

Part 3. Principal and Teacher Employment Contracts.

§ 115C-325. System of employment for public school teachers.

(a) Definition of Terms. - Notwithstanding G.S. 115C-325.1, as used in this section, the following definitions apply, unless the context requires otherwise:

- (1) Repealed by Session Laws 1997-221, s. 13(a).
- (1a) "Career employee" as used in this section means an employee who was awarded career status with that local board as a teacher prior to August 1, 2013.
- (1b), (1c) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
- (1d) Repealed by Session Laws 2011-348, s. 1, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.
- (2) Repealed by Session Laws 1997, c. 221, s. 13(a).
- (3) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
- (4) "Demote" means to reduce the salary of a person who is classified or paid by the State Board of Education as a classroom teacher. The word "demote" does not include: (i) a suspension without pay pursuant to G.S. 115C-325(f)(1); (ii) the elimination or reduction of bonus payments, including merit-based supplements, or a systemwide modification in the amount of any applicable local supplement; or (iii) any reduction in salary that results from the elimination of a special duty, such as the duty of an athletic coach or a choral director.
- (4a) "Disciplinary suspension" means a final decision to suspend a career employee without pay for no more than 60 days under G.S. 115C-325(f)(2).
- (4b) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
- (4c) "Hearing officer" means a person selected under G.S. 115C-325(h)(7).
- (5) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
- (5a) [Expired.]
- (5b) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
- (6) "Teacher" means a person who holds at least a current, not provisional or expired, Class A license or a regular, not provisional or expired, vocational license issued by the State Board of Education; whose major responsibility is to teach or directly supervises teaching or who is classified by the State Board of Education or is paid either as a classroom teacher or instructional support personnel; and who is employed to fill a full-time, permanent position.
- (7) Redesignated.
- (8) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.

(a1) This section shall apply only to career employees. No person who is employed as a teacher who did not acquire career status as a teacher by August 1, 2013, shall have career status.

(b) Personnel Files. - The superintendent shall maintain in his or her office a personnel file for each career employee that contains any complaint, commendation, or suggestion for correction or improvement about the career employee's professional conduct, except that the superintendent may elect not to place in a career employee's file (i) a letter of complaint that contains invalid, irrelevant, outdated, or false information or (ii) a letter of complaint when there is no documentation of an attempt to resolve the issue. The complaint, commendation, or suggestion shall be signed by the person who makes it and shall be placed in the career employee's file only after five days' notice to the employee. Any denial or explanation relating to such complaint, commendation, or suggestion that the career

employee desires to make shall be placed in the file. Any career employee may petition the local board of education to remove any information from his or her personnel file that he or she deems invalid, irrelevant, or outdated. The board may order the superintendent to remove said information if it finds the information is invalid, irrelevant, or outdated.

The personnel file shall be open for the career employee's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a career employee before his or her employment by the board may be kept in a file separate from his or her personnel file and need not be made available to him or her. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a career employee, except the data may be used to substantiate G.S. 115C-325(e)(1)g. or G.S. 115C-325(e)(1)o. as grounds for dismissal or demotion.

- (c) (1) through (3) Repealed.
- (4) Leave of Absence. - A career employee who has been granted a leave of absence by a board shall maintain his or her career status if he or she returns to his or her teaching position at the end of the authorized leave.
- (5), (6) Repealed.
- (d) Career Employees.
 - (1) A career employee 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) of this section.
 - (2)
 - a. Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
 - b. Repealed by Session Laws 1997, c. 221, s. 13(a).
 - c. Subject to G.S. 115C-287.1, 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 or her employment for the next school year. The board shall give him or her written notice of that decision by June 1 of his or her 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 or her 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 or she 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.
- (e) Grounds for Dismissal or Demotion of a Career Employee.
 - (1) Grounds. - No career employee shall be dismissed or demoted or employed on a part-time basis except for one or more of the following:
 - a. Inadequate performance.
 - b. Immorality.
 - c. Insubordination.

- d. Neglect of duty.
- e. Physical or mental incapacity.
- f. Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
- 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 the career employee's teaching license.
- l. A justifiable decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding, provided that there is compliance with subdivision (2) of this subsection.
- m. Failure to maintain his or her license in a current status.
- n. Failure to repay money owed to the State in accordance with the provisions of Article 60, Chapter 143 of the General Statutes.
- o. Providing false information or knowingly omitting a material fact on an application for employment or in response to a preemployment inquiry.

(2) Reduction in Force. -

- a. A local board of education shall adopt a policy for implementing a reduction in force pursuant to sub-subdivision (e)(1)*l.* of this section that includes the following criteria:
 - 1. In determining which positions shall be subject to a reduction, a local board of education shall consider the following:
 - I. Structural considerations, such as identifying positions, departments, courses, programs, operations, and other areas where there are (i) less essential, duplicative, or excess personnel; (ii) job responsibility and position inefficiencies; (iii) opportunities for combined work functions; and (iv) decreased student or other demands for curriculum, programs, operations, or other services.
 - II. Organizational considerations, such as anticipated organizational needs of the local school administrative unit and program or school enrollment.
 - 2. In identifying which career employees in similar positions shall be subject to a dismissal, demotion, or reduction to employment on a part-time basis under the policy, a local school administrative unit shall consider work performance and evaluations.
- b. Before recommending to a board the dismissal or demotion of the career employee pursuant to G.S. 115C-325(e)(1)*l.*, the superintendent shall give written notice to the career employee by

certified mail or personal delivery of his or her intention to make such recommendation and shall set forth as part of his or her recommendation the grounds upon which he or she believes such dismissal or demotion is justified. The notice shall include a statement to the effect that if the career employee within 15 days after receipt of the notice requests a review, he or she 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 employee may file with the superintendent a written request for a hearing before the board within 10 days. If the career employee requests a hearing before the board, the hearing procedures provided in G.S. 115C-325(j3) shall be followed. If no request is made within the 15-day period, the superintendent may file his or her 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 a hearing by a hearing officer shall not apply to a dismissal or demotion recommended pursuant to G.S. 115C-325(e)(1).

When a career employee is dismissed pursuant to G.S. 115C-325(e)(1), above, his or her name shall be placed on a list of available career employees to be maintained by the board.

- (3) Inadequate Performance. - In determining whether the professional performance of a career employee is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Failure to notify a career employee of an inadequacy or deficiency in performance shall be conclusive evidence of satisfactory performance. Inadequate performance for a career employee shall mean (i) the failure to perform at a proficient level on any standard of the evaluation instrument or (ii) otherwise performing in a manner that is below standard. For a career employee, a performance rating below proficient shall constitute inadequate performance unless the principal noted on the instrument that the career employee is making adequate progress toward proficiency given the circumstances.
- (4) Three-Year Limitation on Basis of Dismissal or Demotion. - Dismissal or demotion under subdivision (1) above, except paragraphs g. and o. 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 or demotion is mailed to the career employee. The three-year limitation shall not apply to dismissals or demotions pursuant to subdivision (1)b. above when the charge of immorality is based upon a career employee's sexual misconduct toward or sexual harassment of students or staff.
- (f) (1) Suspension without Pay. - If a superintendent believes that cause exists for dismissing a career employee for any reason specified in G.S. 115C-325(e)(1) and that immediate suspension of the career employee is necessary, the superintendent may suspend the career employee without

pay. Before suspending a career employee without pay, the superintendent shall meet with the career employee and give him or her written notice of the charges against him or her, an explanation of the bases for the charges, and an opportunity to respond. However, if the career employee is incarcerated or is in the custody of a local, State, private, or federal correctional facility, the superintendent shall not be required to meet with the career employee before suspending that employee without pay but may instead provide written notice of the charges against the employee, provide a written explanation of the basis for the charges, and provide an opportunity for the employee to respond in writing. Within five days after a suspension under this paragraph, the superintendent shall initiate a dismissal, demotion, or disciplinary suspension without pay as provided in this section. If it is finally determined that no grounds for dismissal, demotion, or disciplinary suspension without pay exist, the career employee shall be reinstated immediately, shall be paid for the period of suspension, and all records of the suspension shall be removed from the career employee's personnel file.

(2) Disciplinary Suspension Without Pay. - A career employee recommended for disciplinary suspension without pay may request a hearing before the board. If no request is made within 15 days, the superintendent may file his or her 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.

a. Board hearing for disciplinary suspensions for more than 10 days or for certain types of intentional misconduct. - The procedures for a board hearing under G.S. 115C-325(j3) shall apply if any of the following circumstances exist:

1. The recommended disciplinary suspension without pay is for more than 10 days; or
2. The disciplinary suspension is for intentional misconduct, such as inappropriate sexual or physical conduct, immorality, insubordination, habitual or excessive alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes, any cause that constitutes grounds for the revocation of the career employee's license, or providing false information.

b. Board hearing for disciplinary suspensions of no more than 10 days. - The procedures for a board hearing under G.S. 115C-325(j2) shall apply to all disciplinary suspensions of no more than 10 days that are not for intentional misconduct as specified in sub-sub-subdivision a.2. of this subdivision.

(f1) Suspension with Pay. - If a superintendent believes that cause may exist for dismissing or demoting a career employee for any reasons specified in G.S. 115C-325(e)(1), but that additional investigation of the facts is necessary and circumstances are such that the career employee should be removed immediately from his or her duties, the superintendent may suspend the career employee with pay for a reasonable period of time, not to exceed 90 days. The superintendent shall notify the board of education within two days of his or her action and shall notify the career employee within two days of the action and the reasons for it. If the superintendent has not initiated dismissal or demotion proceedings against the career employee within the 90-day period, the career employee shall be reinstated to his or her

duties immediately and all records of the suspension with pay shall be removed from the career employee's personnel file at his or her request. However, if the superintendent and the employee agree to extend the 90-day period, the superintendent may initiate dismissal or demotion proceedings against the career employee at any time during the period of the extension.

- (f2) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
- (g) Repealed by Session Laws 1997, c. 221, s. 13(a).
- (h) Procedure for Dismissal or Demotion of Career Employee.
 - (1) A career employee may not be dismissed, demoted, or reduced to part-time employment except upon the superintendent's recommendation.
 - (2) Before recommending to a board the dismissal or demotion of the career employee, the superintendent shall give written notice to the career employee by certified mail or personal delivery of his or her intention to make such recommendation and shall set forth as part of his or her recommendation the grounds upon which he or she believes such dismissal or demotion is justified. The superintendent also shall meet with the career employee and provide written notice of the charges against the career employee, an explanation of the basis for the charges, and an opportunity to respond if the career employee has not done so under G.S. 115C-325(f)(1). The notice shall include a statement to the effect that if the career employee within 14 days after the date of receipt of the notice requests a review, he or she may request to have the grounds for the proposed recommendations of the superintendent reviewed by an impartial hearing officer appointed by the Superintendent of Public Instruction as provided for in G.S. 115C-325(h)(7). A copy of G.S. 115C-325 shall also be sent to the career employee. If the career employee does not request a hearing before a hearing officer within the 14 days provided, the superintendent may submit his or her recommendation to the board.
 - (3) Within the 14-day period after receipt of the notice, the career employee may file with the superintendent a written request for either (i) a hearing on the grounds for the superintendent's proposed recommendation by a hearing officer or (ii) a hearing within 10 days before the board on the superintendent's recommendation. If the career employee requests an immediate hearing before the board, he or she forfeits his or her right to a hearing by a hearing officer. If no request is made within that period, the superintendent may file his or her recommendation with the board. The board, if it sees fit, may by resolution (i) reject the superintendent's recommendation and dismiss, demote, reinstate, or suspend the career employee without pay. If a request for review is made, the superintendent shall not file the recommendation for dismissal with the board until a report of the hearing officer is filed with the superintendent. Failure of the hearing officer to submit the report as required by G.S. 115C-325(i1)(1) shall entitle the career employee to a hearing before the board under the same procedures as provided in G.S.115C-325(j).
 - (4) Repealed by Session Laws 1997, c. 221, s. 13(a).
 - (5) Repealed by Session Laws 2011-348, s. 1, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.
 - (6) If a career employee requests a review by a hearing officer, the superintendent shall notify the Superintendent of Public Instruction within five days of his or her receipt of the request.

(7) Within five days of being notified of the request for a hearing before a hearing officer, the Superintendent of Public Instruction shall submit to both parties a list of hearing officers trained and approved by the State Board of Education. Within five days of receiving the list, the parties may jointly select a hearing officer from that list, or, if the parties cannot agree to a hearing officer, each party may strike up to one-third of the names on the list and submit its strikeout list to the Superintendent of Public Instruction. The Superintendent of Public Instruction shall then appoint a hearing officer from those individuals remaining on the list. Further, the parties may jointly agree on another hearing officer not on the State Board of Education's list, provided that individual is available to proceed in a timely manner and is willing to accept the terms of appointment required by the State Board of Education. No person eliminated by the career employee or superintendent shall be designated as the hearing officer for that case.

(8) The superintendent and career employee shall serve a copy to the other party of all documents submitted to the Superintendent of Public Instruction and to the designated hearing officer and include a signed certificate of service similar to that required in court pleadings.

(h1) Hearing Officers; Qualifications; Training; Compensation. -

(1) The State Board of Education shall select and maintain a master list of no more than 15 qualified hearing officers. The State Board shall, except for good cause shown, remove a hearing officer from the list who has failed to conduct a hearing or prepare a report within the time specified in G.S. 115C-325(i1) or who has failed to submit a supplemental report in accordance with G.S. 115C-325(i1)(4) or (j1)(2). A hearing officer shall, except for good cause shown, also be removed from the list for failure to meet the terms and conditions of engagement established by the State Board. Additionally, if a hearing officer is not appointed to a case within a two-year period due to repeated strikes from the list by either party as provided in G.S. 115C-325(h)(7), the State Board may remove the hearing officer from the master list.

(2) Persons selected by the State Board as hearing officers shall be members in good standing of the North Carolina State Bar who have demonstrated experience and expertise in the areas of education law, due process, administrative law, or employment law within the last five years. The State Board shall give special consideration in its selection to persons jointly endorsed by the largest by membership of each statewide organization representing teachers, school administrators, and local boards of education. Following State Board selection, hearing officers must complete a special training course approved by the State Board of Education that includes training on the teacher evaluation instrument and performance standards before they are qualified to hear teacher dismissal or demotion cases.

(3) The State Board of Education shall determine the compensation for a hearing officer. The State Board shall pay the hearing officer's compensation and authorized expenses.

(i) Repealed by Session Laws 1997, c. 221, s. 13(a).

(11) Report of Hearing Officer; Superintendent's Recommendation. -

(1) The hearing officer shall complete the hearing held in accordance with G.S. 115C-325(j) and prepare the report within 90 days from the time of the designation. This time period may be extended only for extraordinary

cause and upon written agreement by both parties. The State Board of Education shall determine an appropriate reduction in compensation to the hearing officer for failure to submit a timely report to the superintendent within the maximum 90-day period set forth in this subdivision, except upon a showing of good cause by the hearing officer.

- (2) The hearing officer shall make all necessary findings of fact, based upon the preponderance of the evidence, on all issues related to each and every ground for dismissal and on all relevant matters related to the question of whether the superintendent's recommendation is justified. The hearing officer shall not make a recommendation as to conclusions of law or the disposition of the case. The hearing officer shall deliver copies of the report to the superintendent and the career employee.
- (3) Within five days after receiving the hearing officer's report, the superintendent shall decide whether to submit a written recommendation to the local board for dismissal, demotion, or disciplinary suspension without pay to the board or to drop the charges against the career employee. The superintendent shall notify the career employee, in writing, of the decision.
- (4) If the superintendent contends that the hearing officer's report fails to address a critical factual issue, the superintendent shall within five days' receipt of the hearing officer's report, request in writing with a copy to the career employee that the hearing officer prepare a supplement to the report. The superintendent shall specify what critical factual issue the superintendent contends the hearing officer failed to address. If the hearing officer determines that the report failed to address a critical factual issue, the hearing officer shall prepare a supplement to the report to address the issue and deliver the supplement to both parties before the board hearing. In no event shall the hearing officer take more than 30 days to provide a supplemental report. If the hearing officer fails to submit a timely supplemental report, the superintendent shall report the hearing officer to the State Board. The State Board shall determine an appropriate reduction in compensation to the hearing officer for failure to submit a timely supplemental report to both parties, except upon a showing of good cause by the hearing officer. The failure of the hearing officer to prepare a supplemental report or to address a critical factual issue shall not constitute a basis for appeal.

(j) Hearing by a Hearing Officer. - The following provisions shall apply to a hearing conducted by the hearing officer.

- (1) The hearing shall be private.
- (2) The hearing shall be conducted in accordance with reasonable rules and regulations adopted by the State Board of Education to govern such hearings.
- (3) At the hearing the career employee and the superintendent or the superintendent's designee 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. 115C-325 have been followed.
- (4) Rules of evidence shall not apply to a hearing conducted by a hearing officer. The hearing officer 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 career employee 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 the superintendent intends to present. At least three days before the hearing, the career employee shall provide to the superintendent a list of witnesses the career employee intends to present, a brief statement of the nature of the testimony of each witness and a copy of any documentary evidence the career employee intends to present. Additional witnesses or documentary evidence may not be presented except upon a finding by the hearing officer that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this subdivision.

(5a) The hearing shall be completed within three days after commencement, unless extended by the hearing officer on a showing of extraordinary cause. Neither party shall have more than eight hours to present its case in chief, which does not include cross-examination of witnesses, rebuttal evidence, or arguments of counsel.

(6) The hearing officer may issue subpoenas, at his or her discretion or upon written application by either party, and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for dismissal.

(7) The hearing officer shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.

(8) The superintendent shall provide for making a transcript of the hearing. If the career employee contemplates a hearing before the board or to appeal the board's decision to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings before the hearing officer.

(j1) **Board Determination. -**

(1) Within five days after receiving the superintendent's notice of intent to recommend the career employee's dismissal to the board, the career employee shall decide whether to request a hearing before the board and shall notify the superintendent, in writing, of the decision. If the career employee can show that the request for a hearing was postmarked within the time provided, the career employee shall not forfeit the right to a board hearing. Within five days after receiving the career employee's request for a board hearing, the superintendent shall request that a transcript of the hearing be made. Within five days of receiving a copy of the transcript, the superintendent shall submit to the board the written recommendation and shall provide a copy of the recommendation to the career employee. The superintendent's recommendation shall state the grounds for the recommendation and shall be accompanied by a copy of the hearing officer's report and a copy of the transcript of the hearing.

(2) If the career employee contends that the hearing officer's report fails to address a critical factual issue the career employee shall, at the same time he or she notifies the superintendent of a request for a board hearing pursuant to G.S. 115C-325(j1)(1), request in writing with a copy to the superintendent that the hearing officer prepare a supplement to the hearing officer's report. The career employee shall specify the critical factual issue he or she contends the hearing officer failed to address. If the hearing officer determines that the report failed to address a critical factual issue,

the hearing officer shall prepare a supplement to the report to address the issue and shall deliver the supplement to both parties before the board hearing. In no event shall the hearing officer take more than 30 days to provide a supplemental report. If the hearing officer fails to submit a timely supplemental report, the superintendent shall report the hearing officer to the State Board. The State Board shall determine an appropriate reduction in compensation to the hearing officer for failure to submit a timely supplemental report to both parties, except upon a showing of good cause by the hearing officer. The failure of the hearing officer to prepare a supplemental report or to address a critical factual issue shall not constitute a basis for appeal.

(3) Within five 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 shall notify the career employee by certified mail or personal delivery of the date, time, and place of the hearing. The time specified shall not be less than 10 nor more than 30 days after the board has notified the career employee, unless both parties agree to an extension. If the career employee did not request a hearing, the board may, by resolution, reject the superintendent's decision, or accept or modify the decision and dismiss, demote, reinstate, or suspend the career employee without pay.

(4) If the career employee requests a board hearing, it shall be conducted in accordance with G.S. 115C-325(j2).

(5) The board shall make a determination and may (i) reject the superintendent's recommendation or (ii) accept or modify the recommendation and dismiss, demote, reinstate, or suspend the employee without pay.

(6) Within two days following the hearing, the board shall send a written copy of its findings and determination to the career employee and the superintendent.

(j2) Board Hearing. - The following procedures shall apply to a hearing conducted by the board:

(1) The hearing shall be private.

(2) If the career employee requested a hearing by a hearing officer, the board shall receive the following:

a. The whole record from the hearing held by the hearing officer, including a transcript of the hearing, as well as any other records, exhibits, and documentary evidence submitted to the case manager at the hearing.

b. The hearing officer's findings of fact, including any supplemental findings prepared by the hearing officer under G.S. 115C-325 (i1) (4) or G.S. 115C-325(j1)(2).

c. Repealed by Session Laws 2011-348, s. 1, effective July 1, 2011, and applicable to persons recommended for dismissal or demotion on or after that date.

d. The superintendent's recommendation and the grounds for the recommendation.

(3) If the career employee did not request a hearing by a hearing officer, the board shall receive the following:

a. Any documentary evidence the superintendent intends to use to support the recommendation. The superintendent shall provide the

documentary evidence to the career employee seven days before the hearing.

b. Any documentary evidence the career employee intends to use to rebut the superintendent's recommendation. The career employee shall provide the superintendent with the documentary evidence three days before the hearing.

c. The superintendent's recommendation and the grounds for the recommendation.

(4) The superintendent and career employee may submit a written statement not less than three days before the hearing.

(5) The superintendent and career employee shall be permitted to make oral arguments to the board based on the record before the board.

(6) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence at the hearing before the hearing officer.

(7) The board shall accept the hearing officer's findings of fact unless a majority of the board determines that the findings of fact are not supported by substantial evidence when reviewing the record as a whole. In such an event, the board shall make alternative findings of fact. If a majority of the board determines that the hearing officer did not address a critical factual issue, the board may remand the findings of fact to the hearing officer to complete the report to the board. If the hearing officer does not submit the report within seven days receipt of the board's request, the board may determine its own findings of fact regarding the critical factual issues not addressed by the hearing officer. The board's determination shall be based upon a preponderance of the evidence.

(8) The board is not required to provide a transcript of the hearing to the career employee. If the board elects to make a transcript and if the career employee contemplates an appeal to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings. A career employee may have the hearing transcribed by a court reporter at the career employee's expense.

(j3) Board Hearing for Certain Disciplinary Suspensions and for Reductions in Force.

- The following procedures shall apply for a board hearing under G.S. 115C-325(e)(2) and G.S. 115C-325(f)(2)a:

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with reasonable rules adopted by the State Board of Education to govern such hearings.

(3) At the hearing, the career employee and the superintendent 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 exist for a disciplinary suspension without pay under G.S. 115C-325(f)(2)a. or whether the grounds for a dismissal or demotion due to a reduction in force is justified.

(4) Rules of evidence shall not apply to a hearing under this subsection and the board 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 eight days before the hearing, the superintendent shall provide to the career employee 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 the superintendent intends to present.

(6) At least six days before the hearing, the career employee shall provide the superintendent a list of witnesses the career employee intends to present, a brief statement of the nature of the testimony of each witness, and a copy of any documentary evidence the career employee intends to present.

(7) No new evidence may be presented at the hearing except upon a finding by the board that the new evidence is critical to the matter at issue and the party making the request could not, with reasonable diligence, have discovered and produced the evidence according to the schedule provided in this subsection.

(8) The board may subpoena and swear witnesses and may require them to give testimony and to produce records and documents relevant to the grounds for suspension without pay.

(9) The board shall decide all procedural issues, including limiting cumulative evidence, necessary for a fair and efficient hearing.

(10) The superintendent shall provide for making a transcript of the hearing. If the career employee contemplates an appeal of the board's decision to a court of law, the career employee may request and shall receive at no charge a transcript of the proceedings.

(k) (l) Repealed by Session Laws 1997, c. 221, s. 13(a).

(m) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.

(n) Appeal. - Any career employee who has been dismissed or demoted under G.S. 115C-325(e)(2), or under G.S. 115C-325(j2), or who has been suspended without pay under G.S. 115C-325(f)(2) shall have the right to appeal from the decision of the board to the superior court for the superior court district or set of districts as defined in G.S. 7A-41.1 in which the career employee is employed on one or more of the following grounds that the decision:

(1) Is in violation of constitutional provisions.

(2) Is in excess of the statutory authority or jurisdiction of the board.

(3) Was made upon unlawful procedure.

(4) Is affected by other error of law.

(5) Is unsupported by substantial evidence in view of the entire record as submitted.

(6) Is arbitrary or capricious.

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 determined under G.S. 115C-325(j2) (8) or G.S. 115C-325(j3)(10). A career employee who has been demoted or dismissed 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.

(o) Resignation. -

(1) If a career employee has been recommended for dismissal under G.S. 115C-325(e)(1) and the employee chooses to resign without the written agreement of the superintendent, then:

a. The superintendent shall report the matter to the State Board of Education.

b. The career employee shall be deemed to have consented to (i) the placement in the employee's personnel file of the written notice of the superintendent's intention to recommend dismissal and (ii) the release of the fact that the superintendent has reported this employee to the State Board of Education to prospective

employers, upon request. The provisions of G.S. 115C-321 shall not apply to the release of this particular information.

c. The career employee shall be deemed to have voluntarily surrendered his or her license pending an investigation by the State Board of Education in a determination whether or not to seek action against the employee's license. This license surrender shall not exceed 45 days from the date of resignation. Provided further that the cessation of the license surrender shall not prevent the State Board of Education from taking any further action it deems appropriate. The State Board of Education shall initiate investigation within five working days of the written notice from the superintendent and shall make a final decision as to whether to revoke or suspend the career employee's license within 45 days from the date of resignation.

(2) A career employee who is not recommended for dismissal should not resign without the consent of the superintendent unless he or she has given at least 30 days' notice. If a career employee who is not recommended for dismissal does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the career employee's license for the remainder of that school year. A copy of the request shall be placed in the career employee's personnel file. If a career employee's criminal history is relevant to the employee's resignation, regardless of whether the employee has given at least 30 days' notice, the board shall report to the State Board of Education the reason for an employee's resignation.

(p) Section Applicable to Certain Institutions. - Notwithstanding any law or regulation to the contrary, this section shall apply to all career employees employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human Services, Public Instruction, and Public Safety regardless of the age of the students.

(p1) Procedure for Dismissal of Career Employees Employed in Low-Performing Residential Schools. -

(1) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of career employees assigned to a residential school that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Part 3A of Article 3 of Chapter 143B of the General Statutes. The Secretary shall dismiss a career employee when the Secretary receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the career employee.

The Secretary may dismiss a career employee when:

- a. The Secretary determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under Part 3A of Article 3 of Chapter 143B of the General Statutes; and
- b. That assistance team makes the recommendation to dismiss the career employee for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career employee.

Within 30 days of any dismissal under this subdivision, a career employee may request a hearing before a panel of three members designated by the Secretary. The Secretary shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

(2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of licensed career employees who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed career employee.

Within 30 days of any dismissal under this subdivision, a licensed career employee may request a hearing before a panel of three members designated by the Secretary of Health and Human Services. The Secretary shall adopt procedures to ensure that due process rights are afforded to licensed career employees recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

(3) Nothing in this subsection shall prevent the Secretary from refusing to renew the contract of any person employed in a school identified as low-performing under Part 3A of Article 3 of Chapter 143B of the General Statutes.

(4) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.

(5) The Secretary of Health and Human Services shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection.

(q) Procedure for Dismissal of Career Employees Employed in Low-Performing Schools. -

(1) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.

(2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of career employees assigned to schools that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Article 8B of this Chapter. The State Board shall dismiss a career employee when the State Board receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the career employee.

The State Board may dismiss a career employee when:

- a. The State Board determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under G.S. 115C-105.38; and
- b. That assistance team makes the recommendation to dismiss the career employee for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career employee.

A career employee may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(2a) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of licensed career employees who have engaged in a remediation plan under G.S. 115C-105.38A(a) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the licensed career employee.

A licensed career employee may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to licensed career employees recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes.

(4) Repealed by Session Laws 2017-157, s. 2(b), effective July 21, 2017.
(5) The State Board shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection.

(1955, c. 664; 1967, c. 223, s. 1; 1971, c. 883; c. 1188, s. 2; 1973, c. 315, s. 1; c. 782, ss. 1-30; 1979, c. 864, s. 2; 1981, c. 423, s. 1; c. 538, ss. 1-3; c. 731, s. 1; c. 1127, ss. 39, 40; 1981 (Reg. Sess., 1982), c. 1282, s. 30; 1983, c. 770, ss. 1-15; 1983 (Reg. Sess., 1984), c. 1034, s. 34; 1985, c. 791, s. 5(a), (b); 1985 (Reg. Sess., 1986), c. 1014, s. 60(a); 1987, c. 395, s. 2; c. 540, c. 571, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 109; 1991 (Reg. Sess., 1992), c. 942, s. 1; c. 1038, s. 14; 1993, c. 169, s. 1; c. 210, ss. 1-3; 1993 (Reg. Sess., 1994), c. 677, ss. 10, 16(a); 1995, c. 369, s. 2; 1995 (Reg. Sess., 1996), c. 716, s. 8; 1997-221, ss. 11(a), 13(a); 1997-443, s. 11A.118(a); 1998-5, s. 2; 1998-59, s. 3; 1998-131, s. 6; 1998-202, s. 4(o); 1998-212, s. 28.24(c); 1998-217, s. 67.1(a); 1999-96, ss. 1-5; 1999-456, s. 34; 2000-67, s. 8.24(b); 2000-137, s. 4(r); 2000-140, ss. 23, 24; 2001-376, s. 2; 2001-424, ss. 28.11(g), 32.25(b); 2001-487, s. 74(c); 2002-110, ss. 2, 3; 2002-126, ss. 7.38, 28.10(a), (c), (d); 2003-302, s. 1; 2004-81, s. 2; 2004-124, ss. 31.18A(a), (c), (d); 2004-199, s. 57(b); 2005-144, ss. 7A.1, 7A.3, 7A.4; 2005-276, ss. 29.28(b), 29.28(d); 2007-145, ss. 7(a), (c)-(e); 2007-326, ss. 2, 3(a), (c)-(e); 2007-484, s. 43.7E; 2009-326, s. 1; 2010-31, s. 7.14(a); 2010-163, s. 1; 2011-145, ss. 7.23(b), 7.25(e); 2011-348, ss. 1, 8.5(a), (b); 2012-83, s. 40; 2012-194, ss. 21(a), (b); 2013-360, ss. 9.6(a), (f); 2014-115, s. 9; 2015-241, s. 8.38(b); 2017-157, ss. 2(a), (b), (p); 2017-186, s. 2(eeeee); 2017-189, ss. 4(c), (d), 6(j), (k).)