

Policy and Legislative  
**Update**

August 2009

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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 2009. 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 and resources.

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 districts in drafting additional changes as needed.

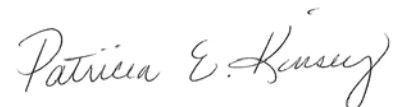
We will be sending a limited number of hard copies to each district. Also, we are posting the *2009 Policy and Legislative Update* in a MS Word document and Adobe .pdf format at SCSBA's Web site at [www.scsba.org](http://www.scsba.org). The Adobe Acrobat Reader (.pdf) version is a read only file; however, 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 reflect 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 members.



*Scott T. Price*  
General Counsel



*Patricia E. Kinsey*  
Director of Policy Services



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# FEDERAL EDUCATION TAX-CREDIT BOND IMPLEMENTATION ACT

**Effective date:** June 3, 2009

**Summary:** The General Assembly during the waning hours of the 2009 session passed the Federal Education Tax-Credit Bond Implementation Act, designed to allow South Carolina to draw down some \$260 million in interest-free bonds for school construction over the next two years.

The federal American Recovery and Reinvestment Act of 2009 (ARRA) provides for the issuance by local school districts of the new Qualified School Construction Bond (QSCB). QSCB obligations are to be issued with a zero percent interest rate. In exchange for forgoing interest, the holder of a QSCB obligation will receive a credit against federal income tax.

According to federal law, the proceeds of QSCB obligations only may be used to defray the cost of the construction, rehabilitation or repair of a public school facility or for the acquisition of land on which a facility is to be constructed.

South Carolina is allotted \$130 million under ARRA in 2009 plus special allocations for the Greenville (\$15 million) and Charleston (\$13.5 million) school districts, which are receiving direct allocations from the United States Department of Education as nationally ranked "large" districts. These QSCBs are new and are **separate** from the federal stimulus funds that eventually made their way to the state and federal courts in South Carolina.

Under the Federal Education Tax-Credit Bond Implementation Act, issuance authority for the bonds is granted to the state superintendent of education. Sixty percent of the state's QSCB issuance authority must be to districts having the lowest capital financing resources, measured in terms of assessed value per pupil, and capped at \$20 million per district. Forty percent of the state's QSCB issuance authority must be to districts having an ability to expeditiously issue bonds for "shovel ready" projects, capped at \$10 million per school district.

**Local district action required:** The Federal Education Tax-Credit Bond Implementation Act is limited in nature and will not be applicable to all school districts. SCSBA does not recommend any policy changes due to this Act.

**Policy reference:** N/A

**Text:** Section 1. This act is known and may be cited as the "Federal Educational Tax-Credit Bond Implementation Act".

Section 2. The General Assembly finds that:

(1) Owing to a devastating upheaval in world financial markets, the United States is experiencing restricted access to credit, closures of numerous business concerns, and high levels of unemployment across the nation. In response, the United States Congress has made provisions for a variety of strategies intended to stimulate economic activity in The American Recovery and Reinvestment Act of 2009 (ARRA). Among the strategies implemented by ARRA are various innovative financing programs for local governments.

(2) Traditionally, most financing undertaken by local governments is exempt from federal income tax. In order to stimulate local building activity and, further, to ameliorate the impact of a significant present weakness in the market for tax-exempt securities, ARRA, through a change in federal tax law, provides for the issuance by local school districts of a new type of obligation, the Qualified School Construction Bond (QSCB). It is the intent of Congress that QSCB obligations will be issued with an interest rate at or near to zero. In exchange for forgoing interest, the holder of a QSCB obligation will receive a credit against federal income tax intended to provide tax benefits equivalent to the forgone interest payments. The proceeds of QSCB obligations only may be used to defray the cost of the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which a facility is to be constructed.

(3) ARRA authorizes the issuance of eleven billion dollars of QSCB obligations in each of calendar years 2009 and 2010. Allocations will be made to the states in proportion to the respective numbers of children in each state who have attained age five but not age eighteen for the most recent fiscal year ending before the calendar year. South Carolina has been allotted one hundred and thirty one million dollars under ARRA in 2009 plus special allocations for large districts. Forty percent of the total national allocation amount is being allocated to one hundred large school districts and up to twenty-five additional school districts selected by the Secretary of the United States Department of Education. School districts of Charleston County and Greenville County are receiving direct allocations from the Secretary of the United States Department of Education.

(4) ARRA does not specify any method or criteria by which a state must allocate its share of QSCB issuance authority to its school districts. Accordingly, it is necessary for the General Assembly to direct the allocation of this issuance authority. The General Assembly has determined in this act to provide for the allocation of sixty percent of the State's QSCB issuance authority, not including the amount allocated to school districts of Greenville and Charleston Counties, to school districts having the lowest capital financing resources, measured in terms of assessed value per pupil, not to exceed a maximum of twenty million dollars per school district, and forty percent of the State's QSCB issuance authority to school districts having an ability to expeditiously issue bonds demonstrated through a high credit rating and timely start and completion of a project, not to exceed ten million dollars per school district. Any remaining QSCB allocations shall be awarded on a pro rata basis to school districts that originally requested more than the maximum amount in a QSCB allocation. By allocating QSCB issuance authority to such school districts, a portion of the critical facilities needs of these districts may be addressed, subject to Article X, Section 15 of the South Carolina Constitution, 1895.

(5) Because the public market for tax-credit obligations is presently underdeveloped and may require several years or more to become a robust substitute for the tax-exempt market of prior years, it is also necessary to make appropriate provisions for the marketing of QSCB obligations. Section 3. Chapter 3, Title 59 of the 1976 Code is amended by adding:

"Section [59-3-100](#). (A)(1) Issuance authority for Qualified School Construction Bonds (QSCB) obligations allotted to the State pursuant to the provisions of 26 U.S.C. Section 54F(d)(1) and any issuance authority allocated pursuant to 26 U.S.C. Section 54F(d)(2) to school districts of the State and not used by them shall be allocated by the State Superintendent of Education to one or more of the school districts, or county boards of education on behalf of one or more school districts of the State. In that regard, the State Superintendent of Education shall allocate sixty percent of the state's QSCB issuance authority to or on behalf of school districts having the lowest capital financing resources, measured in terms of assessed value per pupil, not to exceed twenty million dollars per school district and forty percent of the state's QSCB issuance authority to or on behalf of school districts having an ability to expeditiously issue bonds demonstrated through a high credit rating and timely start and completion of a project, not to exceed ten

million dollars per school district. Any remaining QSCB allocations shall be awarded on a pro rata basis to school districts that originally requested more than the maximum amount in a QSCB allocation. School districts allocated issuance authority under 26 U.S.C. Section 54F(d)(2)(E)(i) are not eligible for allocation of issuance authority under this paragraph (A). When two or more school districts are proposing a joint construction rehabilitation of a qualified project, the priority level for the project must be based on the priority level of the joint partner having the lowest assessed value per pupil.

(2) The State may not issue a QSCB obligation. For purposes of Article X, Section 15, of the South Carolina Constitution, a QSCB obligation shall be considered general obligation debt. A school district may not use the proceeds of a QSCB obligation for the purposes stated in Section 14003(b) of the American Recovery and Reinvestment Act of 2009.

(B) The State Superintendent of Education is authorized to establish for each allocation of issuance authority a schedule for issuance of QSCB obligations, giving due regard for the time required to initiate and hold bond referendums, and may reallocate issuance authority or any portion of issuance authority to another school district or county board of education if the schedule is not kept.

(C) Issuance authority allocated pursuant to this section but not utilized may be reallocated by the State Superintendent of Education in accordance with this section.

(D) Assessed value for purposes of this section means the assessed value of all taxable property, excluding property subject to a fee in lieu of tax. Each per pupil measurement is based upon the one hundred thirty-five day count for the most recently completed fiscal year."

Section 4. Section [11-15-460](#) of the 1976 Code, as last amended by Act 34 of 1989, is further amended to read:

"Section [11-15-460](#). These refunding bonds must bear interest at those rates as may be determined by the governing body of the issuer. However, before the issuance of any refunding bonds, except in the case of the refunding of Qualified School Construction Bonds issued pursuant to the provisions of 26 U.S.C. Section 54F, the governing body shall determine that a savings can be effected through the issuance of these refunding bonds."

Section 5. Section [11-27-50](#) of the 1976 Code, as last amended by Act 113 of 1999, is further amended by adding an appropriately numbered item at the end to read:

"( ) Notwithstanding any other provision of law, bonds issued as Qualified School Construction Bonds in amounts not exceeding one and a half million dollars pursuant to the provisions of 26 U.S.C. Section 54F may be sold at public or private sale at the price determined by the governing body of the issuer."

Section 6. The powers and authorizations conferred by this act shall be in addition to all other powers and authorizations previously conferred upon the State Superintendent of Education, the State Department of Education, and the school districts of the State. The provisions of this act are remedial in nature and shall be liberally construed in order to give full force and effect to its provisions.

Section 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Section 8. This act takes effect upon approval by the Governor.



# GUNS ON SCHOOL PROPERTY

**Effective date:** June 2, 2009

**Summary:** The General Assembly this year enacted an exception regarding the prohibition against guns on school grounds.

The new provision concerns the concealed weapon law and allows a person who is authorized to carry a concealed weapon - a firearm - under state law to carry the weapon on any elementary or secondary school property provided the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle. This change includes higher education campuses.

Bill proponents claimed that it would address the issue of people who, although they lawfully carried a concealed weapon, found that they were breaking the law by merely dropping their children off at school due to the then-clear prohibition against firearms on school property. SCSBA raised concerns about any such changes in the law that could potentially lead to a firearm being on a school campus, even if in a locked vehicle.

The new law does not change current law that forbids permit holders from carrying a firearm into a district office or board meeting, as well as into a school athletic event. However, it does mean that a district or school employee as well as a visitor to campus who is authorized to carry a concealed firearm pursuant to state law could keep a firearm in their car under the conditions outlined in the new law.

**Local district action required:** Most district policies concerning weapons in schools relate only to students. However, SCSBA does have a staff conduct policy listing possible offenses and “possessing weapons on school property” is one of them. This language has been amended to reflect the changes in the law.

**Policy reference:** GBEB (Staff Conduct).

*Model policy follows text of law.*

## **Text: Concealed weapons, school property exception**

SECTION 1. Section [16-23-430](#) of the 1976 Code is amended to read:

Section [16-23-430](#). (A) It shall be unlawful for any person, except state, county, or municipal law enforcement officers or personnel authorized by school officials, to carry on his person, while on any elementary or secondary school property, a knife, with a blade over two inches long, a blackjack, a metal pipe or pole, firearms, or any other type of weapon, device, or object which may be used to inflict bodily injury or death.

(B) This section does not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.

(C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than five years, or both. Any weapon or object used in violation of this section may be confiscated by the law enforcement division making the arrest.

**Concealed weapons, school property exception**

SECTION 2. Section [16-23-420](#)(A) of the 1976 Code, as last amended by Act 294 of 2004, is further amended to read:

Section [16-23-420](#). (A) It is unlawful for a person to possess a firearm of any kind on any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post-secondary institution, or in any publicly owned building, without the express permission of the authorities in charge of the premises or property. The provisions of this subsection related to any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution, do not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.

## STAFF CONDUCT

Code **GBEB** Issued **MODEL/09**

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Purpose: To establish the board's vision for appropriate staff conduct.

The board reaffirms one of the oldest beliefs in education, which is “One of the best methods of instruction is that of setting a good example.”

The board expects the staff of the district to strive to set the kind of example for students that will serve them well in their own conduct and behavior and subsequently contribute to an appropriate school atmosphere.

To that end, in dress, conduct and interpersonal relationships, all staff should recognize that they are being continuously observed by students and that their actions and demeanor will be reflected in the conduct of the students.

The personal life of an employee will be the concern of and warrant the attention of the board only as it may directly prevent the employee from effectively performing assigned functions during duty hours or as it violates local, state or federal law or contractual agreements.

No employee will commit or attempt to induce students or others to commit an act or acts of immoral conduct which may be harmful to others or bring discredit to the district. If it appears an employee may have violated the law, the district will cooperate with law enforcement agencies.

Employees of the district, while on duty and in the presence of students, will not use profanity, will not use tobacco in any form, and will not consume or be under the influence of intoxicating beverages. Employees will not be involved in drug abuse or drug traffic.

Violations of this policy by employees will be grounds for immediate suspension and possible termination of employment. In such cases, an employee will be informed of his/her right to any hearing or due process procedure that may be applicable under law or district policy.

The following list includes some of the actions that are considered misconduct while on duty on or off district premises.

- possessing, using, selling, manufacturing, distributing or dispensing any illegal drugs or alcohol while on duty or off district property
- fighting or deliberately harming another
- being absent without approval
- refusing to follow a supervisor's instructions and directions
- failure to adhere to safety and health rules as established by state law and the district
- destroying school property intentionally
- using obscene language which is unsuitable in the school setting

## **PAGE 2 - GBEB - STAFF CONDUCT**

- having any interaction/activity of a sexual nature or intent with a student
- possessing weapons on school property (unless otherwise authorized by law)
- using school property without proper authorization
- behaving in any inappropriate manner to the extent of adversely affecting the employee's ability to perform his/her work
- harassment, intimidation or bullying of a student

### **Arrest of an employee**

The board delegates specific authority to the superintendent to take appropriate employment action with regard to an employee who has been arrested, consistent with state law.

- Employees arrested for a misdemeanor offense which would indicate no danger or appearance of danger to students, co-employees or the district will normally not be subject to any employment action.
- Employees arrested for a misdemeanor offense which would indicate a possible danger or appearance of danger to the school district, co-employees or to pupils will normally be suspended with pay pending adjudication.
- Employees arrested for a misdemeanor offense which would indicate a possible danger or appearance of danger to pupils but not to the school district or co-employees will normally be reassigned to different responsibilities away from pupils within the district pending adjudication.
- Employees arrested for a felony offense will normally be suspended with pay pending adjudication.

In certain circumstances, other employment action may be taken.

Cf. GBEBB

Adopted ^

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Legal references:

- A. South Carolina Code of Laws, 1976 as amended:
1. Section 16-23-420 and 430 - Concealed weapons, school property exception.

# PANDEMIC PLAN

**Effective date: N/A**

**Summary:** The world is due for a flu pandemic, say experts, and preparation is the best defense. A pandemic, or global disease outbreak, begins when a new influenza virus emerges to which humans have little or no immunity and for which there is no vaccine. Once the virus is able to spread easily from person to person, it can quickly sweep around the world and through any and every community. Pandemic planning requires school districts to anticipate scenarios beyond the scope of their experience and normal operations.

Faced with recent warnings of an impending influenza pandemic, school districts across the nation have begun formulating emergency response plans for a potentially devastating health crisis. Without an operational pandemic plan, a school district leaves itself vulnerable to the crippling effects of a severe outbreak. With a plan in place, a district gains the crucial ability to sustain itself through the “crisis”. Coupled with the strain it would put on global, federal and state resources, a pandemic would demand from local communities, prepared or not, an increased level of self-sufficiency. School districts may be expected to maintain operations with little outside assistance for extended periods of time.

Despite the warnings, districts may be tempted to put off the task of pandemic planning. Some, faced with more immediate concerns, may deem it too time-consuming. Others may dismiss the predictions, associating them with the notorious hype of Y2K. For school districts, mass absenteeism would spawn several major problems that, if not anticipated, could throw the community into turmoil.

A well-developed crisis management plan is key to coping with an outbreak. The strength of the plan hinges upon a district’s policies for preventing and controlling infection, maintaining core operations, continuing student productivity and communicating with the public.

Before a district begins to develop or revise its emergency preparedness plan for a pandemic, it should invest time in the following preliminary steps.

- Establish a team.
- Know the government’s role.
- Develop a checklist (see below).

As a governance team, the school board has the responsibility to ensure that its district is equipped with a plan to deal with a crisis situation, including an influenza outbreak. Development of the plan should occur in collaboration with community partners, especially the local health department.

After the plan is complete, training for the staff and students and communication with the community are vital next steps.

## **A checklist for district preparedness planning**

Pandemic preparedness and response plans will differ, as each school district needs to tailor its plans according to the unique set of circumstances it faces. This checklist highlights the major points that every district should consider when shaping its plan. For a more comprehensive checklist, go to [www.pandemicflu.gov/plan/schoolchecklist.html](http://www.pandemicflu.gov/plan/schoolchecklist.html)

### ***Planning and coordination***

*Find out who's in charge.* Identify the state and local authorities responsible for officially declaring a public health emergency.

*Establish a district team.* Form a committee of key district stakeholders to oversee the development of the district's emergency plan.

*Set up an Incident Command System (ICS).* Set up an ICS to manage the execution of the district's plan. An ICS is a standardized organization structure that establishes a line of authority, common terminology and procedures to be followed.

*Get everybody on the same page.* Coordinate with the local and/or state health department and state education agencies to ensure compatibility with their pandemic plans and your ICS.

*Build accountability into the plan.* Define roles for those executing the district plan. Include timelines, deliverables and performance measures.

*Learn about surge capacity plans.* Familiarize yourself with the local health department's plan for dealing with surge capacity, and learn if and how schools will be involved.

*Anticipate special needs.* Consider how students' special needs will be met outside of school. Also work with the local health department to plan psychosocial support services for staff, students and families.

*Develop a surveillance system.* Develop a district surveillance system that would alert the local health department to a substantial increase in absenteeism among students.

*Review, revise and share.* Implement an exercise to test the district plan and revise it periodically. Share what your school district has learned with other districts.

### ***Continuity of student learning and core operations***

*Consider all possibilities.* Develop different scenarios to assess how staff and student absences would impact learning, extracurricular activities and school closings.

*Develop plans for outside the classroom instruction.* Develop procedures to assure continuity of instruction in the event of school closures. Consider web-based distance instruction, telephone trees, mailed assignments, and instruction via local radio or television stations.

*Anticipate essential functions.* Develop a continuity of operations plan for essential central office functions, including payroll and ongoing communication with students and parents.

### ***Infection control policies and procedures***

*Educate the district.* Work with the local health department to promote infection prevention procedures, such as hand hygiene and cough/sneeze etiquette, at schools.

*Keep supplies well-stocked.* Provide sufficient and accessible infection prevention supplies such as disinfectants, soap, waterless hand hygiene products, tissues and disposal receptacles.

*Develop sick leave procedures.* Establish procedures for staff and student sick leave absences unique to a pandemic flu. Consider non-punitive, liberal leave to reinforce a stay-at-home plan for those with known or suspected illness.

*Establish a send-home procedure.* Develop procedures for staff and students suspected to be ill or who become ill at school, and include a procedure for transporting ill students from school. Check that school-based health facilities conform to those recommended procedures for health care settings.

### ***Communication planning***

*Develop a dissemination plan.* Determine how the district will communicate with staff, students and families. Develop platforms, such as hotlines, telephone trees, dedicated Web sites, and local radio or television stations, for communicating pandemic status and actions. Identify district spokespersons and media liaisons.

*Ensure accessibility.* Establish language, culture and reading level appropriateness in communications. Include community leaders representing different language and/or ethnic groups in the dissemination of public health messages.

*Inform people in advance.* Be sure that all members of the district know **who** is legally authorized to execute the district's operational plan and **what** the plan is. Advise district staff, students and families **where** to find up to date and reliable pandemic information from federal, state and local public health sources.

*Join the network.* Develop and maintain contact with key public health and education stakeholders, and use this network to obtain and provide regular updates as the influenza pandemic unfolds.

*Promote a healthy and aware community.* Disseminate information from public health sources covering: routine infection control, such as proper hand hygiene and cough/sneeze etiquette; pandemic influenza fundamentals, such as signs and symptoms of infection and modes of transmission; and personal and family protection and response strategies, such as social distancing and at-home care of ill students and family members.

*Assess the district's readiness.* Review, test and update communication plans regularly.

**Local district action required:** SCSBA does not recommend any specific policy language for pandemics other than the broad statement in your existing policy EBC stating that “each school in the district has an emergency preparedness plan that has been developed in cooperation with local law enforcement and other emergency response agencies.”

Please contact Heather Kinard at [hkinard@scsba.org](mailto:hkinard@scsba.org) or 800-326-3679 for further information about crisis management plans.

**Policy reference:** EBC (Emergencies).

### **Online resources for pandemic planning**

<http://www.scdhec.gov/flu/swine-flu.htm> South Carolina Department of Health and Environmental Control's H1N1 (swine flu) page.

[www.cdc.gov/h1n1flu](http://www.cdc.gov/h1n1flu) Centers for Disease Control and Prevention's H1N1 (swine flu) page.

[www.pandemicflu.gov](http://www.pandemicflu.gov) Authoritative site for U.S. government information on the pandemic threat

[www.pandemicflu.gov/plan/schoolchecklist.html](http://www.pandemicflu.gov/plan/schoolchecklist.html) Checklists developed by the U.S. Department of Health and Human Services and the Centers for Disease Control and Prevention

[www.ed.gov/admins/lead/safety/emergencyplan/pandemic/index.html](http://www.ed.gov/admins/lead/safety/emergencyplan/pandemic/index.html) Information on pandemic preparedness developed by the U.S. Department of Education, including tools to assist schools

[www.hhs.gov/pandemicflu/plan/pdf/HHSPandemicInfluenzaPlan.pdf](http://www.hhs.gov/pandemicflu/plan/pdf/HHSPandemicInfluenzaPlan.pdf) Health and Human Service's Pandemic Influenza Plan, outlining national, state and local responsibilities

<http://www.nsba.org/MainMenu/SchoolHealth/Updates/Swine-Flu.aspx>. National School Boards Association

<http://www.epa.gov/oppad001/influenza-disinfectants.html> Antimicrobial Products Registered for Use Against Influenza A Viruses on Hard Surfaces.

<http://rems.ed.gov/> Readiness and Emergency Management for schools Technical Assistance Center.

The U.S. Department of Education has created an email address [osdfs.safeschl@ed.gov](mailto:osdfs.safeschl@ed.gov) where education leaders and school staff can direct any questions related to how schools should be proceeding. They have also asked that if a school is closed due to swine flu, it be reported to them at this email address.

# PROTECTION OF PUPIL RIGHTS AMENDMENT (PPRA)

**Effective date:** see below

**Summary:** The Protection of Pupil Rights Amendment (PPRA) (20 U.S.C. Sec 1232h; 34 CFR Part 98) applies to programs that receive funding from the U. S. Department of Education (ED).

This law is intended to protect the rights of parents and students by seeking to ensure that schools and contractors make instructional materials available for inspection by parents if those materials will be used in connection with an ED-funded survey, analysis or evaluation in which their children participate. It also seeks to ensure that schools and contractors obtain written parental consent before minor children are required to participate in any ED-funded survey, analysis or evaluation that reveals information concerning any of these specific areas.

- political affiliations or beliefs of the student or the student's parent
- mental and psychological problems of the student or the student's family
- sex behaviors or attitudes
- illegal, anti-social, self-incriminating or demeaning behavior
- critical appraisals of other individuals with whom respondents have close family relationships
- legally recognized privileged or analogous relationships, such as those of lawyers, physicians and ministers
- religious practices, affiliations or beliefs of the student or student's parent
- income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program)

The No Child Left Behind Act of 2001 (NCLB) recently amended portions of PPRA that give parents more rights with regard to the surveying of minor students, the collection of information from students for marketing purposes, and certain non-emergency medical examinations. The Family Policy Compliance Office issued a guidance in Fall 2008 regarding the new obligations of schools under this law.

Districts are required to develop and adopt policies - in conjunction with parents - regarding the following.

- The right of parents to inspect, upon request, a survey created by a third party before the survey is administered or distributed by a school to students.
- Arrangements to protect student privacy in the event of the administration of a survey to students, including the right of parents to inspect, upon request, the survey, if the survey contains one or more of the same eight items of information noted above.
- The right of parents to inspect, upon request, any instructional material used as part of the educational curriculum for students.
- The administration of physical examinations or screenings that the school may administer to students.
- The collection, disclosure or use of personal information collected from students for the purpose of marketing or selling, or otherwise providing the information to others for that purpose.

- The right of parents to inspect, upon request, any instrument used in the collection of information, as described in the bullet above, before it is administered to students.

Districts must "directly" notify parents of these policies and, at a minimum, will provide the notice at least annually, at the beginning of the school year. The district must also notify parents within a reasonable period of time if any substantive change is made to the policies.

In the notification, the district will offer an opportunity for parents to opt out of (remove their child) from participation in the following activities.

- Activities involving the collection, disclosure or use of personal information collected from students for the purpose of marketing or for selling that information, or otherwise providing that information to others for that purpose.
- The administration of any third party (non-Department of Education funded) survey containing one or more of the above described eight items of information.
- Any non-emergency, invasive physical examination or screening that is required as a condition of attendance, administered by the school and scheduled by the school in advance, and not necessary to protect the immediate health and safety of the student or of other students.

These requirements do not supersede any of the requirements of FERPA.

**Local district action required:** SCSBA is providing a revised model policy based on the changes to PPRA. A model notification form for parents is also provided.

**Policy reference:** IJ (Instructional Resources and Materials).

*Model policy and exhibit follow the text of this section.*

**Text:** The text of this law can be accessed at <http://www.ed.gov/policy/gen/guid/fpco/ppra/index.html>

## INSTRUCTIONAL RESOURCES AND MATERIALS

Code **IJ** Issued **MODEL/09**

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**Purpose:** To establish the board's vision for instructional materials and the basic structure for parental examination of certain materials.

Instructional materials are all materials designed for use by students and their teachers as a learning resource. They may be printed or non-printed and may include books, audiovisual materials and kits.

The professional staff will have primary responsibility for the selection of instructional materials and resources. They will seek the involvement of parents/legal guardians and other community members in selecting instructional materials. The selection of instructional materials will follow state board of education regulations as well as other legal requirements. All materials will support the schools' educational philosophy, goals and objectives. The board will handle challenges to materials as provided in policy KEC.

### **Parental inspection of certain materials**

Parents/legal guardians of district students have the right to inspect all instructional materials including teacher's manuals, films, tapes, software or other supplementary materials which will be used in connection with any survey, analysis or evaluation as part of any applicable program. The district will make the materials available for inspection at appropriate locations.

*(Option: The board may designate a place such as district office or appropriate school during normal business hours and for schools during the school day or until a particular time.*

The district will not require any student to submit to a survey, analysis or evaluation that reveals information prohibited by law as cited in the references below.

The district will give parents/legal guardians and students annually, at the beginning of the school year, a general notice of their rights under the law as well as after any change in district policy regarding these matters.

### *Surveys/Activities involving students*

Any survey project involving students and/or their records must have the prior written approval of the superintendent or his/her designee. Specific notice will be given to parents/legal guardians of students who are actually scheduled to participate in certain covered surveys/activities.

Except as specified below, prior written parental consent is not required when students participate in district-approved studies (including standardization samples) or when information is disclosed to organizations conducting studies for the purpose of developing, validating or administering standardized tests, administering student aid programs and/or improving instruction, as long as students and/or their parents/legal guardians are not personally identified and the records are destroyed when no longer needed for the prescribed purpose.

Written parental consent must be secured before students are required to participate in any survey, analysis or evaluation that reveals information concerning the following that is funded in whole or in part by a program of the U. S. Department of Education.

## PAGE 2 - IJ - INSTRUCTIONAL RESOURCES AND MATERIALS

- political affiliations or beliefs of the student or student's parent/legal guardian
- mental and psychological problems of the student or student's family
- sexual behavior or attitudes
- illegal, anti-social, self-incriminating or demeaning behavior
- critical appraisals of other individuals with whom respondents have close family relationships
- legally recognized privileged or analogous relationships, such as with lawyers, doctors or ministers
- religious practices, affiliations or beliefs of the student or the student's parents/legal guardians
- income, (other than as required by law to determine program eligibility for participation in a program or for receiving financial assistance under such program)

Additionally, parents/legal guardians must receive notice and an opportunity to opt a student out of participation in the following.

- any other protected information survey, regardless of funding
- any nonemergency, invasive physical exam or screening required as a condition of attendance, administered by the school or its agent, and not necessary to protect the immediate health and safety of a student, except for hearing, vision or scoliosis screenings, or any physical exam or screening permitted or required under state law
- activities involving collection, disclosure or use of personal information obtained from students for marketing or to sell or otherwise distribute the information to others

Parents/Legal guardians **may inspect**, upon request and before administration or use, the following.

- protected information surveys of students
- instruments used to collect personal information from students for any of the above marketing, sales or other distribution purposes
- instructional material used as part of the educational curriculum

Adopted ^

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Legal references:

A. Federal law:

1. 20 U.S.C. Code, § 1232h; 34 CFR, Part 98, as amended - Protection of Pupil Rights Amendment (PPRA).

**Notification of Rights Under the Protection of Pupil Rights Amendment (PPRA)**

PPRA affords parents certain rights regarding our conduct of surveys, collection and use of information for marketing purposes, and certain physical exams. These include the right to the following.

- *Consent* before students are required to submit to a survey that concerns one or more of the following protected areas (protected information survey) if the survey is funded in whole or in part by a program of the U.S. Department of Education (ED).
  - political affiliations or beliefs of the student or student's parent
  - mental or psychological problems of the student or student's family
  - sex behavior or attitudes
  - illegal, anti-social, self-incriminating or demeaning behavior
  - critical appraisals of others with whom respondents have close family relationships
  - legally recognized privileged relationships, such as with lawyers, doctors or ministers
  - religious practices, affiliations or beliefs of the student or parents
  - income, other than as required by law to determine program eligibility
- *Receive* notice and an opportunity to opt a student out of the following.
  - any other protected information survey, regardless of funding
  - any non-emergency, invasive physical exam or screening required as a condition of attendance, administered by the school or its agent and not necessary to protect the immediate health and safety of a student, except for hearing, vision or scoliosis screenings, or any physical exam or screening permitted or required under state law
  - activities involving collection, disclosure or use of personal information obtained from students for marketing or to sell or otherwise distribute the information to others
- *Inspect*, upon request and before administration or use, the following.
  - protected information surveys of students
  - instruments used to collect personal information from students for any of the above marketing, sales or other distribution purposes
  - instructional material used as part of the educational curriculum

These rights transfer from the parents to a student who is 18 years old or an emancipated minor under state law.

*(School district will/has develop[ed] and adopt[ed])* policies, in consultation with parents, regarding these rights, as well as arrangements to protect student privacy in the administration of protected information surveys and the collection, disclosure or use of personal information for marketing, sales or other distribution purposes. The district will directly notify parents of these policies at least annually at the start of each school year and after any substantive changes. The district will also directly notify, such as through U.S. Mail or email, parents of students who are scheduled to participate in the specific activities or surveys noted below and will provide an opportunity for the parent to opt his/her child out of participation of the specific activity or survey. The district will make this notification to parents at the beginning of the school year if the district has identified the specific or approximate dates of the activities or surveys at that time. For surveys and activities scheduled after the school year starts, parents will be provided reasonable notification of the planned activities and surveys listed below and be provided an opportunity to opt their child out of such activities and surveys. Parents will also be provided an opportunity to review any pertinent surveys. Following is a list of the specific activities and surveys covered under this requirement.

- collection, disclosure or use of personal information for marketing, sales or other distribution
- administration of any protected information survey not funded in whole or in part by ED
- any non-emergency, invasive physical examination or screening as described above

Parents who believe their rights have been violated may file a complaint with the following.

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-5901



# REPORT CARD ADVERTISING

**Effective date:** June 2, 2009

**Summary:** The General Assembly this year enacted into law a long-standing temporary budget proviso that allows school districts to waive in certain circumstances the requirement that school report cards be advertised in local newspapers.

The new law allows for a waiver of the Education Accountability Act (EAA) requirement to advertise school report cards in the local newspaper if an article in the paper has previously highlighted report card results.

This waiver provision was previously part of a longtime budget proviso, but was inadvertently deleted when the EAA was amended with numerous changes during the 2008 Legislative Session.

This waiver recognizes that most local newspapers write news stories about the school report cards, including printing graphics showing the results. In such an instance, waiving the advertisement requirement can save districts money.

**Local district action required:** SCSBA does not recommend any policy changes.

**Policy reference:** N/A

**Text:** Section 1. Section [59-18-930](#) of the 1976 Code, as last amended by Act 353 of 2008, is further amended to read:

Section [59-18-930](#). (A) The State Department of Education must issue the executive summary of the report card annually to all schools and districts of the State no later than November first. The executive summary shall be printed in black and white, be no more than two pages, use graphical displays whenever possible, and contain National Assessment of Educational Progress (NAEP) scores as well as national scores. The report card summary must be made available to all parents of the school and the school district.

(B) The school, in conjunction with the district board, also must inform the community of the school's report card by advertising the results in at least one South Carolina daily newspaper of general circulation in the area. This notice must be published within forty-five days of receipt of the report cards issued by the State Department of Education and must be a minimum of two columns by ten inches (four and one-half by ten inches) with at least a twenty-four point bold headline.

(C) If an audited newspaper of general circulation in a school district's geographic area has previously published the entire school report card results as a news item, the requirement of subsection (B) may be waived.

Section 2. This act takes effect upon approval by the Governor.



# SCHOOL DISTRICT FUNDING FLEXIBILITY

**Effective date:** April 7, 2009

**Summary:** The General Assembly in 2009 enacted a two-year joint resolution concerning school district flexibility (the “flexibility bill”) to help schools manage and protect from further erosion core instructional and operational services to students in a year that saw some \$350 million cut from the education budget alone.

The joint resolution was enacted to cover the end of the 2008-09 budget year as well as the current 2009-10 year. In addition, lawmakers amended flexibility proviso 1.43 in the state budget to reflect the language from the joint resolution.

The flexibility bill includes the following provisions.

- Transferring and expending of funds among appropriated state general fund revenues, Education Improvement Act funds, Education Lottery Act funds, and funds received from the Children's Education Endowment Fund for school facilities and fixed equipment assistance to ensure the delivery of academic and arts instruction to students.
- Suspending professional staffing ratios and expenditure regulations and guidelines at the sub-function and service area level, except for four-year-old programs.
- Delaying from April fifteenth to May fifteenth the date that contracts are issued to teachers.
- Uniform negotiating of salaries below the school district salary schedule for the 2009-2010 school year for retired teachers who are not participants in the Teacher and Employee Retention Incentive (TERI) Program.
- Furloughing teachers for up to five non-instructional days provided that district administrators are furloughed for twice the number of days.
- Encouraging districts to limit the number of low enrollment courses, reduce travel for the staff and the school board, reduce and limit activities requiring dues and memberships, reduce transportation costs for extracurricular and academic competitions, and expand virtual instruction.
- Requiring each school district board chairman and superintendent quarterly throughout the 2009-10 fiscal year to certify where non-instructional or nonessential programs have been suspended, as well as specific things done in furtherance of the above joint resolution requirements.

The certification must be in writing, signed by the board chairman and the superintendent, delivered electronically to the State Superintendent of Education, and an electronic copy forwarded to the chairs of the Senate Finance Committee, the Senate Education Committee, the House Ways and Means Committee, and the House Education and Public Works Committee.

Additionally, the certification must be presented publicly at a regularly called school board meeting, and the certification must be posted on the Internet Web site maintained by the school district.

- Requiring that, in order to take advantage of the act's flexibility, at least 65 percent of each district's per pupil expenditures must be utilized within the In\$ite categories of instruction, instructional support and non-instruction pupil services. By August 1, 2010, school districts must report to the State Department of Education the actual percentage of per pupil expenditures used for classroom instruction, instructional support and noninstruction pupil services for the school year ending June 30, 2010.
- Suspending, for Fiscal Years 2008-09 and 2009-10, the local maintenance of effort under the Education Improvement Act (EIA).

### **Transparency provisions**

An amendment to the joint resolution on the Senate floor included transparency requirements for school districts. Under the provisions, districts are required to maintain a transaction register that includes a complete record of all funds expended over \$100, from whatever source for whatever purpose, and will be prominently posted on the district's Internet Web site and made available for public viewing and downloading. This requirement is only enforced if the comptroller general distributes to the district the methodology and resources for compliance with the provisions of this section. Under the joint resolution, transparency provisions are to be implemented within 180 days of the effective date of the law. However, this language was removed in proviso 1.43 which modified the joint resolution regarding the effective date for transparency.

The comptroller general's office is planning on the transparency requirements going into effect July 1, 2010. In short, the comptroller's office will be taking the current fiscal year to develop/implement a methodology. In doing so, it will be working with districts and seeking input.

Districts **will not be required** to do anything concerning the transparency until the comptroller's office implements its methodology and makes it available to districts.

**Local district action required:** Because the provisions of school district flexibility are outlined in a joint resolution as well as a temporary budget proviso, SCSBA is not recommending any policy changes at this time.

**Policy reference:** NA

**Text:** Section 1. For the 2008-2009 and 2009-2010 fiscal years, school districts and special schools of this State may transfer and expend funds among appropriated state general fund revenues, Education Improvement Act funds, Education Lottery Act funds, and funds received from the Children's Education Endowment Fund for school facilities and fixed equipment assistance, to ensure the delivery of academic and arts instruction to students. However, a school district may not transfer funds required for debt service or bonded indebtedness.

Section 2. (A) Notwithstanding another provision of law and for the 2008-2009 and 2009-2010 fiscal years, school districts may:

(1) suspend professional staffing ratios and expenditure regulations and guidelines at the sub-function and service area level, except for four-year-old programs. The funds shall be utilized in accordance with Section 4 of this joint resolution;

(2) delay from April fifteenth to May fifteenth the date that contracts are issued to teachers. A teacher who is reemployed by written notification pursuant to Section [59-25-410](#) shall notify the board of trustees of the district in writing of his acceptance of the contract within ten days of such notification or May twenty-fifth, whichever occurs later. Failure on the part of the teacher to notify the board of acceptance within the specified time limit is conclusive evidence of the teacher's rejection of the contract;

(3) uniformly negotiate salaries below the school district salary schedule for the 2009-2010 school year for retired teachers who are not participants in the Teacher and Employee Retention Incentive Program; and

(4) if not prohibited by an applicable employment contract, furlough teachers for up to five non-instructional days, provided that district administrators are furloughed for twice the number of days.

(B) To further ensure resources are maximized, school districts are encouraged to reduce expenditures by means, including, but not limited to:

(1) limiting the number of low enrollment courses;

(2) reducing travel for the staff and the school district's board;

(3) reducing and limiting activities requiring dues and memberships;

(4) reducing transportation costs for extracurricular and academic competitions; and

(5) expanding virtual instruction.

Education related entities that require dues from school districts are encouraged to consider cost-saving measures for school districts including, but not limited to, coordination and reductions in dues, workshops, and professional training initiatives.

(C) Quarterly throughout the 2009-2010 fiscal year, and during the fourth quarter of Fiscal Year 2008-2009, the chairman of each school district's board and the superintendent of each school district must certify where noninstructional or nonessential programs have been suspended and the specific actions taken in response to the measures provided in Sections 1 and 2 of this joint resolution. The certification must be in writing, signed by the chairman and the superintendent, delivered electronically to the State Superintendent of Education, and an electronic copy forwarded to the Chairman of the Senate Finance Committee, the Chairman of the Senate Education Committee, the Chairman of the House Ways and Means Committee, and the Chairman of the House Education and Public Works Committee. Additionally, the certification must be presented publicly at a regularly called school board meeting, and the certification must be posted on the Internet Web site maintained by the school district.

(D) Prior to implementing the flexibility provisions provided in this joint resolution, school districts must provide to public charter schools the per pupil allocation due to the charter schools for each categorical program.

(E) All other provisions of law, program regulations, guidelines, reporting, and audit requirements remain in effect unless addressed in this joint resolution.

Section 3. Notwithstanding another provision of law and for the 2008-2009 and 2009-2010 fiscal years, implementation of formative assessments for grades one, two, and nine, the foreign language program assessment and the physical education assessment, must be suspended. New textbook adoptions may be suspended. Nothing in this joint resolution suspends, amends, modifies, or otherwise authorizes changes in the manner in which textbooks are purchased.

School districts and the State Department of Education must be granted permission to purchase the most economical type of bus fuel.

Section 4. In order for a school district to take advantage of the flexibility provisions provided in this joint resolution and for the 2009-2010 fiscal year only, at least sixty-five percent of the school district's per pupil expenditures must be utilized within the In\$ite categories of instruction, instructional support, and noninstruction pupil services. No portion of the sixty-five percent may be used for business services, debt service, capital outlay, program management, and leadership services, as defined by In\$ite. By August 1, 2010, the school district shall report to the State Department of Education the actual percentage of its per pupil expenditures used for classroom instruction, instructional support, and noninstruction pupil services for the school year ending June 30, 2010.

For purposes of this section, "In\$ite" means the financial analysis model for education program utilized by the State Department of Education.

Section 5. (A)(1) For the 2009-2010 fiscal year, school districts must maintain a transaction register that includes a complete record of all funds expended over one hundred dollars, from whatever source for whatever purpose. The register must be prominently posted on the district's Internet Web site and made available for public viewing and downloading.

(2)(a) The register must include for each expenditure:

- (i) the transaction amount;
- (ii) the name of the payee; and
- (iii) a statement providing a detailed description of the expenditure.

(b) The register must not include an entry for salary, wages, or other compensation paid to individual employees.

(c) The register must not include any information that can be used to identify an individual employee.

(d) The register must be accompanied by a complete explanation of any codes or acronyms used to identify a payee or an expenditure.

(3) The register must be searchable and updated at least once a month. Each monthly register must be maintained on the Internet Web site for at least five years.

(B)(1) For the 2009-2010 fiscal year, each school district also must maintain on its Internet Web site a copy of each monthly statement for all of the credit cards maintained by the entity, including credit cards issued to its officers or employees for official use.

(2) The credit card number on each statement must be redacted prior to posting on the Internet Web site.

(3) Each credit card statement must be posted not later than the thirtieth day after the first date that any portion of the balance due as shown on the statement is paid. Each statement must be maintained on the Web site for at least five years.

(C)(1) The Comptroller General must establish and maintain a Web site to contain the information required by this section from a school district that does not maintain its own Internet Web site. The Internet Web site must be organized so that the public can differentiate between the school districts and search for the information they are seeking.

(2) School districts that do not maintain an Internet Web site must transmit all information required by this section to the Comptroller General in a manner and at a time determined by the Comptroller General to be included on the Internet Web site required by this section.

(D) The provisions contained in this section do not amend, suspend, supercede, replace, revoke, restrict, or otherwise affect Chapter 4, Title 30, the South Carolina Freedom of Information Act.

(E) The provisions contained in this section must be implemented within one hundred eighty days of the effective date of this joint resolution.

(F) The Comptroller General shall distribute to the districts a methodology and resources for compliance with the provisions of this section. If a district complies with the methodology, it shall be reimbursed for any documented expenses incurred as a result of compliance. Reimbursement must be from the budget of the Comptroller General.

Section 6. For Fiscal Years 2008-2009 and 2009-2010, Section [59-21-1030](#) of the 1976 Code is suspended.

Section 7. This joint resolution takes effect upon approval by the Governor.



# SOUTH CAROLINA ACADEMIC STANDARDS FOR HEALTH AND SAFETY EDUCATION

**Effective date:** July 8, 2009

**Summary:** After 16 months of work by a standards review and writing team, the new Academic Standards for Health and Safety Education were adopted by the South Carolina State Board of Education on July 8, 2009.

The new standards are aligned with the 2007 National Health Education Standards. The major difference in the new South Carolina standards from the older version is the addition of performance indicators for each grade level under each of the eight standards. The six content areas within the eight standards were carefully selected and placed in specific grade levels to be sequential and developmentally age-appropriate. These content areas are as follows.

- alcohol, tobacco and other drugs
- growth, development, and sexual health and responsibility
- injury prevention and safety
- mental, emotional and social health
- personal and community health
- physical activity and nutrition

The South Carolina Department of Education will be offering training to familiarize district curriculum specialists with the new document so they can assist teachers in aligning their health education instruction with the 2009 South Carolina Health and Safety Education Academic Standards.

The new standards can be accessed at the Web site below. For additional information, contact Christine Beyer at [cbeyer@ed.sc.gov](mailto:cbeyer@ed.sc.gov) or 803-734-2782.

**Local district action required:** No policy action is required. Districts need to be aware of the new health standards and the availability of training for administrators.

**Policy reference:** IHAM (Health Education).

**Text:** The text of these standards can be accessed at <http://tinyurl.com/SCHealthEdStds>



# TAX REALIGNMENT COMMISSION

**Effective date:** June 30, 2009

**Summary:** The General Assembly took a tentative step this year toward tackling the continuing concern about South Carolina's broken tax system by creating an 11-member South Carolina Taxation Realignment Commission to study the state's tax system and issue a report with recommended changes.

The bill was initially filed as a BRAC-style proposal in which an appointed group makes recommended changes to the tax code and the General Assembly votes only to approve or not approve the changes. As enacted, however, the bill establishes a study committee to make recommendations regarding - among other things - sales and use tax exemptions or limitations to be retained, modified or repealed; and the assessment of state and local taxes levied and other provisions affecting state and local revenue to fund the operation and responsibilities of state and local governments. In addition, the Commission must study and make recommendations on the pros and cons of a "revenue neutral" replacement of certain state taxes with a broadly based consumption tax modeled on the proposed federal Fair Tax.

According to the timeline set forth in the bill, the Commission by March 15, 2010, must prepare and deliver a report and recommendation to the chairman of the Senate Finance Committee and the chairman of the House Ways and Means Committee, including the text of an amendment that carries out the recommendations. The Commission is to conclude its business by January 1, 2011.

Importantly, the bill specifically **excludes** the Commission's ability to consider recommendations relating to the exemption of owner-occupied residential property under Act 388.

SCSBA supports comprehensive tax reform in South Carolina that includes a complete review and revision of Act 388.

**Local district action required:** SCSBA does not recommend any policy changes.

**Policy reference:** N/A

**Text:** The text of this legislation can be accessed at [www.scstatehouse.net](http://www.scstatehouse.net)





## ANNUAL NOTICES

By: Lisa E. Soronen, NSBA Senior Staff Attorney  
July 2009



Numerous federal (and state) laws require school districts to provide students, parents and/or the public with notices, many of which must be provided at the beginning of the school year. Fortunately, oftentimes federal agencies or other entities have created “model” notices (or provide information useful to creating notices) that can be easily tailored to meet individual district needs. The following article describes some of the notices required by federal law and provides links to documents that may be used in writing notices. This article does not contain a description of employment-related notices required by federal law or notices required by state law.

### No Child Left Behind Act

The No Child Left Behind Act (NCLB) requires the state education agency, school districts and individual schools to provide numerous notices to parents, the public and others. Some of the notices that school districts and/or individual schools are required to give under NCLB include: annual report cards; progress reviews; schools identified for school improvement, corrective action, or restructuring; parental involvement policies; state education agency complaint procedures; teacher and paraprofessional qualifications; non-highly qualified teachers; student achievement information; an informational meeting on Title I, Part A; and a variety of information about the status of English Language Learners. When notice must be given and who must receive the notice differs for each notice.

- The U.S. Department of Education’s non-regulatory guidance document, *Parental Involvement Title I, Part A*, contains a chart listing the *key* parental notice requirements under Title I, Part A of NCLB, who has to issue the notices, and when they must be issued. The description of each notice contains references to the relevant statute sections and guidance documents, some of which contain model policies. Download this document at: <http://www.ed.gov/programs/titleiparta/parentinvguid.doc>

**New requirement:** Pursuant to the Title I regulations, finalized in October 2008, a school district must notify parents of eligible students of the availability of public school choice at least 14 days before the start of the school year. 34 C.F.R. § 200.37(b)(4)(iv). On April 1, 2009, U.S. Department of Education Secretary Arne Duncan issued a letter further advising that, if a state's current assessment timeline precludes districts from meeting this 14-day requirement, a one-year waiver may be granted. The October regulations also require local school districts to notify parents of eligible students of the availability of supplemental education services in a manner that is clearly distinguishable from other school improvement information that parents receive. 34 C.F.R. § 200.37(b)(5). The notice must inform parents of the benefits of supplemental education services, and indicate providers who are able to serve students with disabilities or limited English proficient students. 34 C.F.R. § 200.37(b)(5).

- The Title I final regulations may be viewed here, along with corrections to the regulations: <http://www.ed.gov/programs/titleiparta/legislation.html>
- View the Secretary's letter, which includes a table of the October 2008 provisions, here: <http://www.ed.gov/policy/elsec/guid/secletter/090401.html>

## **Family Educational Rights and Privacy Act**

Pursuant to the Family Educational Rights and Privacy Act (FERPA), school districts must provide parents/guardians and adult students annual notice of their rights to inspect and review education records, amend education records, consent to disclose personally identifiable information in education records, and file a complaint with the U.S. Department of Education. 34 C.F.R. § 99.7.

- Download the U.S. Department of Education's *Model Notification of Rights Under FERPA for Elementary and Secondary Schools* at: <http://www.ed.gov/policy/gen/guid/fpco/doc/ferpamodelnotice04.doc>

Under FERPA, school districts may disclose directory information if they have given public notice to parents/guardians and adult students of what information has been designated as directory information and when and how parents/guardians and adult students may opt out of allowing the district to disclose directory data. 34 C.F.R. § 99.37. Finally, under FERPA school districts must provide notice that they may release the name, address and phone number of students to military recruiters unless parents opt out. 20 U.S.C. § 7908.

- Download the U.S. Department of Education's *Model Notice for Directory Information* at: <http://www.ed.gov/policy/gen/guid/fpco/ferpa/mndirectoryinfo.html>

**Updated model notices coming soon:** The Family Policy Compliance Office (FPCO) is planning on issuing updated model FERPA notices in the fall of 2009 to reflect changes made in the 2009 final FERPA regulations. Changes to the model notices will likely be minor. Go to FPCO's Web site to see if they have issued the updated model notices:

<http://www.ed.gov/policy/gen/guid/fpco/index.html>

## **Protection of Pupil Rights Amendment**

The Protection of Pupil Rights Amendment (PPRA) requires school districts to adopt a number of policies regarding surveys, instructional materials, physical examinations, personal information used for marketing, etc. Parents must be notified of these policies at least annually at the beginning of the school year and within a reasonable time period after any substantial change is made to the policies. 20 U.S.C. § 1232(h) (c)(2)(A).

- Download the U.S. Department of Education's *Model Notice of Rights Under the Protection of Pupil Rights Amendment* at: <http://www.ed.gov/policy/gen/guid/fpco/pdf/modelnotification.pdf>

If districts plan to (1) use students' personal information for selling or marketing purposes; (2) administer any survey about any of the eight topics listed in the statute (political beliefs, income,

sex behavior or attitudes, etc.); or (3) administer certain non-emergency, invasive physical examinations, districts must notify parents at least annually at the beginning of the school year of the specific or approximate dates when these activities are scheduled or expected to be scheduled. 20 U.S.C. § 1232(h)(c)(2)(B).

- Download the U.S. Department of Education's *PPRA Model Notice and Consent/Opt-Out for Specific Activities* at: <http://www.ed.gov/policy/gen/guid/fpco/pdf/ppraconsent.pdf>

### **Child Nutrition Programs**

If school districts participate in the National School Lunch Program, the School Breakfast Program, or the Special Milk Program, near the beginning of the school year, they must provide both parents and the public information about free and reduced price meals and/or free milk. 7 C.F.R. § 245.5. Districts must also provide parents an application form. If districts want to disclose children's free and reduced eligibility status, they may do so in some instances usually only with prior notice and/or consent. 42 U.S.C. § 1758(b)(6)(D)(ii).

- The U.S. Department of Agriculture's document entitled *Eligibility Guidance for School Meals Manual* contains an explanation of the required notices and a sample notice and application form. The document also contains a chart describing to whom, and under what conditions, information regarding free and reduced eligibility status may be disclosed. Relevant notices appear in the appendices:  
[http://www.fns.usda.gov/cnd/Guidance/eligibility\\_guidance.pdf](http://www.fns.usda.gov/cnd/Guidance/eligibility_guidance.pdf)

### **McKinney Vento Act**

The McKinney Vento Act requires homeless student liaisons to provide public notice of the education rights of homeless students disseminated in places where homeless students receive services under the Act. 42 U.S.C. § 11432(g)(6).

- The National Center for Homeless Students (funded by the U.S. Department of Education) has created posters (in black and white or color, in English or in Spanish, for parents or for students) that can be ordered on their Web site:  
[http://www.serve.org/nche/products\\_list.php#youth\\_poster](http://www.serve.org/nche/products_list.php#youth_poster)

### **Asbestos Hazard Emergency Response Act**

The Asbestos Hazard Emergency Response Act (AHERA) requires school districts to inspect their buildings for asbestos-containing building materials and develop, maintain, and update an asbestos management plan. School districts must annually notify parents, teachers and employee organizations in writing of the availability of the management plan and planned or in progress inspections, re-inspections, response actions, and post-response actions, including periodic re-inspection and surveillance activities. 40 C.F.R. §§ 763.84(c), 763.94(g)(4).

- Download the U.S. Environment Protection Agency's *Model AHERA Yearly Notification Form* at: <http://www.epa.gov/region2/ahera/notiform.htm>

## **Notice of Non-Discrimination Under Title VI, Title IX, Section 504, Age Discrimination Act, Title II of the American with Disabilities Act**

A number of federal statutes protect the rights of beneficiaries in programs or activities that receive financial assistance from being discriminated against. Specifically, the following statutes prohibit discrimination: Title VI on the basis of race, color, and national origin; Title IX on the basis of sex; Section 504 on the basis of disability; the Age Discrimination Act on the basis of age; and Title II prohibits state and local governments from discriminating on the basis of disability. The regulations implementing the above statutes require school districts to notify students, parents, and others that they do not discriminate on the basis of race, color, national origin, sex, disability, and age. Title VI, 34 C.F.R. § 100.6(d); Title IX, 34 C.F.R. § 106.9; Section 504, 34 C.F.R. § 104.8; Age Discrimination Act, 34 C.F.R. § 110.25; Title II, 28 C.F.R. § 35.106. However, the regulations contain minor differences relating to the notices' required content and the methods used to publish them.

- Download the U.S. Department of Education's *Notice of Non-Discrimination*, which describes the content and publication requirements for each notice required under each statute. The document contains a sample notice of non-discrimination school districts may use to meet the requirements of **all** of the above statutes:  
<http://www.ed.gov/print/about/offices/list/ocr/docs/nondisc.html>
- On August 4, 2004, the U.S. Department of Education sent a letter to post-secondary institutions reminding them of their notice obligations under Title IX. The letter, which is equally applicable to public K-12 school districts, indicates that the most frequent failure by post-secondary institutions is to disseminate the identity of and contact information for the Title IX coordinator: [http://www.ed.gov/about/offices/list/ocr/responsibilities\\_ix\\_ps.html](http://www.ed.gov/about/offices/list/ocr/responsibilities_ix_ps.html)

### **Individuals with Disabilities Education Act**

Under the Individuals with Disabilities Education Act (IDEA), school districts must give parents of a child with a disability a copy of procedural safeguards one time a year. Additionally, a copy of procedural safeguards must be given to parents upon initial referral or parental request for an evaluation, upon filing a request for a due process hearing, upon a disciplinary action constituting a change in placement, and upon request of a parent. 20 U.S.C. § 1415(d)(1). A school district may post a copy of the procedural safeguards on its Web site. 20 U.S.C. § 1415(d)(1). The procedural safeguards notice must fully explain a number of procedural safeguards specified in the statute in the native language of the parents and be written in an easily understandable manner. 20 U.S.C. § 1415(d)(2).

- Download the U.S. Department of Education's *Model Form: Procedural Safeguards Notice* at: [http://idea.ed.gov/download/modelform3\\_Procedural\\_Safeguards\\_Notice.doc](http://idea.ed.gov/download/modelform3_Procedural_Safeguards_Notice.doc)

## 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](http://www.scstatehouse.net) for the most recent status and for more details of each bill, or contact Scott Price at SCSBA.

- H.3589 (R37) **Anderson County** school districts, budget provisions, effective May 7.
- S.758 (R83) **Clarendon County** school districts, sales tax revenue, effective June 16.
- S.234 (R1) **Dorchester School District Two**, development impact information, effective February 26.
- S.235 (R2) **Dorchester School District Two**, impact fees, effective February 26.
- H.3295 (R13) **Greenville County School District**, make-up days, effective April 8.
- S.795 (R86) **Greenville County School District**, make-up days, effective June 2.
- H.3575 (R17) **Horry County Board of Education**, term of office, effective April 8.
- H.3583 (R18) **Kershaw County School District**, make-up days, effective April 23.
- S.540 (R26) **Oconee County School District**, make-up days, effective May 20.
- H.3649 (R19) **Pickens County School District**, make-up days, effective April 23.
- S.703 (R29) **Spartanburg County** school districts, candidates' petition, effective May 6.



# REGULATIONS

**Effective date:** see table

**Summary:** During the 2009 legislative session, the General Assembly amended five state board of education regulations 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 and administrative rules, 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](http://www.myschools.com). Click on Agency, State Board and the appropriate Regulations Chart dealing with the 2009 regulations. Click on the regulation or the document number. You will be able to view the document or print it in its entirety.

## **Regulation 43-165.1 Program for Assisting, Developing and Evaluating Principal Performance (PADEPP) (Document No. 4027)**

**Policy reference: GCO (Evaluation of Professional Staff).**

Revisions to this regulation include the removal of outdated verbiage; updating and clarification of current responsibilities and procedures of the school districts and the South Carolina Department of Education; changes to reflect the revisions to the national Interstate School Leaders Licensure Consortium (ISLLC) standards and to remove the performance standards and criteria from the regulation (these will be placed in PADEPP guidelines); and additions to allow for the collection of general performance information from districts in order to give feedback to South Carolina universities' principal preparation programs.

*SCSBA action : SCSBA has revised language in its model and accompanying administrative rule to reflect the amendments to this regulation. These two models should replace your existing policy and rule in their entirety.*

*Model policy and rule follow the text of this section.*

## **Regulation 43-168(I)(B)(1) Nutrition Standards for Elementary (K-5) School Food Service Meals and Competitive Foods (Document No. 4050)**

**Policy reference: EF (Food Services). EFE (Competitive Food Sales/Vending Machines). ADF (and other district codes) (School Wellness).**

This regulation addresses nutrition standards for elementary school food service meals and competitive foods and was amended to remove the requirement of offering 2% milk in the schools. The reason for removing this requirement was for schools to be eligible to receive the Healthier US School Challenge certification which recognizes a school's commitment to the

health and well being of its students. This program is optional; schools may still serve/offer 2% milk if they do not wish to participate in the Challenge.

*SCSBA action: No policy action is required. However, districts with extensive information in any of the above-mentioned policy areas (especially the school wellness information) may want to check for this requirement if they want to participate in the Healthier US School Challenge.*

#### **Regulation 43-260 Use and Dissemination of Test Results (Document No. 4049)**

**Policy reference: N/A**

This regulation is not applicable to district policy as it deals with the use and dissemination of test results by the South Carolina Department of Education.

#### **Regulation 43-262 Assessment Program (Document No. 4029)**

**Policy reference: ILB (Test/Assessment Administration). ILBB (State Program Assessments). IKF (Graduation Requirements).**

Amendments to this regulation reflect the changes made to the Education Accountability Act of 1998 by the legislature in 2008 (see *2008 Policy and Legislative Update Book*). Also, outdated verbiage was deleted and references to tests and agencies were updated. New tests were added to the list under the statewide assessment program; references to an exit examination in science and social studies were deleted; and students have a minimum of five opportunities to pass the test.

*SCSBA action: Based on these amendments, we have updated language under “tests administered” in ILB-R; deleted the term “writing” in policy ILBB and updated the language and procedures for the exit examination in administrative rule IKF-R.*

*Model policy and rules follow the text of this section.*

#### **Regulation 43-600 Charter School Appeals (Document No. 4028)**

**Policy reference: IHBH (Charter Schools).**

Section 59-40-70 of the state code of laws was revised by the legislature in 2008 to move all appeals from the denial of a charter school application from the state board to the state administrative law court. Regulation 43-600 has been repealed in its entirety reflective of this change. This legal reference has been removed from policy IHBH.

#### **Regulation 43-601 Procedures and Standards for Review of Charter School Applications (Document No. 4026)**

**Policy reference: IHBH Charter Schools.**

Changes to this regulation amend the standards to conform to changes in state law, add clarification and define virtual charter schools. The significant changes include the following.

- A section of definitions was inserted into the regulation. These definitions were pulled directly from the charter school law.
- The application guideline passed in September 2009 has been fully inserted into the regulation making May 1 the deadline for applications for charter schools that seek to open the following calendar year.
- Evidence must be submitted to the Charter School Advisory Committee (CSAC) that the applicant has provided a copy of its proposed application to the selected authorizer.

- Clarification was provided to the 20% rule of student preference. The 20% specifically refers to the aggregate total of the allowable preferences.
- The charter school budget is not for the full term of the charter, but only for the first five years.
- For applicants seeking to operate a virtual charter school, additional information must be submitted to the CSAC at the time the application is filed. These specifics are detailed.
- Language in the regulation that charter schools are subject to the requirements of the *South Carolina School Facility Planning and Construction Guide* as they relate to charter schools was clarified.
- Language was added requiring local school districts, should they grant conditional authorization, to specify in writing the conditions necessary for approval and the date by which the conditions must be met. If the district fails to meet and review the applicant's progress on those conditions, the application is deemed approved.
- Other sections were modified for editing purposes (i.e. changes in numbering, correction due to changes in the charter school law, etc.).

*SCSBA action: Based on the changes to this regulation, SCSBA does not recommend any specific policy changes. As a point of information for districts with charter schools, the SCDE has a detailed document for district personnel and one for district boards in the role of authorizers. These two documents can be accessed under "Information for Authorizers" at <http://www.ed.sc.gov/agency/Innovation-and-Support/Public-School-Choice/CharterSchools/index.html>*



## EVALUATION OF PROFESSIONAL STAFF

Code **GCO** Issued **MODEL/09**

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Purpose: To establish the basic structure for evaluation of administrators in the district to ensure accountability.

The appropriate personnel will evaluate the performance of every administrator fairly and on a periodic basis in an effort to improve the quality of all work performance.

The superintendent will enforce the rules, regulations and procedures necessary for conducting an efficient, effective program of evaluation in accordance with state laws and regulations.

The elements of the performance evaluation program are as follows.

- Every employee is informed of the criteria by which his/her performance is evaluated.
- Every employee has the right to receive the results of his/her performance evaluation in writing.

### Principal evaluation

At a minimum, the district will use statewide standards and procedures adopted by the state board of education for the purposes of conducting formal or informal evaluations of principals and guiding their professional development. The superintendent may add standards and criteria as established by the board and/or by the principal and superintendent in collaboration. The evaluation will take place at least once every three years.

The district will establish an annual professional development plan for a principal based on the state evaluation program's performance standards and criteria and the school's renewal plan.

If a principal receives an unsatisfactory rating, the district must formally evaluate him/her again within one year.

Adopted ^

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Legal references:

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

1. Section 59-24-40 - Evaluation of and performance standards for school principals.

B. State Board of Education Regulations:

1. R-43-165.1 - Program for Assisting, Developing and Evaluating Principal Performance (PADEPP).



## EVALUATION OF PROFESSIONAL STAFF

Code **GCO-R** Issued **MODEL/09**

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### First year principals

First-year principals are those serving for the first time as building-level principals. First-year principals must participate in an induction program as provided by the state board of education. The superintendent or his/her designee will observe, collect relevant data and consult with a first-year principal on a regular and consistent basis. Further, the superintendent or his/her designee will provide written and oral feedback to the first-year principal on each performance standard and criterion. The principal will enter the formal evaluation cycle in his/her second year.

### Experienced principals

Experienced principals are those principals with one or more years of in-state or out-of-state experience as a principal. Annually, the superintendent or his/her designee will provide informal feedback to experienced principals on their job performance. At least once every three years, the superintendent or his/her designee will conduct a formal evaluation of experienced principals. The formal evaluation must address the nine state-adopted standards and their accompanying criteria. The district may use an evaluation instrument as provided by the South Carolina Department of Education or may use an alternative evaluation process that meets state requirements and national standards and is approved by the South Carolina Department of Education and the state board.

The formal evaluation will consist of formative and summative phases. The **formative** phase will begin with an initial review of the evaluation instrument by the evaluator with the principal. Regular conferences will be held to discuss the principal's progress. The conferences will include an analysis of the data collected during the year.

The **summative** phase will provide for evaluative conclusions based on the data collected in the manner specified by the evaluation instrument. The evaluator must complete the principal evaluation instrument, discuss the results with the principal and go over the degree to which the performance standards and criteria for the evaluation have been met.

After reviewing the overall results of the evaluation, the evaluator and principal will establish the principal's annual professional development plan on the basis of identified strengths and weaknesses as well as the school's renewal plan. Both will sign the evaluation instrument at the conclusion of the summative phase and a written copy of the signed evaluation must be given to the principal.

Each principal may respond in writing to his/her formal evaluation; however, the written response must be submitted to the evaluator within 10 working days of the summative conference.

All appeals will follow the district policies and procedures governing the appeal process.

Issued ^



## TEST/ASSESSMENT ADMINISTRATION

Code **ILB-R** Issued **MODEL/09**

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Tests administered by this district or through the state board of education will include, but are not limited to, the following.

- Measures of Academic Progress (MAP)
- statewide assessment program tests [Palmetto Assessment of State Standards (PASS); South Carolina Alternative Assessment (SC-Alt); exit examination; end-of-course tests]
- statewide testing program tests mandated by the Education Accountability Act of 1998 and current applicable laws and regulations related to students with disabilities and special needs
- examinations for admission to programs such as gifted and talented
- high school equivalency program test (GED)

The district will not use any state-owned test materials or district-owned materials which are the same as those used in any state-mandated testing program for census testing in the grades included in the state-mandated program(s) except on testing dates specified by the state department of education.

The district must provide for the security of state and district testing materials during testing and the storage of all secure tests and test materials before, during and after testing. Throughout the time testing materials are under the control of the school district, tests must be secured under lock and key when not in use for approved test administration activities. All mandated state testing security procedures will be followed.

Each school year, the superintendent will appoint one individual in the district who will be solely responsible for obtaining test instruments (including commercial tests) used in testing programs administered by or through the state board of education. The superintendent will submit the name of the designated individual so appointed to the state department of education in writing on an annual basis.

No employee of the district will knowingly or willfully commit security violations as outlined in state regulation.

Issued ^



## STATE PROGRAM ASSESSMENTS

Code **ILBB** Issued **MODEL/09**

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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, mathematics, social studies and science.

In addition, the National Assessment of Education Progress (NAEP) 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 ^

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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.



# GRADUATION REQUIREMENTS

Code **IKF-R** Issued **MODEL/09**

A student must earn 24 units of credit in state-approved courses for graduation.

The unit requirements are distributed as follows.

<u>Subject</u>	<u>Credit units</u>
English language arts	4
Mathematics	4
Science	3
U.S. History and Constitution	1
Economics	1/2
US Government	1/2
Other social studies	1
PE or junior ROTC	1
Computer science (including keyboarding)	1
Foreign language or Career and technology education	1
Electives	7
<b>Total</b>	<b>24</b>

The student must complete a study of and pass a final examination on the provisions and principles of the United States Constitution, the Declaration of Independence, the Federalist papers and American institutions and ideals. This instruction must be given for a period of at least one year or its equivalent, either within the required course U.S. History and Constitution or within another course.

Beginning with the graduating class of 2010, the student must pass a high school credit course in science and a course in United States history in which an end-of-course examination is administered.

The student must be enrolled for a minimum of one semester immediately preceding his/her graduation except in case of a bona fide change of residence. Units earned in a summer school program do not satisfy this requirement.

The student must pass both parts of the South Carolina high school exit examination in addition to earning the required number of prescribed units.

## **Awarding of high school credit**

A school also may award and accept credit towards a high school diploma for the following.

- in units of one-fourth, one-half and a whole; for example, an academic-standards based course that requires a minimum of 120 hours of instruction (one unit), 60 hours of instruction (one-half unit) and 30 hours of instruction (one-fourth unit)
- a course that has been approved by the state department of education in a proficiency-based system

## PAGE 2 - IKF-R - GRADUATION REQUIREMENTS

- those gateway courses that are a part of the end-of-course examination program only if the student takes the course approved by the school in which he/she is enrolled and meets all the stipulated requirements of the program
- courses in summer programs that meet all the regulatory requirements for courses offered for students in grades nine through 12
- a course that is approved by the district - whether the school offers the particular course or not - if the student receives prior approval
- a course that the student takes in an approved adult education program if the course is approved by the superintendent or his/her designee
- locally designed subject-area courses, elective courses and CATE courses under conditions as outlined in state board regulation
- the PE credit if the PE course meets all statutory requirements including the personal fitness and wellness component and the lifetime fitness component
- the one-half unit of credit carried by the keyboarding course for half the required computer science unit
- the American Sign language course as the required unit in a foreign language
- a college course that a student in grades nine through 12 takes under the district's dual credit arrangement

### Adult education

For adult education students receiving a diploma, the unit requirements are distributed as follows.

<u>Subject</u>	<u>Credit units</u>
English language arts	4
Mathematics	4
Science	3
U.S. History and Constitution	1
Economics	1/2
US Government	1/2
Other social studies	1
Computer science (including keyboarding)	1
Electives	9
<b>Total</b>	<b>24</b>

### Exit examination

For purposes of state testing requirements for the exit examination, high school will be considered to include grades nine through 12. Students will initially take the exit examination in the second spring after their initial enrollment in high school. For purposes of meeting the state testing requirements, these students will be considered as tenth graders. The exit examination will consist of tests in English language arts and mathematics based on state curriculum

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standards. Passage of the exit examination is a condition for the receipt of a state high school diploma. This requirement also applies to students in an adult education program who are seeking a diploma.

Students who do not pass the exit examination must receive academic assistance in the area(s) not passed.

A student who is enrolled in the public school for the entire tenth-grade, eleventh-grade and twelfth-grade years and remains actively enrolled and in good standing until graduation will have a minimum of five opportunities to pass the examination.

Any student who fails to pass the exit examination and who is actively enrolled in school will take an equivalent form of only the parts on which he/she did not meet the minimum performance standard(s) at the next designated administration. Students will have two opportunities per year (spring and fall) to take the failed part or parts.

An administration of the exit examination may be available during the summer after the twelfth grade for students who have met all other requirements for graduation and who were actively enrolled in school.

The district will award an appropriate state certificate to those students who must pass the exit examination to receive a diploma, but fail to do so. The certificate will indicate the number of credits earned and grades completed. A student who has earned the required number of units but who fails to pass the exit exam may enroll in adult education to continue with academic assistance and to re-take the exit exam. If the student is under the age of 21, he/she may continue in school until he/she passes the exit exam and receives a diploma or until he/she reaches 21, whichever occurs first.

The district will do the following.

- Implement administration and security measures established by the state board of education for the purpose of the exit examination.
- Establish a procedure for written notification of students and parents/legal guardians by the seventh grade or upon entry into the district schools, whichever comes first.
- Publicize the exit examination schedules.
- Recommend for a South Carolina State High School Diploma only those students who pass all parts of the exit examination.
- Provide academic assistance related to the parts not passed.
- Advise students who have met all other requirements for graduation but have not passed the exit examination of other alternatives.

Districts will identify students who meet the participation criteria for alternative assessment. Students with an IEP may take the exit exam with accommodations and/or modifications determined to be appropriate by the IEP team and allowable by state and federal statutes and regulations.

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### High school credit for college work

Students in grades nine through 12 and/or adult education programs can earn credits for college course work that can be applied to the required number of units for a state high school diploma. The following conditions apply.

- Courses may be offered through distance learning and cooperative agreements with institutions of higher education. One quality point will be added to the CP weighting for dual credit courses that are applicable.
- Only courses applicable to baccalaureate degrees or to associate degrees offered by institutions accredited by the board of education of that state or the appropriate regional accrediting agency (the New England Association of Colleges and Schools, Middle States Association of Colleges and Schools, Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SCACS CASI), North Central Association of Colleges and Schools, Western Association of Colleges and Schools or Northwest Association of Colleges and Schools) qualify. (*Note: District may specify number of units here.*)
- Tuition costs and any other fees will be the responsibility of the student or his/her parent/legal guardian (*option: of the district*).

Issued ^

## 2009 REGULATIONS STATUS TABLE

	<b>Regulation No. 43 -</b>	<b>Doc. No.</b>	<b>Title</b>	<b>ACTION</b>
1.	165.1	4027	Program for Assisting, Developing, and Evaluating Principal Performance (PADEPP)	6/26/09 Effective date
2.	168(I)(B)(1)	4050	Nutrition Standards for Elementary (K-5) School Food Service Meals and Competitive Foods	2/27/09 Effective date
3.	260	4049	Use and Dissemination of Test Results	6/26/09 Effective date
4.	262	4029	Assessment Program	6/26/09 Effective date
5.	600	4028	Charter School Appeals	6/26/09 Effective date
6.	601	4026	Procedures and Standards for Review of Charter School Applications	6/26/09 Effective date

*Source: South Carolina State Department of Education 2009.*



# COURT DECISIONS

**Effective date:** N/A

**Summary:** Several court decisions issued during 2009 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.

## **Student strip searches**

The U.S. Supreme Court on June 25 handed down a ruling that the strip search of a 13-year-old Arizona student was a violation of the Fourth Amendment to the U.S. Constitution and that such searches were legal only when administrators had specific reason to believe that a student was hiding contraband in his/her clothing.

In South Carolina, S.C. Code Section 59-63-1140 prohibits school officials from conducting a strip search on a student.

In *Safford Unified School District v. Redding*, when a student at Safford Middle School told school officials that student Redding and a friend were distributing prescription drugs on campus and turned over a pill he said he had received from another student, a search of that student's pockets and wallet turned up some pills, including over-the-counter medication she said she had gotten from Redding. Redding denied all allegations but eventually was made to disrobe in front of a school nurse in a fruitless search for pills. Redding sued Safford Unified School District. The search was ultimately found to be unconstitutional by the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit also ruled that the school officials were not entitled to qualified immunity from the suit because their actions were so obviously illegal that no reasonable public official could have believed otherwise.

The Supreme Court affirmed in part, reversed in part, and remanded the case back to the lower appellate court on the issue of the district's liability.

While circumstances justified a search of Redding's backpack and outer clothing, the Court found, the strip search involved both subjective and reasonable societal expectations of personal privacy "requiring distinct elements of justification on the part of school authorities." While the "indignity of the search" alone did not make it unconstitutional, it did "implicate the rule of reasonableness" as stated in a previous ruling that the search be reasonably related in scope to the circumstances which justified the interference in the first place.

On the issue of qualified immunity, the Court overruled the lower court, concluding that immunity was warranted in this case because the law was not clearly established. The Court did acknowledge the dangers of drugs and the need to keep them out of schools, and stressed that "standards of conduct for schools are for school administrators to determine without second-guessing by courts lacking the experience to appreciate what may be needed."

*Local district action required:* Because this case dealt with the reasonableness of a strip search of a student and, further, because South Carolina law prohibits student strip searches, this case does not impact South Carolina schools and does not require any policy revisions.

*Policy reference:* N/A

### **Special education tuition reimbursement**

The U.S. Supreme Court ruled June 22 that the Individuals with Disabilities Education Act (IDEA) authorizes reimbursement for private school placement of a special education student when a public school fails to provide that student with a free appropriate public education (FAPE), even if the student has not previously received special-education services from the public school.

In *Forest Grove School District v. T.A.*, the Court affirmed a Ninth Circuit Court of Appeals ruling that IDEA does not categorically bar reimbursement when a parent unilaterally places in private school a child who has not previously received special-education services through the public school. Previously, the lower district court judge ruled that because the student (T.A.) had not used special education services at the public school first, the IDEA did not allow reimbursement for the private school tuition. But the Ninth Circuit reversed, ruling that T.A. was eligible for reimbursement, in part because the public school did not offer a special education program to him in the first place.

*Forest Grove* involved an Oregon high school student whose parents removed him from public school in the Forest Grove district in his junior year and enrolled him in a \$5,200-a-month residential school. Although Forest Grove officials had noticed the student's difficulties and evaluated him for learning disabilities, he was found ineligible for special-education services. Only after he enrolled in the private school did doctors say the student had attention deficit hyperactivity disorder and other disabilities. Concluding that the district had failed to provide the student with FAPE and that private school placement was appropriate, the hearing officer ordered the district to reimburse his parents for his private school tuition.

In issuing its opinion, the Court reviewed previous rulings that established that school districts that failed to provide FAPE, whether because they propose an inadequate individualized education plan (IEP) or fail to propose an IEP at all, can be required to reimburse parents for private school tuition. The Court analyzed amendments to IDEA from 1997 which added language to the effect that private school reimbursement may be awarded in the case of "a child with a disability, who previously received special education and related services under the authority of a public agency." The Court found this provision did not change other language in IDEA giving courts broad authority to grant "appropriate" relief, including reimbursement for the cost of private special education when a school district fails to provide FAPE. In the absence of clearly stated Congressional intent to repeal that existing provision or to abrogate the Court's previous related rulings, the Court said it was bound to continue to read IDEA as still authorizing the relief the parents here were seeking.

*Forest Grove* represents the third time school districts have sought relief from the high court for what schools fear would be a sharp increase in costs for special education services. The National

School Boards Association in a brief to the Court said those costs "vastly exceed" the federal funding public schools receive under IDEA.

Although *Forest Grove* does not have local board policy implications, the case is significant in further clarifying that school districts may be required to reimburse parents who unilaterally place their special education child in a private school.

*Local district action required:* SCSBA does not recommend specific policy changes based on the *Forest Grove* decision.

*Policy reference:* N/A

### **Preclearance “bailout” provisions of U.S. Voting Rights Act**

The U.S. Supreme Court on June 22 ruled that the 1965 federal Voting Rights Act’s (VRA) preclearance “bailout” provision applies to all political subdivisions of a state, regardless of whether the subdivision conducts voter registration.

According to NSBA, the case, *Northwest Austin Municipal Utility District Number One v. Holder*, concerns the requirement in Section 5 of the VRA that certain state and local governments, mostly in the South, must obtain permission, or “preclearance,” from the Justice Department or a federal court before making changes that affect voting. The requirement applies to all of nine states - Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia - and to scores of counties and municipalities in other states that Congress found had a history of discrimination at the polls.

As noted, South Carolina is a “covered jurisdiction” under the VRA. Many school districts in South Carolina are familiar with the “preclearance” requirements for mostly local legislation that impacts on board elections.

In the *Northwest* case, a Texas utility district with an elected board filed suit seeking relief under the bailout provision from the preclearance requirement, arguing that although the state of Texas is covered by Section 5, there is no evidence the district ever has discriminated on the basis of race in its elections. In the alternative, the district argued that if Section 5 does preclude bailout in this instance, that provision is unconstitutional. The bailout provision - Section 4(a) of the act - allows a “political subdivision” to be released from the preclearance requirement if certain conditions are met. The three-judge U.S. District Court for the District of Columbia rejected both arguments, holding that bailout under Section 4(a) is available only to counties, parishes and subunits that register voters, not to an entity like the district that does not register its own voters. The lower court also ruled that a 2006 amendment extending Section 5 for 25 years is constitutional.

The Supreme Court reversed. The Court rejected the federal government’s argument that the term “political subdivision” for Section 4(a) purposes should be defined by Section 14(c)(2) of the VRA as “any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.” In earlier decisions, the Court noted, it already had established that this definition does not apply to Section 5. The Court likewise rejected as “at least counterintuitive” the federal government’s contention that the district was ineligible for the

bailout provision because it is a “State.” Because the 1982 amendments to VRA allow “piecemeal bailout[s],” “it cannot be true that Section 5 treats every governmental unit as the State itself.” Therefore, the Court concluded, Section 4(a) applies to all political subdivisions.

The Court did not reach the larger question of whether Section 5 of VRA is constitutional. According to NSBA, however, its ruling raised questions about Section 5’s future viability. The *Northwest* ruling was a narrow decision that gives smaller government entities that do not handle their own voter registration, like school districts, the right to use the “bail out” process. It is not known how the ruling will impact in South Carolina or any other “covered” state, or if any school districts, municipalities or smaller government entities will now take advantage of the opening the Court has given them to try to opt out from coverage under the law.

*Local district action required:* SCSBA does not recommend specific policy changes based on the *Northwest Austin Municipal Utility District Number One v. Holder* decision.

*Policy reference:* N/A

### **“Prevailing party” under IDEA**

The U.S. Fourth Circuit Court of Appeals on July 9 ruled that the parents of special education students were entitled to attorneys’ fees even though the legal relief they obtained as a result of a due process hearing was less favorable than the settlement offered by the school district during confidential mediation. The Court also concluded that the parents were a “prevailing party” within the meaning of the Individuals with Disabilities Education Act (IDEA).

Fourth Circuit rulings have the effect of law in South Carolina.

In *J.D. v. Kanawha County Board of Education*, the student (J.D.) was an autistic child who attended Kanawha County Schools in West Virginia where he received special education services. His parents believed that J.D. was not receiving a free appropriate public education (FAPE) and other services due under the IDEA which led to a mediation session with the district. A settlement agreement was drafted, but J.D.’s parents declined to sign and, instead, filed a due process complaint with the Kanawha County Board of Education. Prior to the hearing, the board sent a letter to the parents offering the same terms contained in the unsigned settlement agreement. The parents rejected the offer and the administrative hearing was held in September 2005. The hearing officer rejected the parents’ claim that J.D. had been denied a FAPE, finding that his individualized education program (IEP) was appropriate. However, the hearing officer did find for the parents on the four other issues they had raised: (1) that the school erred by implementing a new IEP in March 2005, after the parents filed their due process complaint; (2) that the school improperly conducted the multi-disciplinary evaluation team assessment; (3) that the school owed J.D. compensatory speech and language therapy; and (4) that J.D. should have received extended school year services in 2004. The parents appealed the ruling that the 2005 IEP had provided J.D. with FAPE to the U.S. district court, which affirmed the decision for the board. The parents also requested \$112,292 in attorneys’ fees under the IDEA, arguing they were proper because they had prevailed on four of five issues before the hearing officer. The board countered that IDEA barred the parents from obtaining attorneys’ fees because the relief ultimately obtained was less favorable than that offered in the settlement agreement. The district court refused to consider the board’s settlement offer as evidence, citing the confidentiality provision of the IDEA, and concluded that the parents were a “prevailing party” because,

although they lost on the first issue, they prevailed and received relief on three of the five claims they raised (the district court found that the first issue above concerning the issuance of the IEP was a procedural matter and provided no remedy). However, the court reduced the award of fees from the \$112,292 requested to \$34,072 to account for the parents' limited success.

In the board's appeal to the Fourth Circuit, the issues were whether the award of attorneys' fees was barred by IDEA because the legal relief obtained by the parents was less favorable than that offered in the settlement agreement; and whether the parents were a "prevailing party" under IDEA because they failed to obtain relief on the central issue they raised in the due process hearing.

The Fourth Circuit affirmed the lower court's decision, agreeing with the district court that it could not consider the settlement agreement as evidence because IDEA provides that "discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding." The appeals court rejected the board's argument that the settlement offer did not violate this provision because it was not part of the mediation, but rather was made after the mediation had concluded. The appeals court found that the timing was immaterial to the clear intent of the statutory language and emphasized its agreement with the lower district court that the Kanawha County board could not "circumvent the confidentiality requirements' by referring to the mediation in its offer and introducing that document into a civil proceeding." Kanawha's contention that the district court's interpretation would prevent parties from ever offering to settle on terms discussed at mediation was without merit, the court found, noting the "paucity of case law on this issue." The confidentiality "provisions let mediations stand free and clear of later proceedings, and ensure that mediation discussions will not be chilled by the threat of disclosure at some later date." As for the parents' "prevailing party" status, the court found that "a party need not prevail on every issue or even the most 'central' issue in a proceeding to be considered a prevailing party."

Although the Fourth Circuit's ruling in *J.D. v. Kanawha County Board of Education* provides further clarification of the issue of a prevailing party under the IDEA, the case has no implications for local board policy.

*Local district action required:* SCSBA does not recommend specific policy changes based on the *J.D. v. Kanawha County Board of Education* decision.

*Policy reference:* N/A

### **Homestead Exemption Fund reimbursement**

The South Carolina Supreme Court on July 6 ruled by a 3-2 vote that for the 2007-08 fiscal year and forward at least six school districts in the state qualify for additional reimbursement from the Homestead Exemption Fund (HEF) established by Act 388 (property tax relief act) of 2006.

The case, *Berkeley County School District, et al. v. South Carolina Department of Revenue*, arose from the Department of Revenue's (DOR) decision to deny the school districts reimbursement from the HEF for expenses incurred under lease-purchase and installment-purchase agreement obligations for construction projects. The districts in the case were Berkeley County, Lexington One and Four, Orangeburg Five, and Spartanburg One and Five.

In past years, the plaintiff districts have entered into lease-purchase agreements and installment-purchase agreements to obtain the current use of, and as a method of financing, new and renovated school buildings and other school-related facilities. The school districts have utilized these types of agreements as alternative financing mechanisms that do not constitute “general obligation debt.” Lease-purchase payments are made from revenue raised directly through the school operating millage. Installment-purchase payments are typically made with the proceeds of one-year general obligation bonds, but in some cases school districts have instead used school operating millage revenue to make installment payments.

Recall that under Act 388, the General Assembly increased the amount of the tax exemption for owner-occupied residential property to 100 percent of the fair market value of the property and provided the property was exempt from all property taxes imposed for school operating purposes. This did not include millage imposed for the repayment of general obligation debt. In order to reimburse school districts for the revenue lost as a result of the exemption, the General Assembly imposed an additional one-cent sales tax, with the revenue to be credited to the HEF.

Relying on past Supreme Court decisions that lease/installment-purchase agreements do not constitute general obligation debt and their understanding that the tax reform statutes no longer exclude payments due under lease/installment-purchase agreements, the county auditors and treasurers for the Berkeley District, Orangeburg District Five, and Spartanburg Districts One and Five, did not levy against or collect from owner-occupied residential property owners in those districts the taxes that would otherwise have been needed for the 2007-08 payments due under the lease-purchase and/or installment-purchase agreements. Instead, they believed their school districts would be reimbursed for the amounts not collected as a result of the exemption from the HEF. For the two Lexington districts, the county auditor imposed taxes sufficient to make payments on the agreements in Lexington Districts One and Four; however, due to a local penny sales tax added in that county, the county treasurer did not collect the taxes in Lexington Four for 2007-08. Therefore, reimbursement to these Lexington districts was not necessary from the HEF.

The issue for the Supreme Court was whether the exemption “from all property taxes imposed for school operating purposes” outlined in Act 388 included payments for the lease/installment-purchase agreements and, if so, whether the districts were entitled to include the value of the exemption in their base year figure for HEF reimbursement.

In late May 2008, the state Budget and Control Board’s Office of Research and Statistics informed DOR that certain school districts were seeking HEF reimbursements for expenses incurred under lease-purchase and installment-purchase agreement obligations for capital improvement projects. DOR in response issued an opinion that HEF reimbursement did not include millage imposed for payments due under such agreements.

The Supreme Court, however, disagreed with the DOR, finding that because the payments under lease-purchase and installment-purchase agreement obligations are used for “school operating purposes,” for which owner-occupied residential property is tax exempt, the districts were entitled to reimbursement for the taxes lost as a result of the exemption. The Court reached its conclusion by finding that payments for the lease/installment-purchase agreements should come within the definition of “school operating purposes.”

“Clearly, a school would not be operational without an infrastructure which necessarily includes school buildings. Thus, the continued operation of a school district is dependent upon the

renovation and purchase of school buildings. Because the lease/installment-purchase payments or requisite ‘rent payments’ effectuate this goal, these payments are essential for ‘school operating purposes,’” the plurality opinion of Justices Beatty and Waller noted. The plurality also noted the consistency of the plaintiffs’ arguments with the Court’s existing rulings holding that lease-purchase and installment-purchase financings are not general obligation debt. Justice Pleicones concurred in the result, providing three votes for the judgment that the exemption for owner-occupied property includes the portion of the operating millage used for these payments, and that the HEF reimbursement includes the value of this exemption.

The immediate benefit of this ruling likely extends to only a very limited number of districts, including specifically the plaintiff districts that had in place school operating taxes to raise funds for lease-purchase or installment-purchase payments in the 2007-08 fiscal year. Districts that used general obligation bonds to raise funds to make installment purchase payments are not affected by the decision. The long-term effect of the ruling certainly begins with the correction of yet another “unintended consequence” of Act 388. *Berkeley County School District, et al. v. South Carolina Department of Revenue* does not have policy implications for school districts.

*Local district action required:* SCSBA does not recommend specific policy changes based on the ruling in *Berkeley County School District, et al. v. South Carolina Department of Revenue*.

*Policy reference:* N/A

### **Sexual offense and substantial evidence**

The South Carolina Court of Appeals on March 25 issued an opinion stating that substantial evidence did not exist to support a student’s expulsion for committing a “sexual offense.”

In *Doe v. Richland County School District Two*, 14-year-old Jane Doe began the school year enrolled at the district’s alternative school. In August, the school suspended her for two days for a verbal altercation with another student. Less than a month later, a video camera captured Doe following a male student into the boys’ restroom. She remained in the restroom for about a minute until another male student entered and she then left the restroom. Following the incident, the school suspended Doe for 10 days and recommended expulsion for the remainder of the year. The school claimed Doe committed a sexual offense when she entered the boys’ restroom with another male student. A footnote in the opinion states that “sexual offense” is not defined by the district’s discipline code; however, Level III, Item 5 of the discipline code makes sexual offenses punishable by expulsion.

The district notified Doe in a letter of the school’s recommendation, the date of the upcoming evidentiary hearing and her procedural rights. Prior to the hearing, the district recorded over the videotape before Doe was allowed to view it. The school administrator and the hearing officer watched the tape prior to its destruction and reported only observing Doe enter the boys’ restroom following a male student. The district did not present any additional evidence suggesting Doe committed a sexual offense. The hearing officer found Doe committed a sexual offense and expelled her for the remainder of the year. Doe timely appealed the hearing officer’s decision to the school board, which upheld the hearing officer’s decision. Doe appealed to the circuit court which reversed, finding substantial evidence did not support the board’s decision to expel Doe for committing a sexual offense. In addition, the court found Doe’s due process rights

were violated. The board appealed the case to the Court of Appeals which affirmed the circuit court's ruling.

The issue in front of the Court of Appeals was whether the board's decision to uphold the expulsion of Doe for committing a sexual offense was supported by substantial evidence. According to the district, Doe's voluntary act of entering the boys' restroom with a male student amounted to a sexual offense and that, coupled with Doe's prior disciplinary history, substantial evidence supported the board's decision to expel her from school.

The Court of Appeals, however, found that Doe's prior acts of disruptive activity while a student in the district had no bearing on the issue of whether she had committed a sexual offense. She was not expelled for any of her prior transgressions. The Court found that the only evidence presented to support the expulsion for the offense was Doe's voluntary entry into the boys' restroom for approximately one minute in pursuit of a male student. Thus, it said, substantial evidence did not exist to support the board's decision to expel her.

The ruling in *Doe v. Richland County School District Two* underscores the importance of having student discipline policies and procedures in place that are sufficiently clear and comprehensive. In this case, the Court concluded that the lower court's decision to overturn a student's expulsion was proper because the student had been charged with an offense that was not clearly defined and for which there was insufficient evidence to establish that the offense had occurred.

*Local district action required:* The ruling in this case did not define "sexual offense," but serves as a reminder that clearly defined offenses in certain cases as well as sufficient evidence of such offenses are critical in disciplinary proceedings. SCSBA does not recommend specific policy revisions due to this case.

*Policy reference:* N/A

# TEMPORARY PROVISOS

**Effective date:** July 1, 2009

**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](http://www.scstatehouse.net).

There are no policy implications for these temporary provisos.

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## *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). Please note the addition this year of \$700 to the state Charter School District per weighted pupil unit.

**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 for Part IA has been determined to be \$2,034, and the base student cost for Part III has been determined to be \$300, for a total base student cost of \$2,334. In Fiscal Year 2009-10, the total pupil count is projected to be 691,816. The average per pupil funding is projected to be \$4,153 state, \$1,296 federal and \$5,792 local. This is an average total funding level of \$11,242 excluding revenues of local bond issues. For Fiscal Year 2009-10, the South Carolina Public Charter School District shall receive and distribute state funds to the charter school as determined by the current year's base student cost, as funded by the General Assembly, plus an additional \$700, multiplied by the weighted students enrolled in the charter school, which must be subject to adjustment for student attendance and state budget allocations.

See [www.scstatehouse.net](http://www.scstatehouse.net) for district listing of per pupil funding.

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## *School districts and special schools flexibility (1.43 and 1A.41)*

The House amended provisos 1.43 and 1A.41 to reflect language enacted in the joint resolution for school district funding flexibility passed earlier in the session. The House added language stating that school districts and special schools may carry forward unexpended funds from the prior fiscal year into the current fiscal year. This language was included in the final budget version.

**1.43, 1A.41 (SDE: School Districts and Special Schools Flexibility)** Due to the length of these provisos, see [www.scstatehouse.net](http://www.scstatehouse.net) for the entire proviso.

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*National Board Certification incentive (1.48 and 1A.26)*

The legislature took action this year on the National Board Certification Incentive by capping the number of National Board Certification applications at 1,100 annually. Lawmakers declined to restrict the \$7,500 salary supplement to the initial 10-year term of certification.

**1.48 (SDE: National Board Certification Incentive)** Public school classroom teachers or classroom teachers who work with classroom teachers who are certified by the State Board of Education and who have been certified by the National Board for Professional Teaching Standards shall be paid a \$7,500 salary supplement beginning July 1 in the year following the year of achieving certification, beginning with 2009 applicants. Teachers employed at the special schools shall be eligible for this \$7,500 salary supplement. The special schools include the Governor's School for Science and Math, Governor's School for the Arts and Humanities, Wil Lou Gray Opportunity School, John de la Howe School, School for the Deaf and the Blind, Felton Lab, Department of Juvenile Justice and Palmetto Unified School District 1. The \$7,500 salary supplement shall be added to the annual pay of the teacher for the length of the national certificate. However, the \$7,500 supplement shall be adjusted on a pro rata basis for the teacher's FTE and paid to the teacher in accordance with the district's payroll procedure. The Center for Educator Recruitment, Retention and Advancement (CERRA-South Carolina) shall develop guidelines and administer the programs whereby teachers who are United States citizens or permanent resident aliens, and who are applying to the National Board for Professional Teaching Standards for certification, may receive a loan equal to the amount of the application fee. Up to eleven hundred loan applications shall be processed annually. One-half of the loan principal amount and interest shall be forgiven when the required portfolio is submitted to the National Board. Teachers attaining certification within three years of receiving the loan will have the full loan principal amount and interest forgiven. Teachers who previously submitted a portfolio to the National Board for Professional Teaching Standards for certification under previous appropriation acts shall receive reimbursement of their certification fee as prescribed under the provisions of the previous appropriation act. Funds collected from educators who are in default of the National Board loan shall be retained and carried forward for National Board purposes. Of the funds appropriated in Part IA, Section 1, XIII.A. for National Board Certification, the State Department of Education shall transfer to the Center for Educator Recruitment, Retention and Advancement (CERRA-South Carolina) the funds necessary for the administration of the loan program. In addition, teachers who are certified by the National Board for Professional Teaching Standards shall enter a recertification cycle for their South Carolina certificate consistent with the recertification cycle for National Board Certification. National Board certified teachers moving to this State who hold a valid standard certificate from their sending state are exempted from initial certification requirements and are eligible for a professional teaching certificate and continuing contract status. Their recertification cycle will be consistent with National Board Certification.

Provided, further, that in calculating the compensation for teacher specialists, the State Department of Education shall include state and local compensation as defined in Section 59-18-1530 to include local supplements except local supplements for National Board Certification. Teacher specialists remain eligible for state supplement for National Board Certification.

Teachers who begin the application process after July 1, 2007, and who teach in schools which have an absolute rating of below average or at-risk at the time the teacher applies to the National Board for certification, but who fail to obtain certification, nonetheless shall be eligible for full forgiveness of the loan as follows: upon submission of all required materials for certification, one-half of the loan principal amount and interest shall be forgiven; forgiveness of the remainder of the loan will be at the rate of 33% for each year of full time teaching in the same school regardless of whether that school exceeds an absolute rating of below average or at-risk during the forgiveness period, or for each year of full time teaching in another school that has an absolute rating of below average or at risk.

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*Residential treatment facilities student enrollment and funding (1.77)*

The Legislature adopted a new proviso to address and clarify the school enrollment as well as school funding for children residing in residential treatment facilities (RTF). The proviso was a compromise worked out between school districts, the State Department of Education and representatives from the RTFs.

**1.77. (SDE: Residential Treatment Facilities Student Enrollment and Funding)** Each South Carolina resident of lawful school age residing in licensed residential treatment facilities (RTFs) for children and adolescents as defined under Section 44-7-130 of the 1976 Code, ("students") shall be entitled to receive educational services from the school district in which the RTF is located ("facility school district"). The responsibility for providing appropriate educational programs and services for these students, both with and without disabilities, who are referred or placed by the State is vested in the facility school districts.

A facility school district must provide the necessary educational programs and services directly to the student at the RTF's facility, provided that the RTF facility provides and maintains adequate space for the educational programs and services consistent with the least restrictive environment requirements. Under these circumstances, the facility school district may choose to enroll the student and assume full legal and financial responsibility for the educational services, or it may choose to provide the educational services and serve as the educational and fiscal agent of the school district in which the student's legal guardian resides ("resident school district") for purposes of enrolling the student, approving the student's entry into a medical homebound instructional program, if appropriate, and receiving and expending funds, unless the resident school district undertakes to carry out its educational responsibilities for the student directly.

Alternatively, a facility school district may choose to provide the necessary educational programs and services by contracting with the RTF provided that the RTF agrees to provide educational services to the student at the RTF's facility. Under these circumstances, the facility school district must enroll the student and pay the RTF for the educational services provided.

The State shall appropriate 100 percent of the base student cost to provide for the education of the students referred or placed by the State in an RTF. The facility school districts are entitled to receive the base student cost multiplied by the appropriate Education Finance Act pupil weighting, as set forth in Section 59-20-40 of the 1976 Code and any eligible federal funds. These funds may be retained by the facility school districts for the purpose of providing the educational programs and services directly to students referred or placed by the State or the facility school districts may use these funds to reimburse RTF's for the educational programs and

services provided directly by the RTFs. A facility school district is entitled to reimbursement from a resident school district for the difference between (1) the reasonable costs expended for the educational services provided directly by the facility school district or the amount paid to the RTF, and (2) the aggregate amount of federal and state funding received by the facility school district for that student.

All students enrolled in the facility school districts shall have access to the facility school districts' general education curriculum, which will be tied to the South Carolina academic standards in the core content areas. All students with disabilities who are eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA), as amended, and the State Board of Education (SBE) regulations, as amended, shall receive special education and related services in the least restrictive environment by appropriately certified personnel. Students in an RTF will at all times be eligible to receive the educational credits (e.g., Carnegie Units) earned through their educational efforts.

With respect to students enrolled in the facility school districts, for accountability purposes, the assessment and accountability measures for students residing in RTFs shall be attributed to a specific school only if the child physically attends the school. All assessment and accountability measures of students not physically attending a specific school shall be disaggregated and reported separately in the facility school districts' accountability calculations.

RTFs shall notify the facility school district as soon as practical, and before admission to the RTF if practical, of a student's admission to the RTF. RTFs, the facility school districts and the Department of Education shall use their best efforts to secure and/or exchange information, including documents and records necessary to provide appropriate educational services and/or related services as necessary to assist the facility school district in determining the resident school district.

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*Technical assistance for schools sharing facilities (former 1.79)*

This new proviso from 2007-08 to address the issue of schools sharing facilities and how they are to receive technical assistance funding was **deleted** this year.

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*EIA consolidation of subfunds (1A.60, 1A.61, 1A.62 and 1A.63)*

Taking a small step toward school funding reform, the Legislature this year adopted the consolidation of 19 EIA provisos into four new funding line categories: Artistically and Academically High Achieving Students; Students at Risk of School Failure; Reading; and Professional Development. A breakdown of the provisos that were included in each new category follows.

- Artistically and Academically High Achieving Students (which includes **1A.2**, Advanced Placement; **1A.3**, Gifted and Talented; and **1A.5**, Junior Scholars).
- Students at Risk of School Failure (which includes **1A.6**, Academic Assistance/Carry Forward; **1A.7**, Academic Assistance/Curriculum Development; **1A.8**, Academic Assistance/Early Childhood Development; **1A.9**, Academic Assistance/Formula Funding and Distribution; **1A.11**, Academic Assistance/Remedial Adult Education; **1A.25**,

Parenting/Family Literacy; **1A.43**, EAA Summer School Grades 3-8; **1A.44**, Alternative School Waiver Requirement; and **1A.45**, Class Size Reduction-Grade One).

- Reading (which includes **1A.10**, Academic Assistance/Reading Recovery; **1A.36**, Institute of Reading; and **1A.38**, Professional Development).
- Professional Development (which includes **1A.14**, Course Reimbursement/Teachers; **1A.15**, Critical Teaching Needs/Roper Mountain; **1A.27**, CSO Mathematics and Science Unit; and **1A.32**, Principal Executive/Leadership Institute Carry Forward).

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*Teacher salaries/SE Average (1A.17)*

This proviso was amended this year to freeze teacher salaries at the 2008-09 level. Also, long-time language was deleted stating that it is the intent of the General Assembly to exceed the Southeastern by \$300.

**1A.17. (SDE-EIA: Teacher Salaries/SE Average)** The projected Southeastern average teacher salary shall be the average of the average teachers salaries of the southeastern states as projected by the Division of Budget and Analyses. For the current school year, the Southeastern average teacher salary is projected to be \$48,172. The statewide minimum teacher salary schedule used in Fiscal Year 2008-09 will continue to be used in Fiscal Year 2009-10. The General Assembly remains desirous of raising the average teacher salary in South Carolina through incremental increases over the next few years so as to make such equivalent to the national average teacher salary.

Funds appropriated in Part IA, Section 1, XI.C.2. for Teacher Salaries must be used to increase salaries of those teachers eligible pursuant to Section 59-20-50 (b), to include classroom teachers, librarians, guidance counselors, psychologists, social workers, occupational and physical therapists, school nurses, orientation/mobility instructors and audiologists in the school districts of the state.

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*Technical assistance (1A.39)*

The Legislature adopted a change to **1A.39** (technical assistance) to include the local board of trustees in the decision making process concerning the reconstitution of a school as one level of state technical assistance.

**1A.39. (SDE-EIA: Technical Assistance)** In order to best meet the needs of underperforming schools, funds appropriated for technical assistance to schools with an absolute rating of below average or at-risk on the most recent annual school report card must be allocated according to the severity of not meeting report card criteria.

Schools receiving an absolute rating of below average or at-risk must develop and submit to the Department of Education a school renewal plan outlining how technical assistance allocations will be utilized and goals for improvements will be obtained. Each allocation must address specific strategies designed to increase student achievement and must include measures to evaluate success. The school renewal plan may include expenditures for recruitment incentives for faculty and staff, performance incentives for faculty and staff, assistance with curriculum and

test score analysis, professional development activities based on curriculum and test score analysis that may include daily stipends if delivered on days outside of required contract days. School expenditures shall be monitored by the Department of Education.

With the funds appropriated to the Department of Education for technical assistance services, the department will assist schools with an absolute rating of below average or at-risk in designing and implementing technical assistance school renewal plans and in brokering for technical assistance personnel as needed and as stipulated in the plan. In addition, the department must monitor student academic achievement and the expenditure of technical assistance funds in schools receiving these funds and report their findings to the General Assembly and the Education Oversight Committee by January 1 of each fiscal year as the General Assembly may direct. If the Education Oversight Committee or the department 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 principal of the school or the district superintendent may be subject to receiving a public reprimand by the State Board of Education if it is determined that those individuals are responsible for the failure to provide the required information.

The department shall coordinate with and monitor the services provided by the School Improvement Council Assistance and the Writing Improvement Network to the schools. Based on criteria jointly determined by the department and the Education Oversight Committee, the School Improvement Council Assistance and the Writing Improvement Network must submit external evaluations to the Education Oversight Committee at least once every three years.

No more than five percent of the total amount appropriated for technical assistance services to schools with an absolute rating of below average or at-risk may be retained and expended by the department for implementation and delivery of technical assistance services. Using previous report card data, the department shall identify priority schools. Up to \$13,000,000 of the total funds appropriated for technical assistance shall be used by the department to work with those schools identified as priority schools.

The department will create a system of levels of technical assistance for schools that will receive technical assistance funds. The levels will be determined by the severity of not meeting report card criteria. The levels of technical assistance may include a per student allocation, placement of a principal mentor, replacement of the principal, and/or reconstitution of a school.

Reconstitution means the redesign or reorganization of the school, which includes the declaration that all positions in the school are considered vacant. Certified staff currently employed in priority schools must undergo a formal evaluation in the spring following the school's identification as a priority school and must meet determined goals to be rehired and continue their employment at that school. Student achievement will be considered as a significant factor when determining whether to rehire existing staff. Educators who were employed at a school that is being reconstituted prior to the effective date of this proviso and to whom the employment and dismissal laws apply will not lose their rights in the reconstitution. If they are not rehired or are not assigned to another school in the school district they have the opportunity for a hearing. However, employment and dismissal laws shall not apply to educators who are employed in the district and assigned to the priority schools after the effective date of this

proviso, in the event of a reconstitution of the school in which the educator is employed. Those rights are only suspended in the event of a reconstitution of the entire school staff. Additionally, the rights and requirements of the employment and dismissal laws do not apply to educators who are currently on an induction or annual contract, that subsequently are offered continuing contract status after the effective date of this proviso, and are employed at a school that is subject to reconstitution under this proviso.

The reconstitution of a school could take place if the school has been identified as a priority school that has failed to improve satisfactorily. The decision to reconstitute a school shall be made by the State Superintendent of Education in consultation with the principal and/or principal mentor, the school board of trustees and the district superintendent. The decision to reconstitute a school shall be made by April 1, at which time notice shall be given to all employees of the school. The department, in consultation with the principal and district superintendent, shall develop a staffing plan, recruitment and performance bonuses, and a budget for each reconstituted school.

Upon approval of the school renewal plans by the department and the State Board of Education, a newly identified school or a currently identified school with an absolute rating of below average or at-risk on the report card will receive a base amount and a per pupil allocation based on the previous year's average daily membership as determined by the annual budget appropriation. No more than fifteen percent of funds not expended in the prior fiscal year may be carried forward and expended in the current fiscal year for strategies outlined in the school's renewal plan. Schools must use technical assistance funds to augment or increase, not to replace or supplant local or state revenues that would have been used if the technical assistance funds had not been available. Schools must use technical assistance funds only to supplement, and to the extent practical, increase the level of funds available from other revenue sources





**The South Carolina School Boards Association**  
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