

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 883
HOUSE BILL 888

AN ACT TO ESTABLISH AN ORDERLY SYSTEM OF EMPLOYMENT AND
DISMISSAL OF PUBLIC SCHOOL PERSONNEL.

The General Assembly of North Carolina enacts:

Section 1. Article 17 of Chapter 115 of the General Statutes is hereby amended by repealing G.S. 115-67, G.S. 115-144 and G.S. 115-145 and by amending G.S. 115-142 to read as follows:

"§ 115-142. **System of employment for public school teachers.** — (a) Definition of Terms.

As used in this section unless the context requires otherwise:

- (1) 'Administrator' includes any teacher the majority of whose employed time is devoted to service as a supervisor, principal, or director of a department or the equivalent in a public school system but shall not include the superintendent, associate superintendent, assistant superintendent of any public school system or any substitute or temporary teacher employed by a public school system.
- (2) 'Board' means a city or county board of education.
- (3) 'Committee' means the Professional Review Committee created under G.S. 115-442(g).
- (4) 'Demote' means to reduce compensation or to transfer to a position carrying a lower salary.
- (5) 'Career teacher' means any teacher who has been regularly employed by a public school system for a period of not less than three successive years and who has been reemployed by a majority vote of the board of such public school system for the next succeeding school year.
- (6) 'Probationary teacher' means any teacher employed by a public school system who is not a career teacher.
- (7) 'Substitute teacher' means any teacher who is employed to take the place of a probationary or career teacher who is temporarily absent.
- (8) 'Superintendent' means the superintendent of schools of a public school system or, in his absence, the person designated to fulfill his functions.
- (9) 'Teacher' means any person who holds at least a 'Class A certificate' as provided in G.S. 115-153 or any other regular vocational or rehabilitation teaching certificate issued by the State Department of Public Instruction.
- (10) 'Temporary teacher' means a teacher employed to fill a position designated as temporary or experimental or to fill a vacancy which occurs after the opening of school because of the death, disability, retirement, resignation, or dismissal of a career or probationary teacher.

(b) Record of complaints, commendations and suggestions. There shall be maintained in the office of the superintendent a file of any complaints against, commendations of or written suggestions for corrections and improvements made to each teacher by the administration. The complaints, commendations and suggestions shall be signed by the person making the complaint, commendation or suggestion and shall be placed in each teacher's personnel file

only after reasonable notice to the teacher. Any denial or explanation relating to such complaint, commendation or suggestion which the teacher desires to make shall be placed in the file. The personnel file shall be open for inspection by such teacher at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board shall adopt.

(c) Election of career teachers. After a teacher has been employed by the same public school system in this State for a period of three consecutive years, the board of that system is required to vote upon that teacher's employment for the next succeeding year. If a majority of the board votes to reemploy the teacher, he or she becomes a career teacher. If a majority of the board votes against reemployment of the teacher, the teacher remains a probationary teacher whose rights are set forth in G.S. 115-142(M)(2). If the board fails to vote, but reemploys the teacher for the next successive year, then the teacher automatically becomes a career teacher. All teachers employed by a public school system of this State at the time this act takes effect who, at the end of the last school year, will either have been employed by that school system (or a successor system if the system has been consolidated) for a total of four consecutive years or will have been employed by a public school system of this State for a total of five consecutive years shall automatically be career teachers if employed for a second year following the effective date of this act. All other teachers employed by a public school system of this State at the time this act takes effect shall be probationary teachers.

In the event that a career teacher is employed in another school system in this State, he shall not be subject to another probationary period of more than two years, and may at the option of the board immediately receive career teacher status. In any event, if such teacher is employed for a third consecutive year, he or she shall automatically become a career teacher.

(d) Career teachers.

- (1) A career teacher shall not be subjected to the requirement of annual appointment nor shall he or she be dismissed, demoted, or employed on a part-time basis without his or her consent except as provided in subsection (e).
- (2) No career teacher who has served as an administrator in a particular position for a period of three successive years in a public school system shall be transferred to a lower paying position as an administrator or to a lower paying non-administrative position without his consent except for the reasons for which a career teacher may be dismissed or demoted as provided in subsection (e) and in accordance with the procedures set forth in G.S. 115-142(h)-(l) pursuant to which a career teacher may be dismissed.

(e) Grounds for dismissal or demotion of a career teacher.

- (1) No career teacher shall be dismissed or demoted except for:
 - a. inadequate performance;
 - b. immorality;
 - c. insubordination;
 - d. neglect of duty;
 - e. physical or mental incapacity;
 - f. habitual and excessive use of alcoholic beverages or narcotic drugs;
 - g. conviction of a felony or a crime involving moral turpitude;
 - h. advocating the overthrow of the Government of the United States or of the State of North Carolina by force, violence, or other unlawful means;
 - i. failure to fulfill the duties and responsibilities imposed upon teachers by the General Statutes of this State;
 - j. failure to comply with such reasonable requirements as the board may prescribe;

- k any cause which constitutes grounds for the revocation of such career teacher's teaching certificate; or
 - l. a justifiable decrease in the number of positions due to district reorganization or decreased enrollment, provided that subdivision (2) is complied with.
- (2) When a career teacher is dismissed pursuant to G.S. 115-142(e)(1)l. above, his or her name shall be placed on a list of available teachers to be maintained by the board. Career teachers whose names are placed on such a list shall have a priority on all positions for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal.
 - (3) In determining whether the professional performance of a career teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing school system and to any published standards of performance which shall have been adopted by the board. Failure to notify a career teacher of an inadequacy in his or her performance shall be conclusive evidence of satisfactory performance
 - (4) Dismissal under subdivision (1) above, except paragraph g. thereof, shall not be based on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal is mailed to the teacher.
- (f) Suspension and reinstatement. Whenever a board has reason to believe that cause exists for the dismissal of a teacher on any ground specified in paragraphs. b. to h. of subsection (1) of subsection (e) above and when it is of the opinion that immediate suspension of the teacher is necessary for the best interest of the school system, the board may by resolution suspend a teacher from his position without notice and without hearing. However, within five days after such suspension becomes effective, procedures shall be commenced for the dismissal of the teacher pursuant to the provisions of G.S. 115-142(h)-(1). In the event that it is ultimately determined that grounds do not exist for dismissal of the teacher, the teacher shall be reinstated immediately to his or her position and shall be paid for the period of suspension.
- (g) Professional Review Committee; qualifications; term; vacancy; training
- (1) There is hereby created a Professional Review Committee which shall consist of 121 citizens, eleven from each of the State's Congressional Districts five of whom shall be lay persons and six of whom shall have been actively and continuously engaged in teaching or in supervision or administration of schools in this State for the five years preceding their appointment and who are broadly representative of the profession, to be appointed by the Superintendent of Public Instruction with the advice and consent of the State Board of Education. Each member shall be appointed for a term of three years except that the first appointments shall be made as follows: 40 members to serve for a one-year term; 40 members to serve a two-year term, and 41 members to serve a three-year term. The Superintendent of Public Instruction with the advice and consent of the State Board of Education, shall fill any vacancy which may occur in the Committee. The person appointed to fill a vacancy shall serve for the unexpired portion of the term of the member of the committee whom he is appointed to replace.
 - (2) The Superintendent of Public Instruction shall provide for the committee such training as he considers necessary or desirable for the purpose of

- enabling the members of the committee to perform the functions required of them.
- (3) The compensation of committee members while serving as a member of a hearing panel shall be as for State Boards and Commissions pursuant to G.S.138-5.
- (h) Procedure for dismissal or demotion of career teacher.
- (1) A board may dismiss or demote a career teacher only upon the recommendation of the superintendent.
 - (2) At least 20 days before recommending to a board the dismissal or demotion of the career teacher, the superintendent shall give written notice to the career teacher by certified mail of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal is justified. The notice shall include a statement to the effect that if the teacher within 15 days after the date of receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by a panel of the 1399 committee. A copy of G.S. 115-142 and a current list of the members of the Professional Review Committee shall also be sent to the career teacher.
 - (3) Within the 15-day period after receipt of the notice, a career teacher may file with the superintendent a request in writing for review of the superintendent's proposed recommendation by a panel of the committee. If no request is made within that period, the superintendent may file his recommendation with the board. The board, if it sees fit, may by resolution dismiss such teacher. If a request for review is made, the superintendent shall not file his recommendation for dismissal with the board until a report of a panel of the committee is filed with the superintendent.
 - (4) If a request for review is made, the superintendent, within five days of filing such request for review, shall notify the Superintendent of Public Instruction who, within 10 days from the time of receipt of such notice, shall designate a panel of five members of the committee (at least two of whom shall be lay persons) who shall not be employed in or be residents of the county in which the request for review is made, to review the proposed recommendations of the superintendent for the purpose of determining whether in its opinion the grounds for the recommendation are true and substantiated. The teacher or principal making the request for review shall have the right to require that at least two members of the panel shall be members of his professional peer group.
- (i) Investigation by panel of Professional Review Committee; report; action of superintendent; review by board.
- (1) The career teacher and superintendent will each have the right to designate not more than forty of the 121 members of the Professional Review Committee as not acceptable to the teacher or superintendent respectively. No person so designated shall be appointed to the panel. The career teacher shall specify those committee members who are not acceptable in his request for a review of the superintendent's proposed recommendations provided for in subsection (h)(3) above. The superintendent's notice to the Superintendent of Public Instruction provided for in subsection (h)(4) above shall contain a list of those members of the committee not acceptable to the superintendent and the teacher respectively. Failure to designate non-acceptable members in accordance with this subsection shall constitute a waiver of that right.

- (2) As soon as possible after the time of its designation, the panel shall elect a chairman and shall conduct such investigation as it may consider necessary for the purpose of determining whether the grounds for the recommendation are true and substantiated. The panel shall be furnished assistance reasonably required to conduct its investigation and shall be empowered to subpoena and swear witnesses and to require them to give testimony and to produce books and papers relevant to its investigation.
 - (3) The career teacher and superintendent involved shall each have the right to meet with the panel accompanied by counsel or other person of his choice and to present any evidence and arguments which he considers pertinent to the considerations of the panel and to cross-examine witnesses.
 - (4) When the panel has completed its investigation, it shall prepare a written report and send it to the superintendent. The report shall contain an outline of the scope of its investigation and its finding as to whether or not the grounds for the recommendation of the superintendent are true and substantiated. The panel shall complete its investigation and prepare the report within 30 days from the time of its designation, except in cases in which the panel finds that justice requires that a greater time be spent in connection with the investigation and the preparation of such report, and reports that finding to the superintendent and the teacher, provided that such extension does not exceed 60 days.
 - (5) Within 30 days after the superintendent receives the report of the panel, he shall submit his written recommendation for dismissal to the board or shall drop the charges against the teacher. His recommendation shall state the grounds for the recommendation and shall be accompanied by a copy of the report of the panel of the committee.
 - (6) Within 10 days after the receipt of the recommendation of the superintendent and before any formal action is taken, the board shall notify the career teacher by certified mail and furnish to him a copy of the recommendation and of the report of the panel of the committee. If the career teacher is unwilling to abide by the superintendent's recommendation, within 10 days from the date of receipt of the notice he shall notify the board which shall set a time and place for a hearing. The career teacher shall be given at least 10 days' notice of the time and place of the hearing. If the teacher does not notify the board of his unwillingness to abide by the recommendation, the board, if it sees fit, may by resolution dismiss the teacher.
- (j) Hearing procedure. The following provisions shall be applicable to any hearing conducted pursuant to G.S. 115-142 (k) or (l).
- (1) The hearing shall be private unless the career teacher or the superintendent requests a public hearing.
 - (2) The hearing shall be conducted in accordance with such reasonable rules and regulations as the board may adopt consistent with G.S. 115-142, or if no rules have been adopted, in accordance with reasonable rules and regulations adopted by the State Board of Education to govern such hearings.
 - (3) At the hearing the career teacher shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in G.S. 115-142 have been followed.
- (k) Panel finds grounds for superintendent's recommendation true and substantiated.

- (1) If the panel found that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall consider the recommendation of the superintendent, the report of the panel, including any minority report, and any evidence which the teacher may wish to present with respect to the question of whether the grounds for the recommendation are true and substantiated. The hearing may be conducted in an informal manner.
 - (2) If, after considering the recommendation of the superintendent, the report of the panel and the evidence adduced at the hearing, the board concludes that the grounds for the recommendation are true and substantiated, the board, if it sees fit, may by resolution order such dismissal.
- (l) Panel does not find that the grounds for superintendent's recommendation are true and substantiated.
- (1) If the panel does not find that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall determine whether the grounds for the recommendation of the superintendent are true and substantiated upon the basis of competent evidence adduced at the hearing by witnesses who shall testify under oath or affirmation to be administered by any board member or the secretary of the board.
 - (2) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant competent evidence to be received therein. The report of the panel of the committee shall be deemed to be competent evidence. A full record shall be kept of all evidence taken or offered at such hearing. Both counsel for the system and the career teacher or his counsel shall have the right to cross-examine witnesses.
 - (3) At the request of either the superintendent or the career teacher, the board shall subpoena any witness residing within the State to appear at the hearing and testify. Subpoenas for witnesses to testify at the hearing in support of the recommendation of the superintendent or on behalf of the career teacher shall, as requested, be issued in blank by the board over the signature of its chairman or secretary. The witnesses shall be entitled to receive the same mileage and per diem as witnesses called in civil cases in the State, but the board shall not be accountable for the witness fees of more than 10 witnesses subpoenaed on behalf of the career teacher.
 - (4) At the conclusion of the hearing provided in this section, the board shall render its decision on the evidence submitted at such hearing and not otherwise.
 - (5) The findings and the order of the board following the hearing shall be in writing and a copy shall be served upon the career teacher. A record of the proceedings shall be made available without charge for the use of the career teacher in the event he wishes to appeal to the superior court.
- (m) Probationary teacher.
- (1) The board of any public school system may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career teacher may be dismissed as set forth in subsections (e) and (h)-(l) above.
 - (2) The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient; provided, however, that

the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.

(n) Appeal. Any teacher who has been terminated by action of the board after a hearing pursuant to subsections (k) or (l) shall have the right to appeal from the decision of the board to the Superior Court for the judicial district in which the teacher is employed. The appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be borne by the board.

(o) Resignation. No teacher may resign without the consent of the board except upon 45 days' notice. Provided, however, that giving notice of resignation within 45 days preceding the beginning of the school year shall constitute grounds for the revocation of a teacher's certificate for the remainder of that calendar year or school year, in the discretion of the State Board of Education."

Sec. 2 This act shall be in full force and effect on July 1, 1972.

In the General Assembly read three times and ratified, this the 16th day of July, 1971.