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**TO: Board Chairmen, Superintendents, Council of School Attorneys
Members, Board Legislative Contacts and SCSBA Board
of Directors**

This booklet highlights significant education-related legislation, most of which was passed by the South Carolina General Assembly in 2008. It includes summaries of amended state regulations and other information items of interest to districts, as well as the relevant text of the state laws discussed and web sites for other legislation.

After the summary of the legislation and the recommended district action, we have included policy references so that you may check the language in your existing policies to make sure that it does not conflict with a change in law. Policy references are alphabetical codes based on the SCSBA model manual.

For those items that are likely to require a change in policy or administrative rule, we have included a model (on blue paper). We will be glad to assist those districts that subscribe to our policy update service in drafting additional changes as needed.

We are sending one booklet to each superintendent/director and one booklet to each board chairman. Also, we are again posting the *2008 Policy and Legislative Update* in a MS Word document and Adobe .pdf format at SCSBA's web site at www.scsba.org. The Adobe Acrobat Reader (.pdf) version is a read only file; however, it will print camera ready material if you would like to make additional copies in your district. The MS Word document is a working document that you can cut and paste to help you create your district's policies. SCSBA will not be offering additional printed copies.

Each local school board must consider and decide which policies it will adopt. In all instances, SCSBA does not mandate a particular policy or policy language. This booklet is not intended as a substitute for legal advice relating to your specific situation.

We enjoy working with you throughout the year and appreciate your support. We are always happy to help you with your policy needs and hope you will continue to call on us. For additional information on these or other policy topics, please contact either of the following staff.

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AUTOMATED EXTERNAL DEFIBRILLATORS (AEDs)

Effective date: See below

Summary: Several South Carolina school districts in recent years have invested in making automated external defibrillators (AEDs) available in high schools. An AED is a portable automatic device used to restore normal heart rhythm to patients in cardiac arrest. To date, district use of AEDs has been on a voluntary basis. The Legislature this year, however, enacted a new law stating that, subject to funding by the General Assembly, school districts must develop and implement an AED program for each high school meeting the requirements of current state law.

No funding was included in the 2008-09 state budget for AEDs in high schools and districts are therefore **not required** to establish an AED program under this new law.

The following are the requirements under the new law.

- An operational AED must be on the grounds of each district high school.
- All persons who are reasonably expected to use the device must obtain appropriate training, including completion of a course in cardiopulmonary resuscitation (CPR) or a basic first aid course that includes CPR training and demonstrated proficiency in the use of an AED. The superintendent or his designee must determine who is reasonably expected to use the device.
- Guidelines for periodic inspections and maintenance of the AEDs must be established.
- The purpose of the program and the manner in which the program will operate must be defined.

AED programs created under the new law must meet the requirements of the S.C. Automated External Defibrillator Act (AED Act), enacted in 1999 and found at S.C. Code Section 44-76-10, et. seq.

The AED Act of 1999 governs district AED programs currently in place and establishes training, maintenance, testing, use and reporting requirements for AEDs. The AED Act of 1999 was amended by the General Assembly this year to include an expanded list of organizations that may provide training to an AED user. Added to the list are the American Safety and Health Institute, and programs that meet or exceed the training standards of all groups listed in the Act.

Another addition to the AED Act of 1999 is the inclusion of immunity from civil liability to persons and entities that teach or provide training in the use of AEDs. Both the 1999 Act and the new law for district high schools include nearly identical language providing immunity from civil liability in certain instances of AED application and use in the absence of gross negligence.

As noted above, in the absence of state funding, it is not the General Assembly's intent that districts establish AED programs at each high school.

Local district action required: Districts already operating AED programs in their schools should have a policy in place reflecting the requirements of the AED Act of 1999. This policy should be amended to include the following provisions from changes to the AED Act of 1999.

- additional organizations that may provide AED user training in CPR and AED use (American Safety and Health Institute, or training from a program that meets or exceeds the training standards of these organizations)
- inclusion of immunity from civil liability to persons and entities that teach or provide training in the use of AEDs

SCSBA is not recommending that districts adopt a specific AED policy at this time to reflect the new law concerning AED programs in high schools. SCSBA will, however, provide a sample AED program policy upon request.

Reference: JLCEE* [Automated External Defibrillators (AEDs)].

Text: Bill No. 1 (Act 278)

School districts, automated external defibrillators

Section 1. Chapter 17, Title 59 of the 1976 Code is amended by adding:

Section [59-17-155](#). (A) Subject to appropriations by the General Assembly, each school district shall develop and implement an automated external defibrillator program meeting the requirements of Chapter 76 of Title 44 of the 1976 Code for each high school in the district. The program must include provisions that:

- (1) require an operational automatic external defibrillator on the grounds of the high school;
- (2) require all persons who are reasonably expected to use the device to obtain appropriate training, including completion of a course in cardiopulmonary resuscitation or a basic first aid course that includes cardiopulmonary resuscitation training and demonstrated proficiency in the use of an automated external defibrillator. The school district superintendent, or the superintendent's designee, shall determine who is reasonably expected to use the device;
- (3) establish guidelines for periodic inspections and maintenance of the defibrillators; and
- (4) define the purpose of the program and the manner in which the program will operate.

(B)(1) Any person or entity acting in good faith and gratuitously shall be immune from civil liability for the use of an automated external defibrillator unless the person was grossly negligent in the use.

(2) Any designated automated external defibrillator user meeting the requirements of Section [44-76-30](#)(1) and acting according to the required training shall be immune from civil liability for the application of an automated external defibrillator unless the application was grossly negligent.

(3) A person or entity acquiring an automated external defibrillator and meeting the requirements of Section [44-76-30](#) or an automated external defibrillator liaison meeting the requirements of Section [44-76-30](#) shall be immune from civil liability for the use of an automated external defibrillator by any person or entity described in items (1) or (2) of this subsection.

(4) A prescribing physician shall be immune from civil liability for authorizing the purchase of an automated external defibrillator, unless the authorization was grossly negligent.

(C) Any person or entity, acting in good faith and gratuitously, that teaches or provides a training program for cardiopulmonary resuscitation that includes training in the use of automated external defibrillator is immune from civil liability for providing this training for use if the:

- (1) person or entity has provided the training in accordance with the guidelines and policies of a national training organization, as defined in Section [44-76-30](#)(1);
- (2) person providing the training is authorized to deliver that course or curriculum; and

(3) training delivery was not grossly negligent.

(D) The State Budget and Control Board may establish a state contract for the purchase of automated external defibrillators.

Text: Bill No. 2 (Act 206)

Automated external defibrillator use, civil immunity

Section 1. Section [44-76-40](#) of the 1976 Code is amended by adding an appropriately numbered subsection at the end to read:

(5) Any person or entity, acting in good faith and gratuitously, that teaches or provides a training program for cardiopulmonary resuscitation that includes training in the use of an automated external defibrillator is immune from civil liability for providing this training for use if the:

(a) person or entity has provided the training in accordance with the guidelines and policies of a national training organization, as defined in Section [44-76-30](#)(1);

(b) person providing the training is authorized to deliver that course or curriculum; and

(c) training delivery was not grossly negligent.

Automated external defibrillator training, training organizations expanded

Section 3. Section [44-76-30](#) of the 1976 Code is amended to read:

Section [44-76-30](#). A person or entity that acquires an AED shall:

(1) require its designated AED users to have current training in CPR and AED use by the American Heart Association, American Red Cross, American Safety and Health Institute, or National Safety Council, or training from a program that meets or exceeds the training standards of these organizations;

(2) maintain and test the AED according to the manufacturer's operational guidelines and keep written records of maintenance and testing;

(3) employ or obtain a health care professional to serve as its AED liaison;

(4) have in place an AED program approved by its AED liaison which includes CPR and AED training, AED protocol or guidelines, AED deployment strategies, and an AED equipment maintenance plan;

(5) include in its AED protocol or guidelines that a person who renders emergency care or treatment to a person in cardiac arrest caused by ventricular fibrillation/tachycardia by using an AED must activate the emergency medical services system or 911 as soon as possible; and

(6) report any clinical use of the AED to the AED liaison.

CHARTER SCHOOL APPEALS

Effective date: May 21, 2008

Summary: The General Assembly this year made a handful of revisions to the Charter School Act of 1996 in an attempt to streamline the appeals process as well as address facilities concerns for some charter schools.

Until now, an appeal from the decision of a local board as well as from that of the Charter School Advisory Committee went to the State Board of Education (SBE). This structure created an often drawn-out (and costly) appeals process as well as presenting potential conflicts in situations where the State Department of Education (SDE) might be advising a charter school applicant or a local school board on an issue relating to an application.

Under the new law, all appeals from the denial of a charter school application have been moved from the state board to the state administrative law court. Similarly, this provision applies to decisions of the Charter School Advisory Committee, the state charter school district or a local school board to revoke or not renew a charter school. Finally, a local board wishing to appeal a decision by the state charter district approving a charter school application must now do so with the administrative law court.

Regarding facilities, some charter applicants have pointed to difficulties in securing financing due to the five-year approval or renewal period. Now, the charter school application or renewal period has been extended to 10 years. This provision applies to a charter granted by either a local school district or the state charter school district. Also, the extension applies so that a charter school may terminate its contract with a sponsor before the 10-year term of contract if all parties under contract with the charter school agree to the dissolution. The shift from five to 10 years does not change a charter school sponsor's ability to revoke a charter as outlined in the Charter School Act.

Finally, admission provisions for charter schools have been amended to allow enrollment priority to siblings of previously enrolled students. Such priority enrollment for siblings of already-enrolled and, now, previously enrolled students may not exceed 20 percent of the charter school's total enrollment.

These changes to the law should be reflected in any charter school policies as well as in applicable administrative rules.

Local district action required: Districts should amend current charter school policies to replace any references to the state board with the state administrative law court as the body to hear any appeals.

Policy reference: IHBH (Charter Schools).

Model policy follows text of law.

Text: Charters for ten years

Section 1. Section [59-40-110](#)(A) of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

(A) A charter must be approved or renewed for a period of ten school years; however, the charter only may be revoked or not renewed under the provisions of subsection (C) of this section. The sponsor annually shall evaluate the conditions outlined in subsection (C). The annual evaluation results must be used in making a determination for nonrenewal or revocation.

Charter school sponsor contract period conformed

Section 2. Section [59-40-115](#) of the 1976 Code, as added by Act 274 of 2006, is amended to read:

Section [59-40-115](#). A charter school may terminate its contract with a sponsor before the ten-year term of contract if all parties under contract with the charter school agree to the dissolution. A charter school that terminates its contract with a sponsor directly may seek application for the length of time remaining on its original contract from another sponsor without review from the Charter School Advisory Committee.

Revised appeals procedure

Section 3. Section [59-40-70](#)(A)(5) of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

(5) An applicant shall submit the application to the advisory committee and one copy to the school board of trustees of the district from which it is seeking sponsorship. In the case of the South Carolina Public Charter School District, the applicant shall provide notice of the application to the local school board of trustees in which the charter school will be located for informational purposes only. The advisory committee shall receive input from the school district in which the applicant is seeking sponsorship and shall request clarifying information from the applicant. An applicant may submit an application to the advisory committee at any time during the fiscal year and the advisory committee, within sixty days, shall determine whether the application is in compliance. An application that is in compliance must be forwarded to the school district from which the applicant is seeking sponsorship with a letter stating the application is in compliance. The letter also shall include a recommendation from the Charter School Advisory Committee to approve or deny the charter. The letter must specify the reasons for its recommendation. This recommendation is nonbinding on the school board of trustees. If the application is in noncompliance, it must be returned to the applicant with deficiencies noted. The applicant may appeal the decision to the Administrative Law Court.

Revised appeals procedure

Section 4. Section [59-40-70](#)(E) of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

(E) If the school district board of trustees from which the applicant is seeking sponsorship denies a charter school application, the charter applicant may appeal the denial to the Administrative Law Court pursuant to Section [59-40-90](#).

Revised appeals procedure

Section 5. Section [59-40-70](#)(G) of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

(G) If a local school board of trustees has information that an approved application by the South Carolina Public Charter School District adversely affects the other students in its district, as defined in regulation, or that the approval of the application fails to meet the spirit and intent of this chapter, the local school board of trustees may appeal the granting of the charter to the Administrative Law Court. The Administrative Law Court, within forty-five days, may affirm or

reverse the application for action by the South Carolina Public Charter School District in accordance with an order of the state board.

Revised appeals procedure

Section 6. Section [59-40-90](#) of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

Section [59-40-90](#). A final decision of the school district may be appealed by any party to the Administrative Law Court as provided in Sections [1-23-380](#)(B) and [1-23-600](#)(D).

Charter school revocation

Section 7. Section [59-40-110](#)(H) of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

H) A decision to revoke or not to renew a charter school may be appealed to the Administrative Law Court pursuant to the provisions of Section [59-40-90](#).

Regulations and guidelines

Section 8. Section [59-40-180](#) of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

Section [59-40-180](#). The State Board of Education shall promulgate regulations and develop guidelines necessary to implement the provisions of this chapter, including standards which the Charter School Advisory Committee shall use to determine compliance with this chapter and an application process to include a timeline for submission of applications that will allow for final decisions, including Administrative Law Court appeal, by December first of the year preceding the charter school's opening.

Admissions decisions

Section 9. Section [59-40-50](#)(B)(8) of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

(8) not limit or deny admission or show preference in admission decisions to any individual or group of individuals; however, a charter school may give enrollment priority to a sibling of a pupil already enrolled or previously enrolled, children of a charter school employee, and children of the charter committee, if such priority enrollment does not constitute more than twenty percent of the enrollment of the charter school.

CHARTER SCHOOLS

Code **IHBH** Issued **MODEL/08**

Purpose: To establish the basic structure for the board's decision to grant a charter.

To achieve its goal of promoting cultural diversity, educational improvement and academic excellence for all students, the board supports the establishment of charter schools within the district.

A charter school is a public, nonsectarian, nonreligious, nonhome-based, nonprofit corporation forming a school that operates within a public school district or the South Carolina Public Charter School District.

A charter school is accountable to the local school board or charter district board that grants its charter and will meet the following conditions.

- Be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services. Enrollment must not differ from the racial composition of the school district or that of the targeted student population of the charter school by more than 20 percent.
- Open enrollment to any child who resides in the district subject to space limitations. The charter school will not charge tuition or charges of any other kind unless allowed by the sponsor and as comparable to the charges of the district.
- Assume responsibility for its own operation including preparation of a budget, contracting for services, curriculum and personnel matters.
- Have an education program, curriculum and student achievement standards that meet or exceed the state curriculum standards and any content standards adopted by the district.
- Follow the application process as required by law. In the case of sponsorship by the South Carolina Public Charter School District, the applicant must provide notice of the application to the school district for informational purposes only.

If the school board has information that an approved application by the South Carolina Public Charter School District adversely affects the other students in the district, as defined in state regulation, or that the approval of the application fails to meet the spirit and intent of the law, the school board may appeal the granting of the charter to the state administrative law court.

The performance of students attending a charter school sponsored by the district will be reflected on a separate line on the district's report card and will not be included in the overall performance ratings of the school district.

The sponsor may deny, revoke or not renew a charter under certain conditions outlined in the law. This decision may be appealed to the state administrative law court for review according to the provisions of law.

Adopted ^

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Legal references:

A. S.C. Code of Laws, 1976, as amended:

1. Section 59-5-60 - General powers of board.
2. Sections 59-40-10 through 59-40-210 - South Carolina Charter Schools Act of 1996, as amended by the Charter Schools Act of 2005 and the South Carolina Public Charter School District Act.
3. Section 59-18-900 - Annual report cards and performance ratings.
4. Section 59-18-920 - Requirements of report cards.
5. Section 59-16-10, et. seq. - South Carolina Virtual School Program.

B. State Board of Education Regulations:

1. R43-600 - Charter school appeals.
2. R43-601 - Procedures and standards for review of charter school applications.

EDUCATION ACCOUNTABILITY ACT (EAA) REFORM

Effective date: June 5, 2008

Summary: What began more than a year ago as a set of recommendations developed by a broad-based stakeholders' group to make changes to South Carolina's Education Accountability Act of 1998 (EAA) culminated in the enactment this year by the General Assembly of the first major EAA reform in a decade.

The bill to replace the Palmetto Achievement Challenge Test (PACT) and make other significant changes to the education accountability system was enacted into law when the Governor allowed it to pass without his signature. The changes to the EAA were seen by many as a means to strengthen areas that have proven positive and improve on areas of the law that have inhibited progress.

Bill drafters took the opportunity during the debate over EAA amendments to clean up and update language in the accountability act as well as include provisions that for several years have been "add-ons" to the EAA through state budget provisos. The most significant changes to the EAA are outlined briefly below.

Testing

While the elimination of PACT was the driving force behind EAA reform, several other testing-related issues also were added including time spent on testing as well as when results are available.

- The Palmetto Achievement Challenge Test (PACT) was replaced with a new end-of-year accountability test beginning in 2009. The new test will feature essay questions administered in March and multiple-choice questions in May. The results are to be provided to schools in a timely fashion (by August 1 beginning in 2010) and structured to give teachers better diagnostic information on an individual student's learning.
- Test score terms were changed from Advanced, Proficient, Basic, Below Basic to Exemplary, Met and Not Met.
- Student performance target levels for Exemplary, Met and Not Met must be set following administration of the new test. A broad-based stakeholders group must provide input for setting the performance levels for Exemplary, Met and Not Met.
- Ratings for the school and district report cards will be delayed in the current school year until no later than February 15, 2010.
- A statewide adoption list is created of formative assessments in English/language arts and mathematics for grades one through nine, and district participation is required subject to funding by the legislature beginning in 2009-10.
- The requirement for a first- and second- grade reading assessment and a first-grade readiness test is eliminated.

School and district ratings

The debate over how schools are labeled under the accountability system resurfaced during the EAA reform debate and threatened to derail the process before a compromise was reached.

- The school and district rating term, “Improvement Rating” was changed to “Growth Rating” and the school rating term “Unsatisfactory” was changed to “School/District At-Risk.”
- A broad-based stakeholders group is required to provide input on the criteria for calculating the new school and district ratings.

Report cards

All parties studying EAA reform have long felt that the school and district report cards were too lengthy, costly to produce and distribute, and unwieldy for parents.

- The production of two school and district report cards - a comprehensive version and a two-page executive summary - are now required.
 - The comprehensive report cards are to be made available on the state, district and school web sites and, upon request, printed by districts.
 - The two-page summary will be printed by the state and made available to schools’ parents and the school district will include state scores on the National Assessment of Education Progress (NAEP) as well as national scores.
- Districts are required to post on their web site the percentage of new trustees who have completed orientation requirements as outlined in state law. Previously, this information was included on the district report card.
- District superintendents must review the principal’s narrative concerning school performance, and the school principal must review the school’s performance on statewide assessments prior to writing the narrative. The governing body for a charter school must review the narrative for the charter school.

Rewards and technical assistance

A number of technical assistance provisions that for many years were included as temporary budget provisos were codified into the EAA as part of the reform process.

- Several parts of EIA proviso 1A.42 relating to a school that receives a below average or school/district at risk rating are now in permanent law in the EAA. They include provisions relating to the following.
 - The development of school renewal plans and the use of technical assistance funding as well as technical assistance personnel in their implementation.
 - SDE workshops to assist schools in formulating school renewal plans including a new requirement that the chairman of a local board (or board member designee), the superintendent or district instructional leader, and the principal of any school receiving technical assistance funds must attend at least one of the workshops in order to receive any state aid for technical assistance.
 - The placement of teacher and principal specialists in schools and limits regarding years of service as well as salary supplements. This also includes the employment of principal mentors.
 - The requirement that in order to implement the school district and school renewal plan, a school must be eligible to receive the technical assistance funding over the next three

years in order to implement fully systemic reform and to provide an opportunity for building local education capacity.

- Other specifics on spending technical assistance funds on activities that include, but are not limited to, professional development, compensation incentives, homework centers, formative assessments or comprehensive school reform efforts.
- “Closing the achievement gap” has been added as an additional school performance award to recognize schools making substantial progress in closing the achievement gap between disaggregated groups.

Other

- A comprehensive review of the accountability system is required every five years beginning in 2013 by the Education Oversight Committee (EOC) working with the State Board of Education and a broad-based stakeholders group and to report findings to the General Assembly.
- The state requirement for student academic plans is eliminated.

Local district action required: SCSBA is providing model policy revisions in two areas based on the amendments to the EAA.

IKE (Promotion and Retention of Students)

Since the passage of the EAA, districts have had policy language in place reflecting the requirements of EAA with regard to academic assistance plans for students. One of the changes to the law eliminated the state requirement for these plans. The process for providing academic assistance to students is now up to the district - you may stay with the state language as is, adapt it reflect your individual district changes, or implement a new process. The model policy IKE (Promotion and Retention of Students) follows with this advice included. Also note that the language on the use of an end-of- year assessment as the sole criterion in making student decisions in this area should be included in this policy.

ILBB (State Program Assessments)

Another change to the law eliminates the administration of a state readiness test for grades one and two. This language has been removed from model policy ILBB (State Program Assessments) and its accompanying administrative rule to reflect its deletion from the EAA.

Any districts that have cross reference language in IKACA (Parent Conferences) or any other policies requiring conferences specifically as outlined in the EAA need to delete that language from the policy or amend it to reflect the changes to the student academic plan process. No model policy is provided for this recommendation.

Also, several years ago, SCSBA eliminated references to specific state tests by brand name, so to speak, and began referring to any tests used as the “statewide assessment program” or “standardized test scores” or “end of year tests.” This is a good time to check your testing (ILB, ILBB), student records (JRA) and any other relevant policy areas for references to PACT and (hopefully not) BSAP and replace these specific terms with more general language.

Policy reference: IKACA (Parent Conferences). IKE (Promotion and Retention of Students). ILBB (State Program Assessments). JRA (Student Records).

Model policies and a model administrative rule follow text of law.

Text: The text of this law may be found at www.scstatehouse.net. Click on Current Legislation; Bill, Act or Rat #; and enter R330, A282, H4662 for the search.

PROMOTION AND RETENTION OF STUDENTS

Code **IKE** Issued **MODEL/08**

Purpose: To establish the basic structure for the promotion and retention of students.

The district affirms academic excellence for students. This promotion/retention policy describes the standards our students must meet in order to maintain academic excellence and to be considered for promotion from one grade to the next.

This policy will be applicable to all students who are in the regular school program. Students functioning in special education programs will be governed by their Individual Educational Plan (IEP). The district will administer this policy fairly, equitably and consistently in the schools.

Promotion

Insert district information here for grades K through eight.

Retention/Academic assistance

The process for providing academic assistance to students is now up to the district - you may stay with the state language as is, adapt the current language to reflect your district changes or include new information.

Insert district language here.

A student's score on an end of year assessment may not be the sole criterion for placing the student on academic probation, retaining the student in his/her current grade, or requiring the student to attend summer school.

Information to parents/legal guardians

The district will distribute this promotion/retention policy to every student and parent/legal guardian at the beginning of the academic year. The district will also make every effort to educate and inform parents/legal guardians and students through (*insert district information here; newsletters, student handbooks, PTO/PTA meetings, etc*).

Adopted ^

Legal references:

- A. S.C. Code of Laws, 1976 as amended:
 - 1. Section 59-18-1310 - Reports consolidated; submission dates.
- B. State Board of Education Regulations:
 - 1. R43-240 - Summer programs.
 - 2. R43-262 - Assessment program.

STATE PROGRAM ASSESSMENTS

Code **ILBB** Issued **MODEL/08**

Purpose: To establish the basic structure for implementation of the statewide assessment program.

Statewide assessment program

All students attending district schools will participate in the statewide assessment program as mandated by current applicable laws and regulations. This program will promote student learning and continuously assess each individual student's performance in relation to the statewide academic standards and guidelines for English/language arts, writing, mathematics, social studies and science.

In addition, the National Assessment of Education Progress (NAPE) will be administered each year to obtain an indication of student and school performance relative to national performance levels.

The district will comply with administrative rules prepared by the administration as well as federal and state laws and regulations in the implementation of the statewide assessment program.

Students with disabilities will be included in the assessment program in compliance with the provisions of state and federal laws and regulations.

Adopted ^

Legal references:

A. Federal law:

1. 20 U.S.C. Sections 6310, et. seq. - No Child Left Behind Act of 2001.
2. Education of the Handicapped Act, Public Law 93-380, amended by Public Law 94-142, Education of All Handicapped Children Act.
3. 20 USCA Sections 1400-1485 - The Individuals with Disabilities Education Act.
4. The Individuals with Disabilities Education Improvement Act of 2004.

B. S. C. Code, 1976, as amended:

1. Sections 59-18-100, et. seq. - Education Accountability Act of 1998.

C. State Board of Education Regulations:

1. R43-262 - Assessment programs.
2. R43-262.4 - End of course tests.

STATE PROGRAM ASSESSMENTS

Code **ILBB-R** Issued **MODEL/08**

Statewide assessment program

Administration of test

The district's assessment program will include continuous assessment of the individual student's performance in relation to the state standards of student achievement for K-12.

Inservice training

The district will provide appropriate inservice training for staff, including newly employed certified personnel, involved in implementing the statewide assessment program. This training will help to ensure efficient and effective methods of instruction.

Notice of deficiencies

The schools will send written notice to the parent/legal guardian of any student who does not meet the required standards set for any test prescribed by the statewide assessment program. The school will file a copy of the notice in the scholastic record of the student concerned. The school will also provide suggestions for appropriate assistance that the parent/legal guardian may give to the child.

If any parent/legal guardian requests test result information, the school will provide the information in writing.

Assistance to the student

The schools will use the results of the test administered under the statewide assessment program in the diagnosis of student deficiencies. When test results indicate a deficiency, the schools will provide basic instruction to aid the student in bringing his/her performance up to the statewide standards. The program will be specific to the individual student's needs (see policy IKE, Promotion and Retention of Students).

Make-up tests

Any student who is unable to take any of the statewide assessments on the prescribed day will take the missed test on the scheduled make-up date.

Issued ^

EDUCATION CAPITAL IMPROVEMENTS SALES AND USE TAX ACT

Effective date: June 12, 2008

Summary: SCSBA has long supported a statewide law allowing local school districts to enact, through referendum, a local option sales tax for school construction purposes. Until now, such a local option sales tax has been a creature of local legislation enjoyed by only a handful of districts statewide.

The General Assembly this year took a step toward this goal of a statewide school district local option sales tax law with the enactment of the Education Capital Improvements Sales and Use Tax Act. This act, however, is limited to use in counties which have collected at least \$7 million in state accommodations taxes in the most recent fiscal year for which full collection figures are available. According to state figures, only Horry and Charleston counties would meet this threshold collection amount.

Under the act, subject to a referendum, a school district may impose a one-cent sales and use tax for up to 15 years. Exemptions to the tax include groceries and items under a maximum sales tax. A portion of the revenue may be shared with a local technical college and/or public institution of higher learning, pursuant to a memorandum of agreement between the school board and the boards of the institutions. A memorandum of agreement - which must outline any revenue-sharing plan as well as specific capital improvement projects for which the revenue is to be used - must be adopted by a two-thirds vote of the school board as well as a governing board for a technical college or institute of higher education if the revenue is to be shared. The act establishes school boards as the authorizing entities via resolution for imposing a local option sales tax. In addition, the following applies.

- A referendum may only be conducted in even-numbered years at the time of the general election. The sales tax may be renewed in the same manner as initially imposed within a county; however, the referendum cannot be held more than two years before the date that the current sales tax is scheduled to terminate.
- A sales tax under this act cannot be imposed in a county where a local option sales tax is already imposed or scheduled to be imposed for public school capital improvements.
- Districts may use proceeds to pay for capital projects listed in the board resolution and referendum question, or to service general obligation debt incurred by the district for these purposes, or a combination. If any of the revenue is used for debt service payment, then the county auditor upon notice from the school district will correspondingly reduce the next debt service millage levy.

The act does not specifically preclude use in multi-district counties and would likely require all districts within a county to ratify a memorandum of agreement; however, there is still the \$7 million accommodations tax threshold that must be considered. Enactment of the Education Capital Improvements Sales and Use Tax Act does not have any policy implications for school districts.

Local district action required: SCSBA does not recommend any policy changes due to the enactment of this law.

Policy reference: NA

Text: The text of this law may be found at www.scstatehouse.net. Click on Current Legislation; Bill, Act or Rat #; and enter A316, R362, S1232 for the search.

FAMILY AND MEDICAL LEAVE ACT (FMLA)

Effective date: January 28, 2008

Summary: In January 2008, the 2008 National Defense Authorization Act (NDAA) was signed into law by President Bush. Among other things, the law amended the Family and Medical Leave Act of 1993 (FMLA) to expand its coverage to employees with family members in the military who are on active duty or who are being called up for active duty. Specifically, the amended FMLA now contains the following provisions.

- The law will now allow for up to 12 weeks of leave during the employer’s designated 12-month period for an employee whose spouse, son, daughter or parent is on active duty or has been called to active duty for any “exigency” situation (effective when federal regulations are final).
- An employee who is the spouse, son, daughter, parent or next of kin of a “member of the Armed forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness” may be permitted to take up to 26 workweeks of leave to care for this individual (effective now).

The Department of Labor submitted proposed regulations that would define a “qualifying exigency” under the new provision and would also address other employer concerns about FMLA by (1) requiring employees to give employers notice before taking leave, with exceptions for extenuating circumstances; and (2) allow employers to require an employee to provide an annual recertification from a doctor that an employee has a “serious health condition.” These regulations should be final by the end of this year.

Local district action required: SCSBA is not recommending any policy revisions on these military leave issues until the regulations are final and clarification is provided on several issues such as next of kin, what are qualifying exigencies, is leave per service member or per employee, what kind of notice is required, and others. At that time, SCSBA will provide model policy and administrative rule information to districts.

Click on the following link for further information on these changes in the NSBA July 2008 issue of *Inquiry & Analysis*.

www.nsba.org/secondarymenu/cosa/resources/inquiryanalysis/iajuly08.aspx

Policy reference: GCC (Professional Staff Leaves and Absences). GDC (Support Staff Leaves and Absences).

FOUNDATIONS OF AMERICAN LAW AND GOVERNMENT ACT

Effective date: June 11, 2008

Summary: The General Assembly during this election year enacted a law that authorizes local governments - including school districts - to post a Foundations of American Law and Government display in a visible, public location in public buildings.

Because the new law is permissible and thus not a mandate, school districts are not required to post a Foundations of American Law and Government display; however, should they opt to do so, the new law sets specific requirements.

In brief, the Foundations of American Law and Government display must include the Ten Commandments; the Magna Carta; the Mayflower Compact, 1620; the Declaration of Independence; “The Star-Spangled Banner” by Francis Scott Key; the Bill of Rights of the United States Constitution; the Preamble to the South Carolina Constitution; the Nineteenth Amendment to the United States Constitution; the national motto “In God We Trust”; the image of Lady Justice; The Lord's Prayer; the Emancipation Proclamation, 1863; and Martin Luther King, Jr.'s “I Have a Dream” speech.

Public displays of the Foundations of American Law and Government display must contain the text of the documents listed above together with the context for acknowledging formative, historically significant documents in America's heritage which is set forth in the new law. All documents in a Foundations of American Law and Government display must be posted on paper not less than 11x14 inches in dimension and must be framed in identically-styled frames. One document may not be displayed more prominently than another.

The Foundations of American Law and Government Act attempts to guide local governments through the thorny issue of the separation of church and state established in the First Amendment. Two recent U.S. Supreme Court decisions from 2005 - one upholding a granite monument featuring the Ten Commandments on the Texas state capitol grounds as not serving a “primarily religious purpose,” and the other striking down the display of the Ten Commandments in indoor hallway displays readily visible to courthouse patrons present for public business - added little clarity to the continuing debate. The Supreme Court is likely to continue to decide these cases on a very fact-specific basis.

It is clear, however, and should be emphasized that displaying the Ten Commandments in *classrooms*, regardless of the source of the display, is not permissible. The U.S. Supreme Court prohibited this practice in *Stone v. Graham* in 1980.

School officials should be aware of this as they consider these displays. It is unlikely that any display of the Ten Commandments in public schools or on public school grounds could withstand legal challenge today. It remains a question as to whether this prohibition would extend to the district office.

Local district action required: Because districts are not mandated to post a Foundations of American Law and Government display, SCSBA does not recommend that districts take any

policy action due to the enactment of this law. Districts that have questions about posting a Foundations of American Law and Government display at the district office are advised to contact SCSBA and/or work closely with legal counsel.

Policy reference: NA

Text: The text of this law may be found at www.scstatehouse.net. Click on Current Legislation; Bill, Act or Rat #; and enter A340, R370, H3159 for the search.

HIGH SCHOOL STUDENT TRANSFERS DUE TO HARASSMENT

Effective date: June 11, 2008

Summary: The General Assembly took action this year regarding high school student transfers and eligibility for interscholastic activities in situations involving a court-approved restraining order.

Under the new law, a high school student who is the victim of physical abuse, harassment or stalking by a classmate during school hours or otherwise resulting in a restraining order being issued by the court against the classmate may transfer with the consent of the student's school district to another high school within or out of the district within 30 days of the restraining order being violated without any loss of eligibility to participate in interscholastic activities at the school to which the student transfers.

This provision resulted from an incident in a local district in which a female student was the victim of harassment by a classmate who was a former boyfriend. Having obtained a transfer from the district and moving to another high school within the district, the female student nonetheless lost a year of eligibility to play softball and missed her senior year of participation.

In this unique situation, a court-approved restraining order must be in place and must have been violated to trigger the statute. Further, resident district consent is required for the transfer. The focus of the new law is on eligibility for interscholastic activities and makes no other changes in the area of student transfers within the district or to a school in another district.

Local district action required: SCSBA does not recommend any specific policy language to implement this law, but does recommend the addition of the appropriate legal reference as follows to the policies mentioned below.

*S.C. Code of Laws, 1976, as amended:
Section 59-63-425 - Student may transfer.*

Policy reference: JJ (Student Activities). JJI (Interscholastic Athletics).

Text: Student may transfer

SECTION 1. Article 5, Chapter 63, Title 59 of the 1976 Code is amended by adding:

Section [59-63-425](#). A high school student who is the victim of physical abuse, harassment, or stalking by a classmate during school hours or otherwise resulting in a restraining order being granted against the classmate by a court of competent jurisdiction may transfer with the consent of the student's school district to another high school within or out of the district within thirty school days of the restraining order being violated, without any loss of eligibility to participate in interscholastic activities at the school to which the student transfers.

REGULATING SECTION 403 (B) PLANS

Effective date: N/A

Summary: The IRS and the Department of the Treasury issued comprehensive new regulations regarding 403(b) retirement plans on July 26, 2007, that generally are applicable beginning tax years after December 31, 2008. If your district offers such a program, you need to be familiar with these regulations and probably have already heard more about this issue from the vendors that provide the financial products for your district.

The new regulations specify that 403(b) programs must be implemented pursuant to written plans. These written plans must contain all material terms of the program and also may contain optional features not required under section 403(b). Service providers must be approved by the district and listed in the written plan.

The district's 403(b) program must conform to the district's written plan document in form and operation and, in turn, this plan must comply with the IRS regulations. The district, the vendors providing investment products and any third parties involved in the administration or compliance functions of the plan must follow the written plan.

The IRS regulations also provide that all employees must receive an annual notice of the 403(b) plan and details regarding how they can participate in it.

The IRS web site has published Revenue procedure 2007-71 which contains model plan language for public school district use. The language here may be incorporated into a district's plan, depending on which parts may apply, for compliance with the IRS regulations. The following is a link to the IRS information.

http://www.irs.gov/irb/2007-51_IRB/ar09.html#d0e983

As further information, the below article is reprinted with permission from *Leadership Insider*, February 2008, copyright 2008 National School Boards Association, all rights reserved. There is a link imbedded in the article to an additional article discussing fiduciary duties boards owe their employees with regard to 403(b) and 457 plans.

Numerous regulations have been issued in 2006 and 2007 on Section 403(b) retirement plans. These plans, as well as 457 plans, are similar to 401(k) plans in the private sector but are available to employees of educational institutions. Contributions and investment earnings grow on a tax-deferred basis until withdrawal, generally after retirement, at which time they are taxed as ordinary income.

Regulations issued by the Internal Revenue Service in the summer of 2006 made two major changes to 403(b) plans:

- 403(b) plans that allow for employee contributions must satisfy the "universal availability rule" - that is, if the district offers the plan to some employees, it generally must permit all employees to participate.

- 403(b) plans must now have a written plan document describing how responsibilities will be allocated among the employer, the entity offering investment options, and any other party involved.

In December, the IRS followed up by issuing a model written plan. A school district that adopts this model can rest assured that the IRS will view its 403(b) plan as satisfying the regulatory requirements.

The article in this issue of *Leadership Insider* by Forrest Jack Lance, Fred Reish and Bruce Ashton, (<http://www.nsba.org/SecondaryMenu/COSA/Resources/LeadershipInsider/InsiderFeb08.aspx>) explains the fiduciary duties school boards owe their employees with regard to 403(b) and 457 plans.

The article alludes to a lawsuit recently filed in the state of Washington against the National Education Association, in which employees accuse the union of endorsing retirement products offered by two companies in exchange for lucrative payments and sponsorships without disclosing these facts to its members. The suit alleges that the administrative fees charged by these plans far exceed those of comparable products.

While this article focuses on one type of retirement program, the duties and practical suggestions the authors outline are applicable to others as well.

Local district action required: If your district offers 403(b) plans, you generally need to allow all employees to participate and you need to develop a written plan to meet the requirements of the IRS provisions. Recommendations in the above-cited article stress the importance of utilizing individuals with the appropriate expertise to assist districts in the development and implementation of these new plans. SCSBA is adding policy language stating only that a plan will be developed, as well as the appropriate legal references.

Policy reference: DKB (Salary Deductions). GCBD (Professional Staff Fringe Benefits). GDBD (Support Staff Fringe Benefits).

Model policy follows.

SALARY DEDUCTIONS

Code **DKB** Issued **MODEL/08**

Purpose: To establish the basic structure for deductions from salaries of employees.

All deductions from salary, except for deductions required by law, are subject to board approval and are voluntary on the part of the individual employee. The district requires that voluntary deductions be authorized in writing by the employee on a form supplied by the district.

The following payroll deductions are required by law.

- Social Security
- state and federal income tax
- state retirement

The following additional payroll deductions are allowed by law and are approved by the school board.

- extended family benefits for health insurance
- tax sheltered annuity plans which meet board established criteria
- employee credit unions
- deductions for state-authorized group survivor monthly income insurance programs and term life insurance

The district will maintain and operate any 403(b) programs pursuant to a written plan. The written plan will contain all the material terms and conditions for eligibility, benefits, applicable limitations, the contracts available under the plan, the time and form under which distributions may be made, and other optional features as appropriate. The district will generally open these programs to all employees and provide notification on an annual basis.

Part-time teachers working 15-30 hours per week qualify for state health and dental insurance.

The district will consider deductions for charitable organizations only after each organization submits evidence that it has a current 501(c)(3) classification with the Internal Revenue Service.

The district will not make deductions for any organization which is chartered by Section 501(c)(4)(5) or (6) of Title 26 U.S. Code.

The district will not make deductions for any organization that has a parent or subsidiary organization which fails to meet the requirements herein.

The district will not make any deductions if the proceeds of the deduction would be for the benefit of a labor organization.

Adopted ^

Legal references:

- A. Federal regulations:
1. 26 CFR 601.201 - Rulings and determination letters.

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B. S. C. Code, 1976, as amended:

1. Section 8-11-91 - Deductions for charitable contributions.
2. Section 8-11-92 - Qualifying criteria for charitable organizations.
3. Section 8-11-93 - Minimum level of employee participation required (lesser of 10 percent or 200 employees).
4. Section 8-11-98 - Deductions for payment to credit union.
5. Section 59-25-45 - Health and dental insurance.

RESIDENCY REQUIREMENTS (MILITARY)

Effective date: June 16, 2008

Summary: The General Assembly this year enacted changes to the law relating to students with military parents/legal guardians in order to accommodate frequent movement and deployment.

The first change, to qualifications for attendance at public schools, adds a new provision stating that children are entitled to attend the public schools of a school district, without charge, if a parent/legal guardian's military deployment or call to active duty is more than 70 miles from his/her residence and is for more than 60 days. If the parent/legal guardian returns from deployment or active duty service prior to the end of the school year, the child may finish the school year in the school he/she attends (without charge) even if the student resides in another school district for the remainder of the year due to the parent/legal guardian's return home.

The second change adds a provision to allow nonresident military personnel to enroll in a program designed to award a South Carolina high school diploma without cost to the state or local district.

Local district action required: SCSBA recommends that boards amend their policy addressing admission of resident students to include the new language reflecting attendance of students with military parents/legal guardians who are deployed or on active duty.

Policy reference: JFAA (Admission of Resident Students).

Model policy follows text of law.

Text: Additional qualifications for attendance at public school or particular public school

SECTION 1. Section [59-63-31](#)(A) of the 1976 Code, as last amended by Act 92 of 2003, is further amended to read:

(A) Children within the ages prescribed in Section [59-63-20](#) also are entitled to attend the public schools of a school district, without charge, if:

(1) the child resides with one of the following who is a resident of the school district:

(a) a person who is not the child's parent or legal guardian to whom the child's custody has been awarded by a court of competent jurisdiction;

(b) a foster parent or in a residential community-based care facility licensed by the Department of Social Services or operated by the Department of Social Services or the Department of Juvenile Justice; or

(c) the child resides with an adult resident of the school district as a result of the:

(i) death, serious illness, or incarceration of a parent or legal guardian;

(ii) relinquishment by a parent or legal guardian of the complete control of the child as evidenced by the failure to provide substantial financial support and parental guidance;

(iii) abuse or neglect by a parent or legal guardian;

(iv) physical or mental condition of a parent or legal guardian is such that he cannot provide adequate care and supervision of the child;

(v) parent's or legal guardian's homelessness, as that term is defined by Public Law 100-77; or

(vi) parent's or legal guardian's military deployment or call to active duty more than seventy miles from his residence for a period greater than sixty days; provided, however, that if the child's parent or legal guardian returns from such military deployment or active duty prior to the end of the school year, the child may finish that school year in the school he attends without charge even if the child resides in another school district for the remainder of the school year due to his parent or legal guardian returning home;

(2) the child is emancipated and resides in the school district;

(3) the child is homeless or is a child of a homeless individual, as defined in Public Law 100-77, as amended; or

(4) the child resides in an emergency shelter located in the district.

In addition to the above requirements of this subsection, the child shall also satisfy the requirements of Section [59-63-30](#)(d) and (e).

Nonresident military enrollment in South Carolina high school diploma program

SECTION 2. Chapter 63, Title 59 of the 1976 Code is amended by adding:

Section [59-63-35](#). Nonresident military personnel may enroll in a program designed to award a South Carolina high school diploma. However, neither the State nor local districts shall be required to bear the cost for any nonresident military personnel enrolled in these programs.

Military personnel considered South Carolina residents with significant contacts

SECTION 3. A member of the United States Armed Forces that, as of the effective date of this act, is stationed outside of this State or was stationed outside of this State for any time during the past twelve months to the extent that he would not be considered a resident of this State for the purposes of this title, but has graduated from a South Carolina high school, and has maintained significant contacts with the State during his service, including, but not limited to, continuously paying property taxes, is a resident or resides in this State, as the case may be, for purposes for this title. This section is repealed on July 1, 2009. This section does not apply for the purpose of eligibility for state scholarships and grants.

ADMISSION OF RESIDENT STUDENTS

Code **JFAA** Issued **MODEL/08**

Purpose: To establish the basic structure for admitting to district schools those students who reside in the district.

Generally, all persons of legally defined and mandated school age who reside in the district and who have presented required birth certificates and certificates of immunization may attend the public schools without charge.

First-time enrollment

When a student seeks to enroll in the district for the first time, the board may consider whether the student meets the district's standards of conduct and behavior. The board will consider non-school records and the student's disciplinary records in any school in which the student was previously enrolled. The board will consider these records as they relate to the adjudication of delinquency in any jurisdiction for violent crimes, unlawful use or possession of weapons, or unlawful sale of drugs.

If the board does not allow the student to enroll based on his/her record, the board will notify the student's parent/legal guardian. The board will give the student a hearing and other procedural rights in accordance with administrative rule JKE-R (Expulsion).

The bar to enrollment applies for a maximum of one year. After the bar is lifted, the student may reapply.

Criteria for admission

Under South Carolina law, the district may admit a student who lives in the district provided the student meets one of the following criteria.

- lives with his/her parents
- lives with his/her legal guardian
- lives with his/her foster parents
- is emancipated
- is homeless or is a child of a homeless individual, as defined in Public Law 100-77
- resides in an emergency shelter located within the district
- lives in a residential community-based care facility licensed by the South Carolina Department of Social Services or operated by the South Carolina Department of Social Services or the South Carolina Department of Youth Services

If an adult resident of the district signs an affidavit as required by law, the district must admit a student who lives with an adult resident of the district provided the child resides with the adult as a result of any of the following.

- the death, serious illness, or incarceration of a parent/legal guardian
- the relinquishment by a parent/legal guardian of the complete control of the child as evidenced by the failure to provide substantial financial support and parental guidance
- abuse or neglect by a parent/legal guardian

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- the physical or mental condition of a parent/legal guardian is such that he/she cannot provide adequate care and supervision of the child
- a parent/legal guardian's homelessness, as that term is defined by Public Law 100-77
- a parent/legal guardian's military deployment or call to active duty more than 70 miles from his/her residence for a period greater than 60 days; provided, however, that if the child's parent/legal guardian returns from such military deployment or active duty prior to the end of the school year, the child may finish that school year in the school he/she attends without charge even if the child resides in another school district for the remainder of the school year due to his/her parent/legal guardian returning home

In addition, the adult must attest that the child's claim of residency in the district is not primarily related to attendance at a particular school. The adult must also accept responsibility for educational decisions for the child.

In all cases the student must do the following.

- have maintained a satisfactory scholastic record in accordance with scholastic standards of achievement set by the board
- not have been guilty of violating the rules of conduct and behavior that must be met by all students as a condition to the right to attend the public schools of the district as set by the board

The district will not deny admission to any student on the basis of race, religion, color, creed, sex, immigrant status or English-speaking status, national origin or disabling condition.

Adopted ^

Legal references:

A. Federal Law:

1. Homeless Assistance Act, Pub.L.No. 100-77, 101 Stat. 482-538 (1987), also known as the McKinney Act.
2. Title VI of the Civil Rights Act of 1964 - Prohibits discrimination on the basis of race, color, national origin, religion or sex.
3. Uniform Tax Act (Section 1524, Internal Code) Section 610 E, Code Section 6676 E - All dependents age five and above required to have social security number.
4. No Child Left Behind Act of 2001, P.L. 107-110, Section 4155.

B. S.C. Code of Laws, 1976, as amended:

1. Section 16-1-60 - Violent crimes.
2. Section 44-29-180 - Student must show immunization prior to admission.
3. Section 59-63-30 - Qualifications for attendance.
4. Section 59-63-31 - Additional qualifications for attendance at public school.
5. Section 59-63-32 - Requirements to enroll child in public school; affidavit; penalties for providing false information.
6. Section 59-63-217 - Board of trustees may consider non-school records and prior school disciplinary records in determining whether a school district may refuse to enroll a student for the first time.
7. Section 59-63-390 - Ages of attendance.
8. Sections 59-63-480 and 490 - Attendance of non-resident students.
9. Section 59-19-90(10) - Power of board to transfer and assign pupils.

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C. State Board of Education Regulations:

1. R-43-272 - School admission.

D. State Board of Health and Environmental Control Regulations:

1. R-61-8 - Immunization of students.

E. U.S. Supreme Court:

1. Parents Involved in Community Schools v. Seattle School District No. 1, 127 S. Ct. 2738 (2007).

RESIDENTIAL IMPROVEMENT DISTRICT ACT

Effective date: June 17, 2008

Summary: Rapid growth and unchecked development in many communities across the state are forcing school districts to scramble in order to accommodate the increasing numbers of students that show up at the schoolhouse door each year. With few tools to work with - an outdated debt limit and unpredictable referendum process, coupled with limited state funds for facilities - districts need new methods of building schools. Calls have increased at the state and local levels for implementing school impact fees in South Carolina. A way, in essence, to make those who drive growth in a community pay for the impact on schools, instead of asking existing taxpayers time and again to pay for new schools.

As one means to address the growth issue - and for some a means to divert attention away from impact fees - lawmakers this year enacted the South Carolina Residential Improvement District Act (RID). The RID law basically allows cities and counties to create special taxing districts to finance certain improvements, which are funded through special assessments collected from the property owners in the defined boundaries of the district.

The new act is based upon existing county improvement district law, but expands it to allow public infrastructure improvements including the construction of a new public school and the renovation and expansion of an existing public school. Also under the new RID law, improvements may be made to non-contiguous parcels of property, a limiting factor in current improvement district law. Further, any improvements to property under this law are to be or become the property of the city, county or school district if it is a new school or renovation to an existing school.

Critics of the new RID law point to the fact that cities and counties may exercise this authority only upon the request and approval of all the owners of the property within the proposed district. They argue that property owners are unlikely to be willing to assess themselves.

Although school boards may not authorize a RID under the new law, any proposed improvement concerning a new public school construction or renovation of an existing school must be approved by the local school board prior to authorization of a RID. A city or county ordinance authorizing the creation of a district must include the expected impact upon school enrollments of development within the proposed district.

Local district action required: SCSBA is not recommending any policy action relating to the new RID law.

Policy reference: NA

Text: The text of this law may be found at www.scstatehouse.net. Click on Current Legislation; Bill, Act or Rat #; and enter A350, R422, H4745 for the search.

SCHOOL RESOURCE OFFICERS (SROs) ARREST PROCEDURES

Effective date: June 4, 2008

Summary: An incident in an upstate school district this past year that left two students spending several nights in a county detention center prompted a change in the law regarding arrest procedures for school resource officers.

During the incident, a middle school resource officer arrested two 13-year-old girls who were involved in an altercation that was threatening to escalate into violence. In this case, there was no judge on duty to hold a bond hearing for the students, resulting in their extended stay at the detention center.

Under the new law, which amends the state code pertaining to the designation and jurisdiction of resource officers, officers may now issue a courtesy summons to a student arrested for a misdemeanor offense in connection with a school activity or school-sponsored event. A student arrested for a misdemeanor offense by a school resource officer must have a bond hearing in magistrate's court within 24 hours of his/her arrest.

Local district action required: The above is provided as information and SCSBA does not recommend any district policy action unless a district has a separate policy for school resource officers. In that case, the language about issuing a courtesy summons and the bond hearing could be added, as well as the following legal reference.

*S.C. Code of Laws, 1976, as amended:
Section 5-7-12 - School resource officers, procedures for certain student arrests.*

Policy reference: KLGA (School Resource Officer).

Text: School resource officers, procedures for certain student arrests

SECTION 2. Section [5-7-12](#)(A) of the 1976 Code is amended to read:

(A) The governing body of a municipality or county may upon the request of another governing body or of another political subdivision of the State, including school districts, designate certain officers to be assigned to the duty of a school resource officer and to work within the school systems of the municipality or county. The person assigned as a school resource officer shall have statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school-sponsored event. In all circumstances in which a school resource officer arrests a student for a misdemeanor offense, the officer may issue a courtesy summons to appear to a student involved in the particular incident in connection with a school activity or school-sponsored event. Notwithstanding another provision of law, a student arrested for a misdemeanor offense by a school resource officer must have a bond hearing in magistrates court within twenty-four hours of his arrest. When acting pursuant to this section and outside of the sworn municipality or county of the school resource officer, the officer shall enjoy all authority, rights, privileges, and immunities, including coverage under the workers' compensation laws that he would have enjoyed if operating in his sworn jurisdiction.

SEX OFFENDERS (RESIDENCES)

Effective date: June 16, 2008

Summary: In recent years, there has been a growing national awareness of sexual predators and the threats they pose to children leading many state legislatures to enact or strengthen laws designed to protect minors from these offenders. Following the lead of a number of states, the South Carolina General Assembly this year enacted a law restricting where a convicted sex offender may reside in the state.

Under the law in general, a sex offender who has been convicted of certain crimes concerning sexual conduct or kidnapping involving a minor cannot reside within 1,000 feet of a school, daycare center, children's recreational facility, park or public playground. There are exceptions listed such as a sex offender who resided within 1,000 feet prior to the enactment of this law.

Importantly, for school districts, the new law requires that at the beginning of each school year, each district must provide the names and addresses of every sex offender who resides within 1,000 feet of a school bus stop within the district to the parents/legal guardians of a student who boards or disembarks a school bus at a stop that is within the 1,000-foot limit. **Or**, the district must provide a hyperlink to the sex offender registry web site on the district's web site for the purpose of allowing parents/legal guardians to gather this information.

State law requires that the State Law Enforcement Division (SLED) operate a sex offender registry. Offenders must also register with the local county sheriff. The SLED sex offender registry is found online at <http://services.sled.sc.gov/sor/>.

Under the new law, local law enforcement agencies must check the school districts' web sites to ensure that each district has complied by posting the hyperlink. In the absence of a hyperlink, the law enforcement agency is to contact the district to confirm that parent/legal guardians have been notified of every sex offender residing within 1,000 feet of a school bus stop. If the district has not provided a hyperlink or notification, local law enforcement must inform the district that it is in violation of the law. If the district does not comply within 30 days after receiving this notice, the district may be subject to being ordered by a court to do so and may face paying attorney's fees and costs for being forced to comply.

SCSBA does not recommend any policy action for this specific change to state law. However, SCSBA will be developing a new model policy dealing with the whole issue of sex offenders and their relationship with schools to include student safety, visitors to schools, use of the sex offender registry, employment, residency limitations, rights of parents on the sex offender registry, etc.

Local district action required: Districts are given the option in this new law to annually notify parents/legal guardians of every sex offender residing within 1,000 feet of their child's bus stop, or post a hyperlink on the district website to the sex offender registry.

Policy reference: N/A

Text: The text of this law may be found at www.scstatehouse.net. Click on Current Legislation; Bill, Act or Rat #; and enter A333, R410, H3094 for the search.

SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT

Effective date: June 4, 2008

Summary: The General Assembly this year, in an effort to address growing national and state concerns over the illegal immigration issue, enacted the South Carolina Illegal Immigration Reform Act.

Under the Illegal Immigration Reform Act, public employers - including school districts - must, beginning January 1, 2009, register and participate in the federal work authorization program (the E-Verify program) to verify the employment authorization of all new employees. The Internet-based E-Verify program is maintained and operated by the U.S. Department of Homeland Security and the Social Security Administration. It allows employers to compare data from the employee's required I-9 form against information in the E-Verify database to verify whether an employee is authorized to work in the United States.

In addition, public employers will also be required to ensure that their contractors comply with E-Verify requirements. Under the act, a public employer may not enter into a services contract with a contractor unless the contractor agrees to do one of the following.

- register and participate in the federal work authorization program to verify the employment authorization of all new employees, and require its subcontractors to do the same, or
- employ only workers who meet one of these criteria.
 - possess a valid South Carolina driver's license or identification card issued by the South Carolina Department of Motor Vehicles
 - are eligible to obtain a South Carolina driver's license or identification card in that they meet the requirements set forth in state law, or
 - possess a valid driver's license or identification card from another state where the license requirements are at least as strict as those in South Carolina

Compliance with the contractor provisions of this act may be achieved by public employers if they obtain written certification from contractors and subcontractors that they will comply with the act and provide documentation as necessary to prove compliance.

Local district action required: Districts need to revise their hiring policies to add language reflecting the requirement of the law requiring that, as public employers, they will register for and participate in the federal work authorization program E-Verify. Legal references have been updated as well.

Policy reference: GCF (Professional Staff Hiring). GDF (Support Staff Hiring).

Model policies follow text of law.

Text: The text of this law may be found at www.scstatehouse.net. Click on Current Legislation; Bill, Act or Rat #; and enter A280, R327, H4400 for the search.

PROFESSIONAL STAFF HIRING

Code **GCF** Issued **MODEL/08**

Purpose: To establish the basic structure for the hiring of high quality district staff.

The superintendent will make recommendations to the board for employment. The superintendent will establish that all persons nominated for employment meet the qualifications set out for the particular position. Principals should be actively involved in the hiring of personnel for their school.

The district will obtain a criminal record history check on all newly hired teachers from the State Law Enforcement Division (SLED) prior to their initial employment.

The district board will make the final decision regarding employment of professional personnel in the district.

The superintendent may use a "Letter of Intent" to assure a prospective employee of a forthcoming recommendation to be hired.

The district will not employ any candidate without a personal interview.

Federal and state laws prohibit employers from hiring aliens not legally eligible to work in the United States. They also require all new employees to present evidence of employment eligibility and require employers to verify that eligibility. The district will utilize the federal work authorization program E-Verify for verification of work authorization submitted by an employee. Newly hired employees must complete the required I-9 form no later than three days following their first working day.

Should a vacancy occur in a position during the year, the board authorizes the superintendent to fill such vacancies for the remainder of the school year in which the vacancy occurs pursuant to a letter of agreement, when appropriate. The superintendent or his/her designee may determine whether advertising the vacancy is necessary or whether the position may be filled through some other means.

The superintendent is authorized to hire retired employees to work in the district on an "as needed" basis when their employment would serve the best interests of the school system. In such cases, the superintendent will notify the employee of the at-will status of his/her employment. The continued employment of retired employees will be at the discretion of the superintendent, who will make such decisions in the best interests of the district. The decision to employ or not employ retired employees will not be subject to the district's grievance procedures.

For issuance of contracts at the conclusion of the TERI program participation, see policy GCB, Professional Staff Contracts and Compensation.

Adopted ^

Legal references:

- A. United States Code:
 - 1. 20 U.S.C. Sections 1681-86 - Prohibits discrimination on the basis of sex.

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2. 42 U.S.C. 2000e, et seq. - Prohibits discrimination in hiring based on race, color, national origin, religion or sex.
 3. 42 U.S.C. 12101, et seq. - Prohibits employment discrimination on the basis of disability.
 4. Public Law 107-110 - No Child Left Behind, revised Elementary and Secondary Education Act (ESEA) of 2001, Title 1, Part A, Subpart 1, Section 1119 - Qualifications for teachers and paraprofessionals.
 5. Public Law 99-603 - Immigration Reform and Control Act of 1986.
 6. Public Law 104-208 - Illegal Immigration Reform and Immigrant Responsibility Act of 1996.
- B. Code of Federal Regulations:
1. 41 CFR 60-20 (1998) - Prohibits discrimination on the basis of sex.
- C. S. C. Code, 1976, as amended:
1. Section 1-1-550 - School districts shall give preference to employment of honorably discharged veterans.
 2. Section 59-1-510 - Guidelines and regulations for recruitment and hiring staff in professional areas.
 3. Section 59-1-520 - Intervention by State Department of Education for non-compliance.
 4. Section 59-19-80 - Teaching contracts to be issued in public meeting.
 5. Section 59-25-410, et seq. - Employment and Dismissal Act - Teachers to be notified of employment status by April 15th.
 6. Section 59-26-40(M) - Before initial employment of a teacher, the local school district shall request a criminal record history from the South Carolina State Law Enforcement Division for past convictions of any crimes.
 7. Section 59-18-1300 - District accountability system.
 8. Section 9-1-2210 - Teacher and Employee Retention Incentive Program; operation.
 9. Section 9-1-1790 - Amount which may be earned upon return to covered employment.
 10. South Carolina Illegal Immigration Reform Act (Act 280 of 2008).
- D. State Board of Education Regulations:
1. R43-205 - Administrative and professional personnel qualifications, duties and workloads.

SUPPORT STAFF HIRING

Code **GDF** Issued **MODEL/08**

Purpose: To establish the basic structure for the hiring of support staff.

The superintendent employs all support staff.

It is the superintendent's responsibility to ensure that all persons employed meet the qualifications established for the particular position. The superintendent will establish an interview and selection procedure that will allow principals or supervisors an opportunity to be actively involved in the selection of an employee for their school. However, the superintendent will make or approve the final selection.

The superintendent will consider all candidates based on the needs of the district as well as on their merits and qualifications. The district will not discriminate or give preferential treatment with regard to race, age, national origin, sex, handicap, alienage or religion. The district will make reasonable accommodation to known physical or mental limitations of otherwise qualified disabled persons where such accommodation would not impose an undue hardship on the operation of district programs.

The district will not employ any candidate without a personal interview.

All offers of employment are contingent upon successful completion of a criminal background check that is satisfactory as determined by the superintendent.

Federal and state laws prohibit employers from hiring aliens not legally eligible to work in the United States. They also require all new employees to present evidence of employment eligibility and require employers to verify that eligibility. The district will utilize the federal work authorization program E-Verify for verification of work authorization submitted by an employee. Newly hired employees must complete the required I-9 form no later than three days following their first working day.

Should a vacancy occur in a position during the year, the board authorizes the superintendent to fill such vacancies for the remainder of the school year in which the vacancy occurs pursuant to a letter of agreement, when appropriate. The superintendent or his/her designee may determine whether advertising the vacancy is necessary or whether the position may be filled through some other means.

The superintendent is authorized to hire retired employees to work in the district on an "as needed" basis when their employment would serve the best interests of the school district. In such cases, the superintendent will notify the employee of the at-will status of his/her employment. The continued employment of retired employees will be at the discretion of the superintendent, who will make such decisions in the best interests of the district. The decision to employ or not employ retired employees will not be subject to the district's grievance procedures.

Adopted ^

PAGE 2 - GDF - SUPPORT STAFF HIRING

Legal references:

A. United States Code:

1. 20 U.S.C. Sections 1681-86 - Prohibits discrimination on the basis of sex.
2. 42 U.S.C. 2000e, et seq. - Prohibits discrimination in hiring based on race, color, national origin, religion or sex.
3. 42 U.S.C. 12101, et seq. - Prohibits employment discrimination on the basis of disability.
4. Public Law 107-110 - No Child Left Behind, revised Elementary and Secondary Education Act (ESEA) of 2001, Title 1, Part A, Subpart 1, Section 1119 - Qualifications for teachers and paraprofessionals.
5. Public Law 99-603 - Immigration Reform and Control Act of 1986.
6. Public Law 104-208 - Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

B. Code of Federal Regulations:

1. 41 CFR 60-20 (1998) - Prohibits discrimination on the basis of sex.

C. S. C. Code, 1976, as amended:

1. Section 1-1-550 - School districts shall give preference to employment of honorably discharged veterans.
2. Section 59-1-510 - Guidelines and regulations for recruitment and hiring staff in professional areas.
3. Section 59-1-520 - Intervention by State Department of Education for non-compliance.
4. Section 59-19-80 - Teaching contracts to be issued in public meeting.
5. Section 59-25-410, et seq. - Employment and Dismissal Act - Teachers to be notified of employment status by April 15th.
6. Section 59-26-40(M) - Before initial employment of a teacher, the local school district shall request a criminal record history from the South Carolina State Law Enforcement Division for past convictions of any crimes.
7. Section 59-18-1300 - District accountability system.
8. Section 9-1-2210 - Teacher and Employee Retention Incentive Program; operation.
9. Section 9-1-1790 - Amount which may be earned upon return to covered employment.
10. South Carolina Illegal Immigration Reform Act (Act 280 of 2008).

D. State Board of Education Regulations:

1. R43-205 - Administrative and professional personnel qualifications, duties and workloads.

SOUTH CAROLINA PUBLIC INVOCATION ACT

Effective date: May 27, 2008

Summary: The General Assembly this year enacted a permissive law that authorizes deliberative public bodies - including school boards - to adopt a policy permitting a public invocation before each meeting of the public body.

Called the South Carolina Public Invocation Act, the new law purports to establish a constitutionally safe way for city and county councils and school boards to open meetings with an invocation that may be (or not be) of a religious nature. In South Carolina, most meetings of public bodies ranging from the General Assembly to school boards open with a prayer. The Fourth Circuit Court of Appeals in 2004 ruled on this issue in the case of *Wynne v. Town of Great Falls*, clarifying the extent to which a public body can pray at a public meeting. Under *Wynne*, invocations, if any, offered by the public body must be non-sectarian, non-proselytizing and should not advance any particular religion.

Under the Act, a public body may adopt a policy permitting a public invocation before each meeting that follows the guidelines of the new law, or it may develop its own policy on public invocations.

The Public Invocation Act, in brief, outlines methods a public body may use to deliver an invocation before each meeting including allowing each member of the public body to deliver a message so long as the duty to do so is regularly rotated amongst the members; the election by the public body of a chaplain; or an invocation speaker selected by the public body on an objective and rotating basis from a wide pool of the religious leaders serving established religious congregations in the local community in which the deliberative public body meets. The Act outlines a method for selecting such religious leaders, including issuing invitations with specific language urging each to avoid proselytizing or advancing any one, or to disparage any other, faith or belief.

The Act directs the state Attorney General's office to prepare a statement of the applicable constitutional law to be made available to public bodies wishing to adopt a public invocation policy.

Local district action required: Because the law is permissive, SCSBA is not recommending that districts take any policy action due to its enactment. Districts that wish to adopt a policy based on the state Public Invocation Act are advised to contact SCSBA and/or work closely with district legal counsel.

Policy reference: NA

Text: The text of this law may be found at www.scstatehouse.net. Click on Current Legislation; Bill, Act or Rat #; and enter A241, R282, S638 for the search.

LOCAL LAW REPORT

Below is an alphabetized list of local laws passed this session. Some bills have been ratified (denoted by a number preceded by "R"), but have not yet been sent to the Governor. "Effective" means the Governor has signed the bill or it became law without his signature. Please check the legislative web site at www.scstatehouse.net (click on Current Legislation; Bill, Act or Rat #; and enter appropriate numbers for the search) for the most recent status and for more details of each bill, or contact Scott Price at SCSBA.

- S.826 (R182) **Aiken County** Board of Education, petition filing deadline, effective Feb. 4.
- S.993 (R192) **Allendale** School District Bond-Property Tax Relief Act, effective Feb. 20.
- H.4775 (R262) **Charleston County** School District, constituent boards, effective May 13.
- S.1372 (R318) **Clarendon County** School Districts 1 and 2, boundary lines, effective June 4.
- H.4315 (R187) **Colleton County** Board of Trustees, filing deadline, effective Feb. 4.
- H.4844 (R263) **Dillon County** Board of Education, sales tax revenue, effective May 22.
- H.4982 (R395) **Dillon County** schools millage levy, effective June 25.
- H.4816 (R393) **Lexington County** school districts, amend Property Tax Relief Act, effective June 11.
- S.639 (R180) **Sumter County Districts 17 and 2**, consolidation, effective Feb. 4.
- S.1229 (R231) **Sumter County** school districts, entering contracts, effective April 11.
- H.4399 (S194) **Union County** Board of Trustees, filing deadline, effective Feb. 21.

REGULATIONS

Effective date: see table

Summary: During the 2008 legislative session, the General Assembly amended one state board of education regulation and repealed another. We have reviewed our model policy manual and noted those policies that contained legal references to changed regulations. We have also made changes in these policies, if needed, based on comparisons of policy language and regulation changes. We will only discuss those regulations here that affect our model policies. A table outlining the status of all final regulations follows.

The information below is arranged numerically by state board regulation number. Beneath the policy reference is a brief discussion of the regulation followed by a summary of our model policy and any action SCSBA has taken based on these regulations.

If your local policy or administrative rule appears to be in conflict with the regulation as repealed, amended or otherwise, you should consider updating either one or both.

For the full text of a regulation, visit the state department of education web site at www.myschools.com. Click on Agency, State Board and the appropriate Regulations Chart dealing with the 2008 regulations. Click on the regulation or the document number. You will be able to view the document or print it in its entirety.

Regulation 43-71 Free Textbooks (Document No. 3138) Policy reference: IJJ (Textbook Selection and Adoption).

As stated in the SDE rationale, this year revenue funds were authorized for use for the implementation of a statewide textbook management system to assist districts in the management and distribution of state-owned textbooks. Implementation of the system made it necessary to amend certain sections in regulation 43-71 to conform to the intent of the 2007-08 Appropriations Act. Specifically, the amendments change how textbooks are tracked as property of the state and circulated to pupils. Additional amendments allow for the collection of liquidated damages for companies that do not comply with the most favored purchaser clause in the contract.

SCSBA action: No policy action is required. Districts need to be aware of these changes in the SDE system for textbook management statewide.

Regulation 43-225 School-to-Work Transition Act Regulations Policy reference: IHAQ (Career/Transition to Work).

The 1994 South Carolina School-to-Work Transition Act was repealed and replaced with the 2005 Education and Economic Development Act. Many of the fundamental provisions of the 1994 law were transitioned into language in the EEDA. Repeal of these school-to-work regulations will not diminish the services or activities provided to students.

SCSBA action: No policy action is required. For an in-depth discussion of the Education and Economic Development Act and the accompanying model policies, see the 2005, 2006 and 2007 Policy and Legislative Update Books. Districts with any outdated policies based on the School-to-Work Transition Act need to update their information.

Regulations Approved by the 2008 General Assembly

Reg. No 43-	Name	Synopsis	Action <u>120-day Review</u>
71 Doc. No. 3138	Free Textbooks	<u>Amend</u> - The purpose of this amendment is to modify how state owned materials are stamped and distributed to pupils.	Published as final in <i>State Register</i> on 5/23/08
225 Doc. No. 3137	School-to-Work Transition Act	<u>Repeal</u> - The School-to-Work Act of 1994 was repealed by the General Assembly upon passage of the EEDA of 2005.	Published as final in <i>State Register</i> on 5/23/08

COURT DECISIONS

Effective date: N/A

Summary: Several court decisions issued during 2008 were significant in their ability to impact on public education. What follows is a brief summary of key cases decided by the U.S. Supreme Court, Fourth Circuit Court of Appeals and the South Carolina Supreme Court and their meaning for public schools.

“Class-of-one” theory in equal protection claim

The U.S. Supreme Court on June 9 held that the "class-of-one" theory of equal protection does not apply in the public employment context.

In *Engquist v. Oregon Department of Agriculture*, when Engquist's position with the Oregon Department of Agriculture (ODA) was eliminated amid budget cuts, she effectively was laid off. Engquist brought what is known as a “class-of-one” claim under the Fourteenth Amendment Equal Protection Clause alleging she was terminated not because she was a member of a protected class, but simply for “arbitrary, vindictive, and malicious reasons.”

The Ninth Circuit Court of Appeals declined to extend “class-of-one” claims from cases involving government legislative and regulatory actions to the public employment context, noting that Supreme Court has routinely afforded government greater leeway when it acts as employer rather than regulator. The Ninth Circuit held that the class-of-one theory is "inapplicable to decisions made by public employers with regard to their employees." The Supreme Court affirmed this ruling.

The Supreme Court, in making comparisons to a 2000 opinion where it recognized a “class-of-one” equal protection claim of a property owner who was required to obtain a longer easement than other property owners, said that what was significant in the earlier case, “was the existence of a clear standard against which departures, even for a single plaintiff could be readily assessed.” There is "a crucial difference," the Court observed, "between the government exercising ‘the power to regulate or license, as lawmaker,’ and the government acting ‘as proprietor, to manage [its] internal operation.’” The employment context, unlike the “arm’s length” regulatory context, involves subjective and individualized decisionmaking. In short, the Court said, “treating similarly situated individuals differently in the employment context is par for the course,” making the “class-of-one” theory of equal protection “simply a poor fit in the public employment context.”

The Court noted that public employers could not function if every personnel decision, from terminations to promotions and pay raises, was subject to constitutional review. Employers’ ability to use discretion in making personnel decisions would be hampered, and employment-related litigation surely would increase, if every personnel decision was required to have a demonstrably rational basis.

Under the *Engquist* ruling, a public employee cannot sue a public employer under the 14th Amendment claiming he or she was treated differently than other employees. The case did not involve membership in a protected class such as gender or race.

Local district action required: *Engquist* is significant for public employers, including school districts, in its refusal to constitutionalize the employment grievance. And, further, in its recognition of the operational and business realities of public employers. SCSBA does not recommend specific policy language changes based on the *Engquist* decision.

Burden of proof in defending age discrimination claim

The U.S. Supreme Court on June 19 held that, in a disparate impact Age Discrimination in Employment Act (ADEA) case, an employer asserting the “reasonable factors other than age” (RFOA) defense bears the burden of production and persuasion.

In *Meacham v. Knolls Atomic Power Laboratory*, plaintiffs were among 31 employees laid off in an involuntary reduction in force. Thirty of the 31 employees were at least 40 years old. The plaintiffs alleged that the process for selecting employees for layoff had a disparate impact on ADEA-protected employees because it relied heavily on subjective ratings of employees’ “flexibility” and “critical skills.” The Second Circuit Court of Appeals reversed a jury verdict for the plaintiffs, concluding that based on an earlier U.S. Supreme Court case the plaintiffs bore the burden of proving the RFOA defense, and they failed to prove their employer’s layoff process was unreasonable. The Supreme Court disagreed.

According to the Court, prior precedent, similarities to the bona fide occupation qualifications (BFOQ) exemption, and the use of the phrase “otherwise qualified” indicate the RFOA language is an affirmative defense which the employer must prove. Likewise, the Court rejected the Second Circuit’s determination that its previous decision required the burden of proof to rest with the plaintiffs. The Court stated that its reliance in previous decisions holding the burden of persuasion in Title VII cases to prove business necessity falls on the employee, is not “at odds with the view of RFOA as an affirmative defense.”

Of note, NSBA filed a “friend of the court” brief in this case supporting the employer’s position and detailing the implications of the case for public schools. NSBA argued that the test in this kind of case is not whether the employer's decision was a "business necessity" and that the ADEA does not place on the employer the burden of proving that common and necessary employment criteria were reasonable.

Local district action required: This case is significant in its impact on district employment decisions that - in light of new challenges, particularly under the No Child Left Behind Act - may disproportionately affect older employees. SCSBA does not recommend specific policy language changes based on the *Meacham* decision.

Retirement plans based on age

The U.S. Supreme Court on June 19 held that where a pension plan includes age as a factor, and the employer treats employees differently based on pension status, to state a claim under the Age Discrimination in Employment Act (ADEA), a plaintiff must prove differential treatment was “actually motivated” by age and not pension status.

Kentucky Retirement Systems v. Equal Employment Opportunity Commission is a case that arose because of the different ways the Kentucky retirement system handles workers who retire for disability reasons versus those who retire because they have served the requisite length of time,

which in Kentucky is either 20 years of service or at age 55 with five years of employment. An employee of the Jefferson County, Ky., sheriff's department who was 61 years old when he sought disability retirement was told he could retire only under the regular retirement plan. He sued claiming that Kentucky discriminated against workers based on age who became disabled after becoming eligible for normal retirement. The Sixth Circuit Court of Appeals found the program discriminatory because age is a factor in the determination of benefits. The Supreme Court reversed.

Relying on a 1993 ruling in which the Court stated the plaintiff must prove in disparate treatment cases that age actually motivated the employer, the Court found that Kentucky's retirement system "does not, on its face, create treatment differences that are 'actually motivated' by age." In this case, the Court found that pension status was not a proxy for age; there was a clear non-age related rationale for the disparity (to help workers who become disabled before normal pension eligibility); in some instances, the plan would actually place older workers at an advantage because they might get more imputed years than younger workers; and the system did not rely on the stereotypical assumptions about the capacity of older workers. Finally, the Court pointed out that the plan was designed to provide a reasonable pension for disabled workers.

According to NSBA, school districts have lost numerous cases involving cash payments to employees who retire after a certain age where the cash payments are reduced or cut off based on age. Many of these cases are cited in the dissenting opinion. It is unclear whether (and how) lower courts will apply this case to future cases involving age-based cash plans offered by school districts.

Local district action required: SCSBA does not recommend specific policy language changes based on the *Kentucky Retirement Systems* decision.

Government speech and school board/district advocacy

Lending critical support to school boards and educators as advocates for public education, the U.S. Fourth Circuit Court of Appeals on June 23 ruled in favor of Lexington County School District One in a case involving that district's efforts to defeat voucher and tuition tax credit legislation.

In *Page v. Lexington County School District One*, filed in January 2006, plaintiff Randy Page, a Lexington County resident and president of South Carolinians for Responsible Government - a pro-voucher/tuition tax credit organization - sued the district in federal court to force it to distribute voucher-related information, claiming that its refusal to do so was a violation of his rights under the First Amendment of the U.S. Constitution. Page's lawsuit followed the district's denial of his request in March 2005 for "equal access" to the district's communication system regarding the proposed Put Parents In Charge (PPIC) Act.

Lexington One argued that this was not a First Amendment forum issue involving a discussion of vouchers - in which case the district could be constitutionally required to allow differing viewpoints; but, instead, said that the anti-voucher information distributed by the district constituted government speech reflecting its position on the matter and, thus, that it had the discretion to promote policies and values of its own choosing.

The Lexington One school board early in the PPIC voucher debate had approved a resolution taking a stand against the proposal. The board's position was posted on the district's web site and included links to other groups that expressed the same viewpoint, including Choose Children First and SCSBA's home pages. In addition, PTA-prepared school newsletters were distributed that included information reflecting the district's position.

The federal district court judge sided in Lexington One's favor and thus upheld the board's right to take a public and active position involving a political issue. In an initial order, the district court analyzed each of the various components of the district's informational distribution system and ruled for the school district as to all but the web site and the PTA newsletters. The court later ruled that Lexington One had not violated Page's free speech rights as to these means, concluding that Lexington One's information constituted "government speech" and that its informational distribution system was not a public forum to which Page was constitutionally entitled to access. Page appealed the rulings to the Fourth Circuit Court of Appeals.

The Fourth Circuit through a three-judge panel, in upholding the lower federal district court's ruling and finding in favor of Lexington One, stated, "It is therefore appropriate for the School District to defend public education in the face of pending legislation that it views as potentially threatening of public education."

Whether Lexington One's campaign was "government speech" that was exempt from First Amendment scrutiny depended on the district's ownership and control of the message, and the district's ownership and control of the message may be determined from consideration of various factors, the Fourth Circuit noted, citing *Johanns v. Livestock Marketing Association*, 544 U.S. 550 (2005). Applying the first factor - the establishment of the message - the Fourth Circuit found that the Lexington One school board had established its message of opposition to PPIC and had directed district officials to communicate that position to employees, legislators, students and the public at large. As for the second factor - control of the message - while conceding the school district did not create all the content of every communication itself, the Court emphasized that Lexington One adopted and approved all speech, even that of third parties. The Court rejected Page's argument that Lexington One had maintained inadequate control over its communications and had thereby created a limited public forum from which he could not be excluded on the basis of his viewpoint.

In analyzing the issue concerning Lexington One's web site, the Court said that Page's argument that by including a link to another organization's web site Lexington One made the contents of that other web site part of its own website "assumes too much." First, the district selected other web sites that supported its own message and there was no evidence that the owners of those web sites had solicited the district to be included on the district web site. Second, the district maintained control of its web site, retaining the right and ability to delete a link at any time. Third, the district never incorporated the materials from the other web sites as its own, but merely provided information on sites supporting its position and the links. Fourth, the district consistently maintained its message of opposition to PPIC and provided references to others who shared that position and supported its message, much as a bibliography, footnote or citation would. Finally, the district web site had a clear disclaimer of the contents of any linked web site, making it clear that only that which was stated on its own web site should be taken as the district's speech. The Court thus concluded that Lexington One, "sufficiently controlled this channel of communication so that its speech remained government speech and it did not create a

limited public forum by including links to other web sites." The same held true for Lexington One's e-mail facility.

In looking at the PTA newsletters, the Court acknowledged that it "may be true that by editorially controlling the newsletter, the individual school may have created a limited public or nonpublic forum because the speech in the PTSA newsletter was not the government's own speech, but speech of the [PTA]." However, the Court added, Page had not demonstrated that he was within the class of persons who was, by design, accorded access to that forum, meaning that the forum created here was defined to allow access to only "entities such as PTAs (PTSAs) and Booster Clubs which were closely associated with the schools" (quoting from the lower court ruling).

Finally, the Court rejected Page's claim that the government speech doctrine should never apply where the government (in this case, a school district) attempts to influence legislation because in such a situation the government's position is not "checked by the ballot box," the traditional justification for the doctrine. He overlooked, the Court said (quoting the lower court), that "school board members are elected" and may be removed at the next election if the voters disagree with them.

The Court also noted that "many courts have rejected First Amendment challenges to government speech involving advocacy regarding ballot measures," and while this case instead involved legislation, the Court found that the grassroots lobbying present here raised "no greater concerns from a democratic accountability standpoint than advocacy regarding measures on the ballot."

Plaintiff Page's request that the entire Fourth Circuit reconsider the three-judge panel's decision was subsequently denied, thus making the Opinion the law of the land in South Carolina and neighboring states North Carolina, Maryland, Virginia and West Virginia.

Page v. Lexington County School District One represents a significant victory for school boards and their advocacy efforts on behalf of public education. The case lends strong legal support to the idea of school boards and districts vigorously engaging in advocacy on behalf of public education, speaking out and taking action when it comes to issues that impact schools. Local board policies concerning advocacy and communication s with the public should reflect the guidance offered in this case by the Fourth Circuit.

Local district action required: This is a significant case supporting school board advocacy. SCSBA recommends that districts amend the following policies to reflect the Fourth Circuit's opinion in this case.

Policy reference: BJ (School Board Legislative Program). KCA (School-Community Relations Goals/Priority Objectives). KD (Public Information and Communication).

Model policies follow this section.

Charter school conditional approval rights

The South Carolina Supreme Court on February 4 issued a ruling in a charter school case that is significant in its clarification of issues concerning conditional charters under the state Charter School Act, as well as the contractual obligations under a charter application.

In *James Academy of Excellence v. Dorchester County School District Two*, James Academy had applied to the district for a charter school to open in the 2004-05 school year. On August 13, 2003, the district board voted to give “conditional approval” to the school contingent on the school finding a site. James Academy notified the district May 4 that it had located a site for the school and subsequently received two payments of more than \$43,000 on July 16 and 30. James Academy subsequently opted on a different site and, on July 16, received building plan approval from the State Department of Education (SDE) and as well as permission to take bids on work to be done.

While the district’s schools opened August 9, James Academy advised the district that it was not ready to open. On a second visit to the charter school’s facility, a district official was re-directed to a third site where James Academy had found a temporary location. The district reported to SDE that James Academy was operating in a different building than the one submitted for approval and was directed by SDE to close the school. The application described a facility with approximately 25,000 square feet, a minimum of 14 classrooms, a science lab, computer lab, cafeteria, administration offices, a main office, a multi-purpose room and restrooms. James Academy’s facility was 6,700 square feet and had none of the requisite rooms except for restrooms.

On August 17, the district superintendent went to James Academy’s temporary location and delivered a letter stating that because the charter school had not met the conditions of approval there was no contract with the district and Academy was not authorized to operate a charter school. The district demanded a refund of some \$87,000 it had paid to James Academy to fund the school.

Despite these actions, James Academy began holding classes at its second site location. At a September 21 meeting, the district board determined that James Academy had not met conditions for approval and that no contract existed with the district. It did, however, give James Academy one week to comply. James Academy did not comply. On appeal from the local board’s decision to close the school, the State Board of Education affirmed the district board’s decision.

On appeal from SBE’s decision, the circuit court found for James Academy and concluded, among other things, that the charter school’s due process rights were violated when the superintendent notified it that it could not operate as a charter school on August 17. The lower court also found that the facility description in the application was not the standard to determine if James Academy had complied with the facility requirement. The state Supreme Court disagreed and reversed the circuit court.

In analyzing the specific wording of the charter school statute, the Supreme Court noted that the act specifically provides that no rights accrue from a conditional charter. The reason for this, the Court said, was to ensure that the local school district maintains control during the approval process while allowing a prospective charter school to receive funding and proceed in setting up its operation. Based on this, the Court said, “[t]here are no due process rights implicated in the

termination of a conditional charter.” Further, even if there was a lack of due process, it was remedied by the district board’s September 21 evidentiary hearing at which James Academy was given additional time to comply.

Finally, the Supreme Court held that, in keeping with the clear language of the charter school statute, the charter school application is a proposed contract and the application becomes the terms of the agreement between the charter school and, in this case, the school board. “This statutory language clearly envisions the charter school’s fulfillment of the terms of its application as a contractual obligation.” In this case, James Academy’s facility did not meet the terms of the application and the facility was never approved by the district. “Under the Charter School Act, no charter existed and Academy was not operating as a charter school.”

James Academy of Excellence v. Dorchester County School District Two is significant in its reinforcement of statutory language concerning conditional charters as well as the contractual obligations of the charter school application.

Local district action required: In light of this case, districts are advised to closely monitor charter schools and hold them to compliance with the charter application. SCSBA does not recommend specific policy language changes based on the *James Academy* decision.

SCHOOL BOARD LEGISLATIVE PROGRAM

Code **BJ** Issued **MODEL/08**

Purpose: To establish and clarify the advocacy role of the board.

The board, as an agent of the state, must operate within the bounds of state and federal laws affecting public education. If the board is to meet its responsibilities to the residents and students of this community, it must work vigorously for the passage of new laws designed to advance the cause of good schools and for the repeal or modification of existing laws that impede this cause.

It is a role of the board to advocate in support of its policies and, further, to take a public and active position involving pending legislation that it views as potentially threatening of public schools.

Therefore, board members will keep themselves informed of pending legislation and actively communicate board positions and concerns to the community and elected representatives at both the state and national level.

The board authorizes the superintendent to set the overall message and communicate on behalf of the board regarding legislative issues impacting public education. This authority extends to, but is not limited to, the defense of public education in the face of pending legislation that he/she views as potentially threatening of public schools. The superintendent is authorized to utilize any and all district communications channels to convey the resulting message to the community and to elected state and national representatives.

In addition, the board will work with its legislative representatives (both state and federal), with the South Carolina School Boards Association, the National School Boards Association and other concerned groups in developing an annual as well as long-range legislative program.

Board members will participate in the SCSBA Delegate Assembly, the SCSBA Board Legislative Contact Program and the Federal Relations Network as deemed appropriate by the board.

Adopted ^

Legal references:

A. Court cases:

1. U.S. Fourth Circuit Court of Appeals: Randall S. Page v. Lexington County School District One, 531 F.3d 275 (4th Cir. 2008).

SCHOOL-COMMUNITY RELATIONS GOALS/PRIORITY OBJECTIVES

Code **KCA** Issued **MODEL/08**

Purpose: To establish the board's vision for school-community relations.

The board will interpret the educational program to the people and invite discussion and suggestion on important educational policies. The board will attempt, at all times, to represent the entire community rather than any single group or section. To this end, the board establishes the following school-community relations goals.

- to develop intelligent citizen understanding of the school district in all aspects of its operation
- to determine how the citizenry feels about the school district and what it wishes the school district to accomplish
- to develop citizen understanding of the need for adequate financial support of a sound educational program
- to help citizens assume a more direct responsibility for the quality of education the school district provides
- to earn the good will, respect and confidence of the citizenry in the personnel and services of the school district
- to bring about citizen understanding of the need for improvement and what must be done to facilitate essential change
- to involve citizens in the work of the board and the solving of its educational problems
- to invite the assistance, cooperation and understanding of elected and appointed officials and committees in the development of educational programs and facilities
- to promote a genuine spirit of cooperation between the board and community in sharing leadership for the improvement of the community
- to use advocacy as a means to support board policies and foster a citizen understanding of the impact of federal and state legislation on the district and its schools

Adopted ^

Legal references:

A. Court cases:

1. U.S. Fourth Circuit Court of Appeals: Randall S. Page v. Lexington County School District One, 531 F.3d 275 (4th Cir. 2008).

PUBLIC INFORMATION AND COMMUNICATION

Code **KD** Issued **MODEL/08**

Purpose: To establish the board's vision for the district's public information and communication program.

It will be the policy of the board to keep the community informed of the objectives, achievements, needs and conditions of the school system.

The board of trustees will seek to keep the citizens of the district regularly and thoroughly informed through all the channels of communication. Therefore, the board will make every attempt to do the following.

- Keep the public informed regarding the policies, administration operation, objectives, educational program and successes or failures of the schools and the needs of the school system.
- Inform the citizens of the board's position in relation to issues that may have an impact on the district schools that are being considered by state or federal elected representatives.
- Provide the means for furnishing full and accurate information, favorable and unfavorable, together with interpretation and explanation of the school plan and programs.

The superintendent will supervise the public information program of the district. The central administration office will implement and coordinate the program. The superintendent will develop guidelines for the district's use of its communications channels, including the district web site, to implement the public information and communication program and to ensure that measures are in place to monitor and control its use and content in a manner that is consistent with the district's mission.

Adopted ^

Legal references:

A. Court cases:

1. U.S. Fourth Circuit Court of Appeals: Randall S. Page v. Lexington County School District One, 531 F.3d 275 (4th Cir. 2008).

TEMPORARY PROVISOS

Effective date: July 1, 2008

Summary: There were several new Part 1B temporary provisos enacted this year as well as others that were carried over from the previous year, amended or deleted. Because they are temporary, budget provisos must be revisited each year. What follows is a non-exhaustive list of new provisos and continuing provisos that were amended by the General Assembly. A complete listing of provisos can be found at the State House web site at www.scstatehouse.net. Search for “temporary provisos.”

There are no policy implications for these temporary provisos.

EFA formula/base student cost inflation factor (1.3)

This continuing proviso is where the established base student cost and inflation factor are set each year. In keeping with a practice started in Fiscal Year 2007-08, the General Assembly included a listing of per pupil funding for each school district (not included below due to space restrictions).

1.3. (SDE: EFA Formula/Base Student Cost Inflation Factor) To the extent possible within available funds, it is the intent of the General Assembly to provide for 100 percent of full implementation of the Education Finance Act to include an inflation factor projected by the Division of Budget and Analyses to match inflation wages of public school employees in the Southeast. The base student cost for the current fiscal year has been determined to be \$2,578. In Fiscal Year 2008-09, the total pupil count is projected to be 690,363. The average per pupil funding is projected to be \$4,867 state, \$1,097 federal, and \$5,516 local. This is an average total funding level of \$11,480 excluding revenues of local bond issues.

See www.scstatehouse.net for district listing of per pupil funding.

Educational responsibility/foster care (1.8)

This continuing proviso was amended this year to add the words “or alternative residences” to the list of non-school facilities for school-age students that are within the educational responsibility of a school district.

1.8. (SDE: Educational Responsibility/Foster Care) Due to the length of this proviso, see www.scstatehouse.net for the relevant language.

School districts and special schools flexibility (1.45)

This continuing proviso was amended to include language requiring districts to provide all local charter school categorical funding prior to exercising flexibility. It was also amended to suspend the EIA local maintenance of effort requirement for 2008-09.

1.45. (SDE: School Districts and Special Schools Flexibility) All school districts and special schools of this State may transfer up to one hundred percent of funds between programs to any instructional program provided the funds are utilized for direct classroom instruction.

The South Carolina Department of Education must establish a procedure for the review of all transfers authorized by this provision. The details of such transfers must be provided to members of the General Assembly upon request. School districts and special schools may carry forward unexpended funds from the prior fiscal year into the current fiscal year to be used for the same purpose. All transfers executed pursuant to this provision must be completed by May first of the current fiscal year. All school districts and special schools of this State may expend funds received from the Children's Education Endowment Fund for school facilities and fixed equipment assistance, for any instructional program. The Education Oversight Committee shall review the utilization of the flexibility provision to determine how it enhances or detracts from the achievement of the goals of the educational accountability system, including the ways in which school districts and the state organize for maximum benefit to classroom instruction, priorities among existing programs and services, and the impact on short, as well as, long-term objectives. The State Department of Education shall provide the reports on the transfers to the Education Oversight Committee for the comprehensive review. This review shall be provided to the members of the General Assembly annually. Any grant or technical assistance funds allocated directly to an individual school may not be reduced or reallocated within the school district and must be expended by the receiving school only according to the guidelines governing the funds.

Prior to implementing the flexibility authorized herein, school districts must provide to Public Charter Schools the per pupil allocation due to them for each categorical program. For Fiscal Year 2008-2009, Section 59-21-1030 is suspended.

National Board certification incentive (1.50 and 1A.28)

This continuing proviso was amended this year to include language concerning the forgiveness of loans for application fees for teachers who begin the application process for National Board certification after July 1, 2007, and who teach in schools with an absolute rating of below average or unsatisfactory but who fail to obtain certification.

1.50. (SDE: National Board Certification Incentive) Due to the length of this proviso, see www.scstatehouse.net for the entire proviso.

4K Child Development Education Pilot Program (1.64)

The General Assembly readopted the Child Development Education Pilot Program for 2008-09, making necessary date changes to the standing proviso. Also, the funded cost per child was increased from \$3,931 to \$4,093.

1.64. (SDE: Child Development Education Pilot Program) Due to the length of this proviso, see www.scstatehouse.net for the entire proviso.

Education Finance Act Reserve Fund (1.71)

The General Assembly amended this proviso this year to direct excess EFA funding in 2008-09 and EFA Reserve Funds to districts receiving less EFA dollars than in the prior fiscal year. The amendment also included language to direct excess EFA reserve funds to fast-growing districts that show an increase in weighted pupil units (WPU) over the previous two years. The amendment could mean up to \$12 million to the affected districts if excess EFA funding is available.

1.71. (SDE: Education Finance Act Reserve Fund) Due to the length of this proviso, see www.scstatehouse.net for the entire proviso.

Formative reading assessment (1.72 and 1A.59)

This proviso was modified this year to give districts further flexibility in using formative reading assessments for grades one and two.

1.72. (SDE: Formative Reading Assessment) School districts may utilize their state, local, and federal funding for other formative reading assessments that have been approved for use by a Department of Education program in lieu of using the State Board approved developmental appropriate formative reading assessment for grades one and two. By August 1, 2008, districts shall be required to inform the Department of Education what assessment for grades one and two will be used.

Physical education assessment program (1.74)

This proviso was amended this year to direct the Department of Education to review and revise the physical education standards and assessment.

1.74. (SDE: Physical Education Assessment Program) Of the funds appropriated to the Department of Education for the physical education assessment program, the department is directed to use the funds for the review and revision of the physical education standards and the subsequent revision of the physical education assessment. For Fiscal Year 2008-09, the department may field test the revised physical education assessment.

Advertising on school buses (1.77)

This proviso was added this year to prohibit SDE and school districts from selling advertising space on school buses.

1.77. (SDE: Prohibit Advertising on School Buses) The Department of Education and local school districts are prohibited from selling space for or the placement of advertisements on the outside or inside of school buses.

Technical assistance for schools sharing facilities (1.79)

This new proviso was added to address the issue of schools sharing facilities and how they are to receive technical assistance funding.

1.79. (SDE: Technical Assistance) Schools which receive individual report cards and share a school identification number (SIDN) and would receive less technical assistance funding in Fiscal Year 2009 than in Fiscal Year 2008 shall receive technical assistance funding as if they were two separate schools, except these schools may not receive more in total than they received in FY 2008.

Charter school funding schedule (1.80)

This new proviso was added to establish a funding schedule from SDE to districts with certain locally approved charter schools.

1.80. (SDE: Charter School Funding Schedule) Of the funds appropriated, districts with locally approved charter schools will receive funds after verification of student attendance on the fifth day of school at the beginning of each school year for those charter schools with approved incremental growth and due to expansion as provided in their charter application. The Department of Education will release funds to districts on behalf of their charter schools no later than 15 days after receipt of verified enrollment. Districts must provide this funding to eligible charters no later than 30 days after receipt from the Department of Education. Funding will be adjusted at the 45-day school count as is currently the case with the Education Finance Act. This does not apply to schools approved and operating under the South Carolina Charter School District.

Teacher supply money (1A.33)

This proviso was amended this year to increase teacher supply money from \$250 to \$275.

1A.33. (SDE-EIA: XI.C.2-Teacher Supplies) Due to the length of this proviso, see www.scstatehouse.net for the entire proviso.

Report card printing (1A.41)

This proviso was deleted this year; however, certain provisions from this proviso were codified in amendments to the Education Accountability Act enacted this year by the General Assembly.

1A.41. (SDE-EIA: Report Card Printing) For changes in the EAA relating to report card printing, please see the write-up in this issue of the *Policy and Legislative Update*.

Technical assistance (1A.42)

This continuing proviso was modified significantly this year to, among other things, strengthen language concerning external review teams and school renewal plans. Also, several of the provisions of this proviso were included in the amendments to the EAA enacted this year.

1A.42. (SDE-EIA: Technical Assistance) In order to best meet the needs of low-performing schools, funds appropriated for technical assistance to schools with an absolute rating of below average or unsatisfactory on the most recent annual school report card must be allocated accordingly. First, a school initially designated as unsatisfactory or below average on the current year's report card must receive by January 1, up to \$10,000 from the funds appropriated for technical assistance and must expend the funds for planning purposes in accordance with Section

59-18-1560 of the 1976 Code. No more than fifteen percent of planning grants may be carried forward into the current fiscal year. Schools receiving an absolute rating of unsatisfactory will also be reviewed by an external review team.

Schools receiving an absolute rating of unsatisfactory or below average must submit to the Department of Education a school renewal plan that includes actions consistent with each of the alternative researched-based technical assistance criteria as approved by the Education Oversight Committee and the Department of Education and consistent with the external review team report. Because the school renewal plan is critical to the planning and implementation of successful intervention strategies, the Department of Education will provide regional workshops to assist schools in formulating school renewal plans based on best practices that positively improve student achievement. The chairman of the local board of education, the superintendent, and the principal of any school receiving technical assistance funds must attend at least one of the workshops in order to receive any state aid for technical assistance. The school renewal plans must address professional development activities that are directly related to instruction in the core subject areas and may include compensation incentives to provide salary supplements to classroom teachers who are certified by the State Board of Education and who have obtained an advanced degree. The purpose of these compensation packages is to improve the recruitment and retention of teachers with advanced degrees in underperforming schools. If the school renewal plans are approved, schools would be permitted to use technical assistance funds to provide these salary supplements.

Upon approval of the plans by the Department of Education and the State Board of Education, a school with an absolute rating of below average will receive an allocation of not less than \$75,000, and a school with an absolute rating of unsatisfactory will receive an allocation of not less than \$250,000, taking into consideration the severity of the problems and the likelihood of positively impacting student achievement, student enrollment, external review team recommendations, and prior year technical assistance carry forward funds. The funds must be expended on the strategies and activities as expressly outlined in the school renewal plan which may include, but are not limited to, professional development, teacher incentive or pay for performance including the Teacher Advancement Program (TAP), homework centers, diagnostic testing, supplemental health and social services, or comprehensive school reform efforts. Not more than fifty percent of the school allocation may be used to reduce class size. The schools will work with the Department of Education to broker the services of technical assistance personnel as needed and as stipulated in the school renewal plan. Not more than fifteen percent of funds not expended in the prior fiscal year may be carried forward and expended for the same purpose in the current fiscal year. It is intended that the technical assistance will be provided for a minimum of three years in order to implement fully systemic reform and to provide opportunity for building local education capacity. Furthermore, schools and school districts must use these technical assistance funds to augment or increase, not to replace local or state revenues that would have been used if the technical assistance funds had not been made available. Schools and school districts may use technical assistance funds only to supplement, and to the extent practical, increase the level of funds that would be made available from other revenue sources for these schools. A school or district may not use these technical assistance funds to supplant funds from other sources.

With the funds appropriated to the Department of Education for technical assistance services, the department will assist schools with an absolute rating of unsatisfactory or below average in designing and implementing school renewal plans and in brokering for technical assistance

personnel as needed and as stipulated in the school renewal plan. Teacher specialists may be placed across grade levels and across core subject areas when placement meets program criteria based on external review team recommendations, need, number of teachers receiving support, and certification and experience of the specialist. Teacher specialists are limited to three years of service at one school unless the specialist submits application for an extension and that application is accepted by the Department of Education and placement is made. Upon acceptance and placement, the specialist can receive the salary and supplement for two additional years, but is no longer attached to the sending district or guaranteed placement in the sending district following tenure in the program as provided in Section 59-18-1530(F) of the 1976 Code.

The criteria for selecting alternate research-based technical assistance are to be those previously approved by the Education Oversight Committee and the Department of Education. The School Improvement Council Assistance and the Writing Improvement Network will coordinate with the department to target schools and school districts designated as unsatisfactory. The department shall coordinate with and monitor the services provided to the schools and districts by the School Improvement Council Assistance and the Writing Improvement Network. In addition, the department must monitor the expenditure of funds and the academic achievement in schools receiving these funds and report to the General Assembly and the Education Oversight Committee by January 1 of each fiscal year as the General Assembly may direct. No more than five percent of the total amount appropriated for technical assistance services to schools with an absolute rating of Unsatisfactory or Below Average may be retained and expended by the department for implementation of technical assistance services. Furthermore, of the funds appropriated for technical assistance, \$930,000 shall be used for the National About Face Pilot Program. The School Improvement Council Assistance, the Writing Improvement Network, and the National About Face Pilot Program must submit external evaluations to the Education Oversight Committee at least once every three years. The Education Oversight Committee and the Department of Education will jointly determine the criteria to be used in evaluating the programs. If the Education Oversight Committee or the Department of Education requests information from schools or school districts regarding the expenditure of technical assistance funds pursuant to evaluations, the school or school district must provide the evaluation information necessary to determine effective use. If the school or school district does not provide the evaluation information necessary to determine effective use, the school or district is not eligible to receive additional funding until the requested data is provided.

By October 1 of the current fiscal year the Department of Education must submit a report to the Education Oversight Committee that documents the schools that have had an absolute rating of unsatisfactory or below average for the past four years and must delineate the reasons for these schools persistent underperformance.

Public choice innovation schools (1A.61)

This proviso, added last year and used to provide innovation grants to a handful of districts, was deleted this year.

1A.61. (SDE-EIA: Public choice innovation schools) deleted.
