

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 770
HOUSE BILL 1400

AN ACT TO CLARIFY THE PROVISIONS OF THE FAIR EMPLOYMENT AND
DISMISSAL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-325(a)(3) is rewritten to read:

"(3) 'Day' means calendar day. In computing any period of time, Rule 6 of the North Carolina Rules of Civil Procedure shall apply."

Sec. 2. G.S. 115C-325(a)(4) is amended by deleting the number "30" and substituting the number "60" in the first sentence.

Sec. 3. The second, third and fourth sentences of G.S. 115C-325(c)(1) are rewritten to read:

"The board shall give him written notice of that decision by June 1 of his third year of employment. If a majority of the board votes to reemploy the teacher, and if it has notified him of the decision, it may not rescind that action but must proceed under the provisions of this section for the demotion or dismissal of a teacher if it decides to terminate his employment."

Sec. 4. G.S. 115C-325(d)(2) is rewritten to read:

"(2) Whether or not he has previously attained career status as a teacher, a person who has performed the duties of a principal in the school system for three consecutive years or has performed the duties of a supervisor in the school system for three consecutive years shall not be transferred from that position to a lower paying administrative position or to a lower paying nonadministrative position without his consent except for the reasons given in G.S. 115C-325(e)(1) and in accordance with the provisions for the dismissal of a career teacher set out in this section. Transfer of a principal or a supervisor is not a transfer to a lower paying position if the principal's or supervisor's salary is maintained at the previous salary amount.

When a teacher has performed the duties of supervisor or principal for three consecutive years, the board, near the end of the third year, shall vote upon his employment for the next school year. The board shall give him written notice of that decision by June 1 of his third year of employment as a supervisor or principal. If a majority of the board votes to reemploy the teacher as a principal or supervisor, and it has notified him of that decision, it may not rescind that action but must proceed under the provisions of this section. If a majority of the board votes not to reemploy the teacher as a principal or supervisor, he shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal. A supervisor or principal who has not held that position for three years and whose contract will not be

renewed for the next school year shall be notified by June 1 and shall retain career status as a teacher if that status was attained prior to assuming the duties of supervisor or principal."

Sec. 5. G.S. 115C-325(e)(2) is rewritten to read:

"(2) Before recommending to a board the dismissal or demotion of the career teacher pursuant to G.S. 115C-325(e)(1)l., 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 receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by the board. Within the 15-day period after receipt of the notice, the career teacher may file with the superintendent a written request for a hearing before the board within 10 days. If the teacher requests a hearing before the board, the hearing procedures provided in G.S. 115C-325(j) shall be followed. If no request is made within the 15-day period, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if there is one, the board concludes that the grounds for the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such dismissal. Provisions of this section which permit appointment of, and investigation and review by, a panel of the Professional Review Committee shall not apply to a dismissal or demotion recommended pursuant to G.S. 115C-325(e)(1)l.

When a career teacher is dismissed pursuant to G.S. 115C- 325(e)(1)l. above, his 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. However, if the local school administrative unit offers the dismissed teacher a position for which he is certified and he refuses it, his name shall be removed from the priority list."

Sec. 6. G.S. 115C-325(f) is rewritten to read:

"(f) Suspension without pay. If a superintendent believes that cause exists for dismissing a probationary or career teacher for any reason specified in G.S. 115C-325(e)(1)a. through G.S. 115C-325(e)(1)j. and that immediate suspension of the teacher is necessary, the superintendent may suspend him without pay and without giving notice and a hearing. Within five days after a suspension under this paragraph, the superintendent shall initiate a dismissal as provided in this section. If it is finally determined that no grounds for dismissal exist, the teacher shall be reinstated immediately and shall be paid for the period of suspension.

A teacher recommended for suspension without pay pursuant to G.S. 115C-325(a)(4) may request a hearing before the board. If the teacher requests a hearing before the board, the procedures provided in G.S. 115C-325(j) shall be followed. If no request is made within 15 days, the superintendent may file his recommendation with the board. If, after considering the recommendation of the superintendent and the evidence adduced at the hearing if one is held, the board concludes that the grounds for

the recommendation are true and substantiated by a preponderance of the evidence, the board, if it sees fit, may by resolution order such suspension. Provisions of this section which permit appointment of, and investigation and review by, a panel of the Professional Review Committee shall not apply to a suspension without pay pursuant to G.S. 115C-325(a)(4)."

Sec. 7. G.S. 115C-325(h)(3) is amended by adding a new sentence following the second sentence to read:

"A hearing conducted by the board pursuant to this subdivision shall be conducted pursuant to G.S. 115C-325(j) and (l)."

Sec. 8. G.S. 115C-325(i)(2) is amended by adding a new sentence at the end to read:

"If the panel holds a hearing, the provisions of G.S. 115C- 325(j) shall apply."

Sec. 9. The second sentence of G.S. 115C-325(i)(4) is rewritten to read:

"The report shall contain an outline of the scope of its investigation, its findings as to whether or not the grounds for the recommendation are true and substantiated by a preponderance of the evidence, and a statement of the reasons for its findings."

Sec. 10. G.S. 115C-325(i)(5) and (6) are rewritten to read:

"(5) Within five days after the superintendent receives the report of the panel, the superintendent shall decide whether or not to submit a written recommendation for dismissal to the board or to drop the charges against the teacher and shall notify the teacher, in writing, of the decision. Within five days after receiving the superintendent's notice of his intent to recommend the teacher's dismissal to the board, the teacher shall decide whether to request a hearing before the board and shall notify the superintendent, in writing, of the decision. If the teacher requests a hearing before the board, the superintendent shall submit his written recommendation to the board with a copy to the teacher within five days after receiving the teacher's request. The superintendent's 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 seven days after receiving the superintendent's recommendation and before taking any formal action, the board shall set a time and place for the hearing and notify the teacher by certified mail of the date, time and place of the hearing. The time specified shall not be less than seven nor more than 20 days after the board has notified the teacher. If the teacher did not request a hearing, the board may, by resolution, dismiss the teacher. If the teacher can show that his request for a hearing was postmarked within the time provided, his right to a hearing is not forfeited."

Sec. 11. G.S. 115C-325(j) is amended by deleting the period at the end of the first sentence and substituting the words "or to any hearing conducted by a board pursuant to G.S. 115C-325(h)(3)." and by adding two new subdivisions to read:

"(4) Rules of evidence shall not apply to a hearing conducted pursuant to this act and boards and panels of the Professional Review Committee may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs.

"(5) At least five days before the hearing, the superintendent shall provide to the teacher a list of witnesses the superintendent intends to present, a brief statement of the

nature of the testimony of each witness and a copy of any documentary evidence he intends to present. At least three days before the hearing, the teacher shall provide to the superintendent a list of witnesses the teacher intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence he intends to present. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the board or panel."

Sec. 12. G.S. 115C-325(k)(2) is amended by adding after the word "substantiated" the words "by a preponderance of the evidence."

Sec. 13. G.S. 115C-325(l)(4) is amended by adding a second sentence to read:

"The board's decision shall be based on a preponderance of the evidence."

Sec. 14. G.S. 115C-325(n) is rewritten to read:

"(n) Appeal. Any teacher who has been dismissed or demoted pursuant to G.S. 115C-325(e)(2), or pursuant to subsections (h), (k) or (l) of this section, or who has been suspended without pay pursuant to G.S. 115C-325(a)(4), 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. This 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. A teacher who has been demoted or dismissed and who has not requested a hearing before the board of education pursuant to this section shall not be entitled to judicial review of the board's action."

Sec. 15. The second paragraph of G.S. 115C-325(o) is rewritten to read:

"A probationary teacher whose contract will not be renewed for the next school year shall be notified of this fact by June 1."

Sec. 16. G.S. 115C-306 is repealed.

Sec. 17. Nothing herein shall be deemed to amend or repeal the provisions of Chapter 394 of the 1983 Session Laws.

Sec. 18. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 15th day of July, 1983.