be demonstrated by consent to receive a minor's library card.

PART IX: MENTAL HEALTH CARE OF MINORS

CURRENT LAW: Article 1A of Chapter 90 governs treatment of minors. Minors may consent to medical health services for the prevention, diagnosis, and treatment of certain medical conditions, substance abuse, and emotional disturbances. The physician is not allowed to notify the parents without the permission of the minor concerning those medical services unless the physician determines notification is essential to the life or health of the minor. If a parent contacts the physician concerning the treatment or medical services being provided to the minor, the physician may give information.

Health care practitioners and physicians are required to report suspected abuse and neglect to the department of social services.

BILL ANALYSIS: Section 9 would repeal the current authority for minors to consent to treatment for emotional disturbances, and instead allow minors to consent to treatment for mental health if the minor believed they were a danger to themselves or to others. Parents would then be notified unless the physician believed the minor was abused or neglected, in which case the department of social services would be notified.

Section 9 would also authorize health care practitioners and physicians to examine minors without parental consent when there is a reasonable belief that the examination will reveal evidence of reportable abuse or neglect.

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PART X: REMEDIES FOR VIOLATIONS

CURRENT LAW: Appeals can be made to the local board of education from final administrative decisions in the following matters:

- Student discipline.
- Alleged violations of specified federal law, State law, State Board of Education policy, State rule, or local board policy, including policies regarding grade retention of students.
- The terms or conditions of employment or employment status of a school employee.
- Any other decision that by statute specifically provides for a right of appeal to the local board of education and for which there is no other statutory appeal process.

If the appeal is for another matter, a person has the right to appeal to the superintendent and then to the local board of education for a hearing. The local board of education may grant a hearing regarding any final decision of school personnel. Hearing panels may be designated and must be composed of not less than two members of the board to hear and act upon the appeal on behalf of the entire board of education. Appeals of right for student discipline, violations of federal law, State law or rule, SBE policy, or local board policy and other decisions that provide for a right of appeal can be further appealed to the superior court. The basis for the right to appeal to superior court is that the local board's decision is in violation of constitutional provisions, is in excess of the authority or jurisdiction of the local board, is made upon unlawful procedure, is affected by other error of law, is unsupported by substantial evidence in view of the entire record, or is arbitrary and capricious.

BILL ANALYSIS: Section 10 would allow a parent to bring an appeal of right before a local board of education that can be further appealed to superior court for any knowing violation of the fundamental right to parent. The fundamental right to parent is the liberty of a parent to direct the upbringing, education, health care, and mental health of the parent's child. Local boards cannot substantially burden the fundamental right to parent without showing that the burden is required by a compelling governmental interest as applied to the parent and the child and is the least restrictive means of furthering that compelling interest.

Parents who successfully appeal the violation of the fundamental right to parent in superior court are entitled to recover the following:

- Declaratory relief.
- Injunctive relief.
- Damages of a minimum of \$5,000.
- Reasonable attorneys' fees and costs.
- Any other appropriate relief.

Governmental and qualified immunities to suit and from liability are waived and abolished to the extent of liability created by the subsection.

EFFECTIVE DATE: This section would become effective when it becomes law and would apply to violations occurring on or after that date.

PART XI: SUPERINTENDENT CONTRACTS

CURRENT LAW: Local boards of education have the sole discretion to elect superintendents for their local school administrative units, however the SBE must adopt the qualifications for superintendents including credentials, education prerequisites, and relevant experience requirements. Generally,

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superintendents must be elected under a written contract of employment for a term of no more than 4 years. Local boards can terminate a superintendent's contract before the contract term of employment has expired if the following conditions are met: (i) no State funds are used for this purpose; (ii) certain local funds are not used for the purpose; (iii) the local board makes public the funds that are to be used for the termination of the contract; (iv) the local board notifies the SBE of the funds that will be used; and (v) no donated funds are used unless raised specifically for this purpose or for funds donated by private for-profit corporations.

The SBE can revoke or refuse to renew a professional educator's license when the educator is employed in a low-performing school (as identified by the statutes) and the assistance team assigned to school recommends that the educator's license be revoked or not renewed for a reason established by the SBE in its license suspension and revocation rules.

BILL ANALYSIS: Section 11 would provide that a contract for a superintendent is void unless it contains the following terms:

- Receipt of five affidavits for violations of the fundamental right to parent may be grounds for termination of the contract. No additional funds beyond the salary for actual days of employment can be paid to the superintendent if a contract is terminated on those grounds.
- Receipt of five affidavits for violations of the fundamental right to parent must result in an automatic reduction of pay of the superintendent's salary in an amount equal to the State funds provided for that salary, if the superintendent's contract is not terminated.

Section 11 would allow parents to file affidavits with the local board of education that contain the name of the superintendent and a copy of the court orders in a final claim for violation of the fundamental right to parent that occurred while the superintendent was employed by the local board of education. Upon receipt of five such affidavits, the local board may terminate the superintendent's contract. If the contract is not terminated, then the superintendent's salary must be reduced as described above for the remainder of the term of the contract, effective within 30 days of the submission of the fifth affidavit. The reduction of salary or termination of contract must be reported to the SBE within 30 days for discretionary revocation of the superintendent's professional educator's license.

Section 11 would also allow the SBE to revoke or refuse to renew a professional educator's license if the superintendent's contract has been terminated or the salary reduced because of five affidavits for violations of the fundamental right to parent.

EFFECTIVE DATE: The requirements related to superintendent contracts apply to all new and renewed contracts entered into on or after the effective date of this act.

PART XII: REQUIRE PARENTAL CONSENT FOR EXTRACURRICULAR ACTIVITIES

CURRENT LAW: Local boards of education are required to establish rules and regulations for extracurricular activities.

BILL ANALYSIS: Section 12 would require that those rules and regulations include a requirement that parents consent to a student's participation in any extracurricular activity.

EFFECTIVE DATE: This section is effective January 1, 2024.

PART XIII: PARENTAL CONSENT FOR HEALTH QUESTIONNAIRES IN ALL GRADES

CURRENT LAW: Local boards of education must annually provide parents notice of rights regarding parental records and opt-out opportunities in state and federal law.

BILL ANALYSIS: Section 13 would require local boards to notify parents of any student well-being questionnaires or health screening forms, and the means for the parents to consent to the use of the questionnaire or form for their child.

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EFFECTIVE DATE: This section would become effective when it becomes law, and notice for the 2023-2024 school year would be provided within 60 days of the effective date.

PART XIV: INFORMATION FOR PARENTS ON MENTAL HEALTH CONCERNS

BILL ANALYSIS: Section 14 would require licensed school personnel to do the following:

- Notify parents if, through direct contact, the personnel has reason to believe that the child is at imminent risk of suicide or is self-identifying as a gender different than the student's biological sex.
- If the personnel believes that disclosure would result in the child becoming abused or neglected, the personnel would instead report to the division of social services.

The Department of Public Instruction would be required to establish guidelines for personnel for the required assessment and identification of students and considerations for parental contact.

EFFECTIVE DATE: This section would become effective when it becomes law and would apply beginning with the 2024-2025 school year. The Department of Public Instruction would be required to establish guidelines by December 15, 2023, report on those to the Joint Legislative Education Oversight Committee by December 31, 2023, and provide the guidelines to schools by February 1, 2024.

PART XV. CLARIFY DEFINITION OF ABUSED OR NEGLECTED JUVENILE

CURRENT LAW: Subchapter I of Chapter 7B of the General Statutes (Juvenile Code) deals with abuse, neglect, and dependency of juveniles. G.S. 7B-101(1) defines an abused juvenile as any juvenile under 18 years of age who is found to be a minor victim of human trafficking or whose parent, guardian, custodian, or caretaker engages in certain conduct, such as inflicting a serious physical injury, other than by accidental means, or creating serious emotional damage.

G.S. 7B-101(15) defines a neglected juvenile as any juvenile under 18 years of age who is found to be a minor victim of human trafficking or whose parent, guardian, custodian, or caretaker engages in certain actions or inaction, such as not providing proper care, supervision, or discipline or not providing or arranging for the provision of necessary medical or remedial care.

BILL ANALYSIS: This section would clarify that referring to and raising a juvenile in a manner consistent with the child's biological sex, including related mental health or medical decisions, would not by itself be considered abuse or neglect.

PART XVI. CHARTER SCHOOLS NOT STATE ACTORS

CURRENT LAW: G.S. 115C-218.15 states that a charter school "shall be a public school within the local school administrative unit in which it is located." Additionally, a charter school must be operated by a private nonprofit corporation with federal tax-exempt status within 24 months following final application approval.

G.S. 115C-218.10 exempts charter schools from statutes and rules applicable to local boards of education or local school administrative units except as provided in Article 14A of the General Statutes.

G.S. 115C-218.20(b) exempts the State Board of Education, the Superintendent of Public Instruction, or any of their members or employees from any civil liability related to acts or omissions of the charter school.

115C-218.105(b) states that debts incurred or created by a charter school cannot constitute indebtedness of the State or its political subdivisions, and cannot involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions, which must be reflected in all contracts and leases into which a charter school enters.

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BILL ANALYSIS: This section would expressly state that actions of a charter school are to be considered actions of the private nonprofit corporation operating the charter school and not of a state actor. The State Treasurer would be required to seek a private letter ruling from the Internal Revenue Service (IRS) to determine if this provision would jeopardize the status of charter schools in the Teachers' and State Employees' Retirement System (TSERS). This section would be effective 30 days after receipt of a private letter ruling from the IRS providing that the changes in law would not jeopardize charter schools' status in TSERS.

BACKGROUND: In *Peltier v. Charter Day School, Inc.*, 37 F.4th 104 (4th Cir. 2022), the Fourth Circuit Court of Appeals held that for the purposes of the Equal Protection Clause of the 14th Amendment, charter schools in North Carolina are state actors. According to the Fourth Circuit, "[w]hen the function at issue has been 'traditionally the *exclusive* prerogative' of the state, a private entity executing that function has engaged in state action." *Id.* at 116. The Fourth Circuit held that the State of North Carolina "has delegated to charter school operators like [Charter Day School] part of the state's constitutional duty to provide free, universal elementary and secondary education" and therefore any actions taken by charter schools in carrying out those duties are considered state actions. *Id.* at 118. The following features of North Carolina's statutory structure related to charter schools were cited in the court's decision:

- Charter schools can only operate under authority granted by the State Board of Education, which provides continuing oversight of the charter schools.
- Charter schools must meet performance standards adopted by the State Board of Education.
- The State can revoke a school's charter.
- Enrollment is open to any student eligible to attend a public school in North Carolina.
- State law expressly provides that charter schools are public schools.
- Charter schools receive per-pupil funding from the State based on the amount provided for students attending traditional public schools.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.