South Carolina School Boards Association

Policy and Legislative Update

August 2011

SCSBA
THE SOUTH CAROLINA
SCHOOL BOARDS ASSOCIATION

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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 2011. 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 links to websites for other legislation.

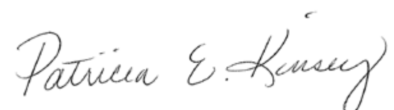
After the summary of the legislation and the recommended district action, we have included policy references so that you may check the language in your existing policies to ensure that it does not conflict with a change in law. Policy references are the alphabetical codes based on the SCSBA model manual.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

The *2011 Policy and Legislative Update* is posted in a MS Word document and Adobe .pdf format at SCSBA's website at www.scsba.org. The Adobe Acrobat Reader (.pdf) version is a read only file; however, it will print camera ready material if you would like to make hard copies. The MS Word document is a working document that you can cut and paste to help you create your district's policies.

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 issues, please contact either of the following staff members.

Scott T. Price
General Counsel



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EDUCATION AND ECONOMIC DEVELOPMENT ACT (EEDA) IMPLEMENTATION EXTENSION

Effective date: June 14, 2011

Summary: Budget cuts to K through 12 education in recent years have slowed implementation of the Education and Economic Development Act (EEDA) of 2005. As a result, the General Assembly this year took steps to extend by one year the deadline for the Act's implementation.

The EEDA, also known as Personal Pathways to Success, was created with the stated goals of increasing high school completion rates, better preparing students for work and college, increasing parental involvement and increasing options for students at risk of dropping out. The EEDA included creation of the Education and Economic Development Coordinating Council (EEDCC) to advise the South Carolina Department of Education (SDE) on implementation; reviewing accountability and performance measures; designating and overseeing the coordination and establishment of regional education centers; and reporting annually to the governor, the General Assembly, the state board of education and other governing boards. In addition, the EEDCC would make recommendations to SDE for the development and implementation of a communication and marketing plan and provide input to the state board and other related governing boards for the promulgation of regulations to carry out the provisions of the act.

Initially slated to sunset this year, the General Assembly amended the EEDA to extend the termination date for the Council to July 1, 2012.

Local district action required: No policy action is required.

Policy reference: IHAQ (Career/Transition to Work Education).

Text: EEDA implementation date extended
SECTION 1. Section 59-59-30 of the 1976 Code, as added by Act 88 of 2005, is amended to read:
Section 59-59-30. This chapter must be implemented fully by July 1, 2012, at which time the council created pursuant to Section 59-59-170 shall cease to exist. The Department of Education shall provide administrative support and staffing to the council to carry out its responsibilities under this chapter.

ETHICS LAW

Effective date: June 7, 2011

Summary: The General Assembly this year made changes to South Carolina's Ethics Act with the goal to strengthen and add clarity to current law. Of significance to school board members, the changes include the addition of other relationships - specifically "brother-in-law" and "sister-in-law" - to the definition of "family member," and the expansion of the prohibition against the use of an office for personal economic gain beyond the immediate family.

Other changes include an increased cap on lobbying penalties, a cap for late-filing penalties for forms and enhanced criminal penalties.

School board members and other public officials are familiar with Ethics Act Section 8-13-700 which, among other things, requires recusal on matters involving an economic interest of a public official. This section was changed this year so that public officials must now recuse on matters in which a family member, not just immediate family member, has an economic interest. Family member is now defined to include spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent or grandchild, and a member of the individual's immediate family. For clarification, Section 8-13-100 of the Code defines immediate family as (a) a child residing in a candidate's, public official's, public member's or public employee's household; (b) a spouse of a candidate, public official, public member or public employee; or (c) an individual claimed by the candidate, public official, public member or public employee or their spouse as a dependent for income tax purposes.

Boards will need to be aware of the changes to the definition of "family member" as well as the need to revise policy language to reflect the application of the policy to matters involving family members, as opposed to immediate family.

Local district action required: SCSBA recommends boards update their policy dealing with board member conflict of interest to use just the one term "family member." For further clarification of this change, we have added the full definition of family member to the legal references of this policy as well as the policy dealing with staff ethics/conflict of interest.

Policy references: BCA (Board Member Code of Ethics). BCB (Board Member Conflict of Interest). GBEA (Staff Ethics/Conflict of Interest).

Model policies follow text of law.

Text: **Full payment of lobbyist's penalties required**
SECTION 1. Section 2-17-20(H) of the 1976 Code is amended to read:
(H) The State Ethics Commission shall not allow a lobbyist to register, reregister, or continue to be registered pursuant to this section until the lobbyist complies with the reporting requirements pursuant to Section 2-17-30, and pays all late filing penalties in accordance with Section 2-17-50 and all complaint fines in accordance with Section 8-13-320(10)(1).

Full payment of lobbyist's principal penalties required
SECTION 2. Section 2-17-25(H) of the 1976 Code is amended to read:
(H) The State Ethics Commission shall not allow a lobbyist's principal to register, reregister, or continue to be registered pursuant to this section until the lobbyist's principal complies with the reporting requirements pursuant to Section 2-17-35, and pays all late filing penalties in accordance with Section 2-17-50 and all complaint fines in accordance with Section 8-13-320(10)(1).

Criminal penalties for failure to file
SECTION 3. Section 2-17-50 of the 1976 Code is amended to read:
Section 2-17-50. (A) The State Ethics Commission shall:
(1) require a person to submit information pursuant to the requirements of this chapter;
(2) in addition to any other penalty in this chapter, require a person who files a late statement or fails to file a required statement to be assessed a civil penalty as follows.
(a) a fine of one hundred dollars if not filed within ten days after the established deadline provided in this chapter; and
(b) after notice has been given by certified or registered mail that a required statement has not been filed, a fine of ten dollars per calendar day for the first ten days after notice has been given, and one hundred dollars for each additional calendar day in which the required statement or report is not filed, not exceeding five thousand dollars.
(B) After the maximum civil penalty has been levied and the requirement statement or report has not been filed, the person is:
(1) for a first offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days;
(2) for a second offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not less than two thousand five hundred dollars nor more than five thousand dollars or imprisoned not less than a mandatory minimum of thirty days;
(3) for a third or subsequent offense, guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.
(C) Filing of the required report and payment of the fine within twenty days of notice by the State Ethics Commission that a required statement has not been filed constitutes compliance with this chapter.
(D) Payment of the fine without filing the required report does not in any way excuse or exempt a person required to file from the filing requirements of this chapter.

"Family member" defined
SECTION 4. Section 8-13-100(15) of the 1976 Code, as added by Act 248 of 1991, is amended to read:
(15) 'Family member' means an individual who is:
(a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;
(b) a member of the individual's immediate family.

References to "immediate family" replaced
SECTION 5. Section 8-13-700(A) and (B) of the 1976 Code, as added by Act 248 of 1991, is amended to read:
(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This

prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.
(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
(2) if the public official is a member of the General Assembly, he shall deliver a copy of the statement to the presiding officer of the appropriate house. The presiding officer shall have the statement printed in the appropriate journal and require that the member of the General Assembly be excused from votes, deliberations, and other action on the matter on which a potential conflict exists;
(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;
(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;
(5) if he is a public member, he shall furnish a copy to the presiding officer of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and shall require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause such disqualification and the reasons for it to be noted in the minutes.

Criminal penalties for failure to file
SECTION 6. Section 8-13-1510 of the 1976 Code, as last amended by Act 76 of 2003, is further amended to read:
Section 8-13-1510. (A) Except as otherwise specifically provided in this chapter, a person required to file a report or statement under this chapter who files a late statement or report or fails to file a required statement or report must be assessed a civil penalty as follows.
(1) a fine of one hundred dollars if the statement or report is not filed within five days after the established deadline provided by law in this chapter; and
(2) after notice has been given by certified or registered mail that a required statement or report has not been filed, a fine of ten dollars per calendar day for the first ten days after notice has been given, and one hundred dollars for each additional calendar day in which the required statement or report is not filed, not exceeding five thousand dollars.
(B) After the maximum civil penalty has been levied and the required statement or report has not been filed, the person is:

(1) for a first offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days;
(2) for a second offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not less than two thousand five hundred dollars nor more than five thousand dollars or imprisoned not less than a mandatory minimum of thirty days;
(3) for a third or subsequent offense, guilty of a misdemeanor triable in magistrates court and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.

Policy

BOARD MEMBER CONFLICT OF INTEREST

Code **BCB** *Issued* **MODEL/11**

Purpose: To establish the basic structure for determining board member conflict of interest.

A trustee may provide services or sell products to the district where he/she is a board member provided all transactions are in accordance with the State Ethics Act (see policy BCA).

If, in the discharge of official responsibilities, the board member is required to take an action or make a decision which affects his/her economic interest or the economic interest of a family member or an individual or business with whom he/she is associated, the board member must prepare a written statement outlining the conflict and give it to the chairman of the board. The board member must also be excused from deliberating or voting on the matter. The minutes of the meeting should reflect the disqualification and reasons for it.

The board member may vote on matters where he/she has no greater interest than does any other member of the class to which the board member belongs. For example, a board member may vote on a budget that includes salaries of all employees, even if the board member has a family member employed by the district. However, the board member may not vote on the contract of the family member.

The State Ethics Act provides that a public official may not have an economic interest in a contract with the district if the official is authorized to perform an official function relating to the contract. The law defines official function to include accepting bids and awarding contracts.

A board member may not participate in an action relating to the discipline of his/her family member.

A board member may not receive pay as a teacher of a public school that is located in the same school district where such person is a trustee.

Nepotism

No immediate family member (parent, child, brother or sister) of a board member will be employed as a teacher without the written approval of the board. This does not apply to teachers employed before his/her family member became a member of the board.

Adopted ^

Legal references:

A. S.C. Constitution:
   1. Article XVII, Section 1A - Dual office holding prohibited.

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B. S.C. Code, 1976, as amended:
   1. Section 8-13-100, et seq. - State Ethics Act.
   2. Section 8-13-100(15) - Family member means an individual who is the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent or grandchild or a member of the individual's immediate family.
   3. Section 8-13-100(18) - Definition of immediate family.
   4. Section 59-19-300 - Prohibits receiving pay as teacher in same district where serving on board.
   5. Section 59-25-10 - Prohibits board from employing members of immediate family as a teacher, with exceptions.
   6. Section 59-31-590 - Prohibits service as agent of school book publisher.
   7. Section 59-69-260 - Authorizes board member to provide services or sell products to the district...so long as these transactions are in accordance with state ethical provision of law.

STAFF ETHICS/CONFLICT OF INTEREST

Code **GBEA** *Issued* **MODEL/11**

Purpose: To establish the basic structure for ethical conduct and the avoidance of conflicts of interest on the part of the district staff.

Staff members will not engage in any activity that conflicts or raises a reasonable question of conflict with their responsibilities in the district.

- No employee will engage in or have a financial interest, directly or indirectly, in any activity that conflicts or raises a reasonable question of conflict with his/her duties and responsibilities in the school system.

- An employee will not engage in work of any type where information concerning a customer, client or employer originates from any information available to him/her through school sources.

- A professional employee will not sell instructional supplies, equipment or reference books in the attendance area served by his/her school nor will the employee furnish the names of students or parents to anyone selling these materials.

Nepotism

Neither a board member nor an employee may participate in an action relating to the discipline of his/her family member.

The district will not place an employee in a position wherein an employee will exercise **direct** administrative or supervisory authority over a member of his/her family.

Option: The board may include any specifics of local policy regarding nepotism, supervisory assignments, etc. here.

South Carolina law Section 59-25-10 provides that no board member's immediate family member (parent, child, brother or sister) may be employed as a teacher without the written consent of the board of trustees.

State ethics law

A public school employee is under the jurisdiction of the "Ethical Conduct of Public Officials and Employees," Section 8-13-700, et seq. S.C. Code of Laws, and is subject to the rules of conduct of the statute. Such rules include the following.

A public employee must do the following.

- may not use his/her position or office for personal financial gain (Section 8-13-700)

- must report the receipt of anything of value worth $25 or more under certain circumstances (Section 8-13-710)
- may not receive compensation to influence action (Section 8-13-705)
- may not receive additional monies as payment for advice or assistance given in the course of their employment (Section 8-13-720)
- may not receive anything of value for speaking before a public or private group if the employee is acting in an official capacity (Section 8-13-715)
- may not use government personnel, equipment or materials in an election campaign (Section 8-13-765)
- may not use or disclose confidential information gained in the course of employment (Section 8-13-725)
- may not cause the employment, appointment, promotion, transfer or advancement of a family member to a state or local office or position in which the public official, public member or public employee supervises or manages (Section 8-13-750)
- may not participate in an action relating to the discipline of the public official's, public member's or public employee's family member (Section 8-13-750)
- may not serve as a member or employee of a governmental regulatory commission that regulates any business with which the employee is associated (Section 8-13-730)
- may not represent another person before a governmental entity (Section 8-13-740)
- may not have an economic interest in a contract if the employee is authorized to perform an official function relating to the contract (Section 8-13-775)
- may not use or disclose confidential information in any way that would affect his/her economic interest (Section 8-13-725)

In cases where an employee is required to take action or make a decision which affects him/herself or other individuals, the employee will take such steps as the Ethics Commission will prescribe to remove him/herself from the potential conflict of interest (Section 8-13-700).

The superintendent must file an annual statement of economic interest with the State Ethics Commission (Section 8-13-1110).

Adopted ^

Legal references:

A. S. C. Code, 1976, as amended:
   1. Section 8-13-700, et seq. - State ethics law.
   2. Section 8-13-100(15) - Family member means an individual who is the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent or grandchild or a member of the individual's immediate family.
   3. Section 8-13-100(18) - Definition of immediate family.
   4. Section 59-15-10 - No employee may serve on the county board of education.
   5. Section 59-19-300 - A board member may not receive pay as a teacher in same district where he/she serves on the board of trustees.
   6. Section 59-31-590 - A teacher may not have pecuniary interest in textbook selection.
   7. Section 59-25-10 - Employment of teachers related to board members or serving as board members.

HIV INFORMATION REGARDING STUDENTS

Effective Date: June 7, 2011

Summary: With the primary intent of protecting sensitive student health related information, the General Assembly this year amended state law dealing with the confidentiality of sexually transmitted disease records held by the Department of Health and Environmental Control (DHEC).

The new language states that if a public school student in grades K through five has AIDS or is infected with HIV, DHEC will notify the district's superintendent and nurse or other health professional assigned to the school of this information. This notification and information contained in the notification cannot be recorded in the student's permanent record. However, if this information is included, the information must be deleted from the student's record before he/she enters the sixth grade.

Also, a new statutory section was added to require school districts to adopt the Center for Disease Control and Prevention (CDC) recommendations on universal precautions for bloodborne disease exposure and communicate written notice of these procedures to each school. This notice must provide information related to education and training in the areas of infection control, universal precautions, and disinfection and sterilization methods and techniques.

Local district action required: SCSBA has several recommendations based on these revisions and additions to the law.

- Model policies and your existing policies include information about adherence to federal and state laws and regulations and include statements about student records in general. The changes to state law this year regarding notification from DHEC to the school district for certain students are administrative in nature and SCSBA recommends districts incorporate these requirements into their internal administrative procedures for maintenance of permanent student records (policy and rule JRA Student Records).

- Policies GBGA and JLCC have been amended to clarify the statement about information regarding HIV status in a student's permanent health record.

- The new section of the law specifically addresses the adoption of an exposure-control plan based on recommendations from the Centers for Disease Control and Prevention and communication of this plan and procedures to schools within the district. General information is already stated in the appropriate policies regarding adoption of a plan, training for staff and locations of the plans. However, SCSBA is recommending more specific language be added based on this new section of the code to policies EBBA and GBGA.

- SCSBA recommends the addition of the following legal reference to policy JRA (Student Records).

  S.C. Code of Laws, 1976, as amended:
  1. Section 44-29-135 - Confidentiality of sexually transmitted disease records.

- Appropriate legal references have been added to all of the above-mentioned policies.

Policy references: EBBA (Prevention of Disease/Infection Transmission). GBGA (Staff Health). JLCC (Communicable/Infectious Diseases). JRA (Student Records).

Model policies follow text of law.

Text: Confidentiality of sexually transmitted disease records
SECTION 1. Section 44-29-135 of the 1976 Code is amended to read:
Section 44-29-135. All information and records held by the Department of Health and Environmental Control and its agents relating to a known or suspected case of a sexually transmitted disease are strictly confidential except as provided in this section. The information must not be released or made public, upon subpoena or otherwise, except under the following circumstances.
(a) release is made of medical or epidemiological information for statistical purposes in a manner that no individual person can be identified;
(b) release is made of medical or epidemiological information with the consent of all persons identified in the information released;
(c) release is made of medical or epidemiological information to the extent necessary to enforce the provisions of this chapter and related regulations concerning the control and treatment of a sexually transmitted disease;
(d) release is made of medical or epidemiological information to medical personnel to the extent necessary to protect the health or life of any person;
(e) in cases involving a minor, the name of the minor and medical information concerning the minor must be reported to appropriate agents if a report of abuse or neglect is required by Section 63-7-310; or
(f) if a minor has Acquired Immunodeficiency Syndrome (AIDS) or is infected with Human Immunodeficiency Virus (HIV), the virus that causes AIDS, and is attending a public school in kindergarten through fifth grade, the department shall notify the superintendent of the school district and the nurse or other health professional assigned to the school the minor attends. This notification and information contained in the notification must not be recorded in the child's permanent record. However, if this information is in the child's permanent school record, the information must be purged from the child's record before the child enters the sixth grade.

Universal precautions for bloodborne disease exposure
SECTION 2. Article 2, Chapter 10, Title 59 of the 1976 Code is amended by adding:
Section 59-10-220. By January 1, 2012, each school district shall adopt the Centers for Disease Control and Prevention (CDC) recommendations on universal precautions for bloodborne disease exposure and shall communicate written notice of these procedures to each school within the district. The notice must provide information regarding education and training in the areas of infection control, universal precautions, and disinfection and sterilization techniques.

PREVENTION OF DISEASE/INFECTION TRANSMISSION

Code **EBBA** *Issued* **MODEL/11**

Purpose: To establish the basic structure for a healthful school environment.

The board is committed to providing a healthful environment for all students and employees. To prevent disease transmission and promote a healthy educational/social environment in the district, the board has adopted and the district has implemented an exposure-control plan based on recommendations from the Centers for Disease Control and Prevention (CDC) for all employees. This plan includes appropriate training for all employees as well as standard (universal) precautions that all employees must take when dealing with blood and other bodily fluids. A copy of the plan is on file in the superintendent's office and each school.

When the district takes action with respect to students or employees found to have a communicable disease, such action will be consistent with rights afforded individuals under state and federal statutory, regulatory and Constitutional provisions. The district will treat each case on an individual basis.

The district will continue to revise and update its policy and procedures in accordance with policy changes through the U.S. Centers for Disease Control and Prevention, the U.S. Occupational Safety and Health Administration and the S.C. Department of Health and Environmental Control.

Cf. GBGA, IHAM, JLCC, JRA

Adopted ^

Legal references:

A. South Carolina Code, 1976, as amended:
   1. Section 44-29-200 - Attendance of teachers or pupils with contagious or infectious disease may be prohibited.
   2. Section 44-29-135(f) - Confidentiality of sexually transmitted disease records.
   3. Section 59-10-220 - Adoption and notification of Centers for Disease Control and Prevention (CDC) recommendations on universal precautions for bloodborne disease exposure.

B. Federal regulations:
   1. U. S. Occupational Safety and Health Administration, CFR 1910.134 - Respiratory protection.
   2. U. S. Occupational Safety and Health Administration, CFR 1910.1030 - Bloodborne pathogens.

C. South Carolina Department of Health and Environmental Control Regulations:
   1. R-61-20 - Communicable diseases.

STAFF HEALTH

Code **GBGA** *Issued* **MODEL/11**

Purpose: To establish the basic structure for practices related to staff health and communicable diseases as they apply to district employees.

Health screening

The district will not initially hire any person to work in any public school or kindergarten until that person has been appropriately evaluated for tuberculosis according to guidelines approved by the South Carolina Department of Health and Environmental Control. The district will not require re-evaluation for employment in consecutive years unless otherwise indicated by such guidelines.

Any person applying for a position in any of the district's schools, including kindergarten, will, as a prerequisite to employment, secure a health certificate from a licensed physician certifying that such person does not have tuberculosis in an active stage.

The physician will make the aforesaid certificate on a form supplied by the South Carolina Department of Health and Environmental Control.

Option: The following is no longer a requirement set out in DHEC regulation but district can require.

The district requires each school district employee to annually indicate in writing that he/she is physically and mentally able to perform the duties of the position for which he/she is elected or appointed.

If the district has questions or concerns regarding the physical or mental capability of an employee to perform the essential functions of his/her position with or without reasonable accommodations, the district may require an appropriate health examination.

Communicable diseases

The board defines a chronic communicable disease as a persistent or recurring infection that may be transmitted to a susceptible person by contact with an infected individual. The U. S. Centers for Disease Control and Prevention (CDC) will be the definitive authority on the identification and transmission of chronic communicable diseases.

It is not the policy of the district to automatically suspend employees with a chronic communicable disease. It is the policy of the district, however, to protect the health of members of the community by implementing a program of education, prevention and reporting with respect to chronic communicable diseases in cooperation with state and local public health agencies.

The district may reassign an employee with a chronic communicable disease to a position that limits student/employee contact. Alternatively, the district may place the employee on medical leave if medical judgment substantiates that said employee poses a significant health threat to students and/or other employees. The school board reserves the right to remove or exclude any employee whose physical condition would interfere with his/her ability to work or would expose other students or employees to infection.

This district will notify other staff and students of the existence of a communicable disease in accordance with regulations and guidelines of the South Carolina Department of Health and Environmental Control.

Staff health (HIV)

Evidence shows that the risk of transmitting human immunodeficiency virus (HIV) is extremely low in school settings when current guidelines are followed. The presence of a person living with HIV infection or diagnosed with acquired immunodeficiency syndrome (AIDS) poses no significant risk to others in school, daycare or school athletic settings.

Employment

The district does not discriminate on the basis of HIV infection or association with another person with HIV infection. In accordance with the Americans with Disabilities Act of 1990, an employee with HIV infection may continue working as long as he/she is able to perform the essential functions of the position, with reasonable accommodation, if necessary.

Employees with acquired immunodeficiency syndrome (AIDS) or human immunodeficiency virus (HIV) should be under no work restrictions in the district, unless the employee's physician advises that medical impairments exist which are so severe as to be a hazard for the employee, district students or other employees. Employees infected with HIV or AIDS present no appreciable infection risk to others under normal school working conditions.

If an employee has been removed or excluded as provided above, as a condition for return to work, the district may require a satisfactory certificate from the employee's physician that the employee's presence is no longer a risk to the employee or to others at school.

Privacy

Students or staff members are not required to disclose HIV infection status to anyone in the education system. HIV antibody testing is not required for any purpose.

Every employee has a duty to treat as highly confidential any knowledge or speculation concerning the HIV status of a student or other staff member. Violation of medical privacy is cause for disciplinary action, criminal prosecution and/or personal liability for a civil suit.

No information regarding a person's HIV status will be divulged to any individual or organization without a court order or the informed, written, signed and dated consent of the person with HIV infection (or the parent/legal guardian of a legal minor). The written consent must specify the name of the recipient of the information and the purpose for disclosure.

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All health records, notes and other documents that reference a person's HIV status will be kept under lock and key. Access to these confidential records is limited to those named in written permission from the person (or parent/legal guardian) and to emergency medical personnel. Information regarding HIV status will not be added to a student's permanent educational record.

Infection control

All employees are required to consistently follow infection control guidelines in all settings and at all times, including playgrounds and school buses. Schools will operate according to the standards promulgated by the U.S. Occupational Safety and Health Administration and the Centers for Disease Control and Prevention for the prevention of bloodborne infections.

Equipment and supplies needed to apply the infection control guidelines will be maintained and kept reasonably accessible. The *(designate individual here)* will implement the precautions and investigate, correct and report on instances of lapse.

A school staff member is expected to alert the person responsible for health and safety issues if a student's health condition or behavior presents a reasonable risk of transmitting an infection.

If a situation occurs at school in which a person might have been exposed to an infectious agent, such as an instance of blood-to-blood contact, school authorities will counsel that person (or, if a minor, alert a parent/legal guardian) to seek appropriate medical evaluation.

HIV and athletics

The privilege of participating in physical education classes, athletic programs, competitive sports and recess is not conditional on a person's HIV status. School authorities will make reasonable accommodations to allow students living with HIV infection to participate in school-sponsored physical activities.

All employees must consistently adhere to infection control guidelines in locker rooms and all play and athletic settings. Rulebooks will reflect these guidelines. First aid kits that include personal protective equipment for preventing exposure to bloodborne pathogens must be on hand at every athletic event.

Physical education teachers and athletic program staff should complete an approved first aid and injury prevention course or training that includes implementation of infection control guidelines. Student orientation about safety on the playing field will include guidelines for avoiding HIV infection.

Staff development

All school staff members will participate in a planned educational program that conveys factual and current information about HIV and other bloodborne pathogens; provides guidance on infection control procedures; informs about current law and state, district and school policies; assists staff to maintain productive parent and community relations; and includes annual review sessions. Certain employees will also receive additional specialized training as appropriate to their positions and responsibilities.

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General provisions

On an annual basis, school administrators will notify students, their family members and school personnel about current policies concerning HIV and other bloodborne pathogens and provide convenient opportunities to discuss them. Information will be provided in major primary languages of students' families.

In accordance with the established policy review process or at least every three years, the (*designate individual here)* will report on the accuracy, relevance and effectiveness of this policy and, when appropriate, provide recommendations for improving and/or updating the policy.

Bloodborne pathogens

The district has prepared and implemented an exposure-control plan for all employees based on the recommendations of the Centers for Disease Control and Prevention (CDC). This plan includes appropriate training for those employees who may be likely to incur occupational exposure to blood or other potentially infectious materials. A copy of the plan is on file in the superintendent's office and each school.

Cf. EBBA, IHAM, JLCC, JRA

Adopted ^

Legal references:

A. South Carolina Code, 1976, as amended:
   1. Section 44-29-150 and 160 - Tuberculin test required of new employees.
   2. Section 44-29-200 - Attendance of teachers or pupils with contagious or infectious disease may be prohibited.
   3. Section 44-29-135(f) - Confidentiality of sexually transmitted disease records.
   4. Section 59-10-220 - Adoption and notification of Centers for Disease Control and Prevention (CDC) recommendations on universal precautions for bloodborne disease exposure.

B. Federal regulations:
   1. U. S. Occupational Safety and Health Administration, CFR 1910.134 - Respiratory protection.
   2. U. S. Occupational Safety and Health Administration, CFR 1910.1030 - Bloodborne pathogens.

C. State Board of Education Regulations:
   1. R-43-207 - All personnel will be screened for tuberculosis.

D. South Carolina Department of Health and Environmental Control Regulations:
   1. R-61-20 - Communicable diseases.
   2. R-61-22 - Evaluation of school employees for tuberculosis.

COMMUNICABLE/INFECTIOUS DISEASES

Code **JLCC** *Issued* **MODEL/11**

Purpose: To establish the basic structure for dealing with students who have communicable or infectious diseases.

HIV infection

Evidence shows that the risk of transmitting human immunodeficiency virus (HIV) is extremely low in school settings when appropriate guidelines are followed. The presence of a person living with HIV infection or diagnosed with acquired immunodeficiency syndrome (AIDS) poses no significant risk to others in school, daycare or school athletic settings.

School attendance

A student with HIV infection has the same right to attend school and receive services as any other student and will be subject to the same rules and policies. HIV infection will not factor into decisions concerning class assignments, privileges or participation in any school-sponsored activity.

School authorities will determine the educational placement of a student known to be infected with HIV on a case-by-case basis by following established policies and procedures for students with chronic health problems or students with disabilities. Decision makers must consult with the student's physician and parent/legal guardian; respect the student and family's privacy rights; and reassess the placement if there is a change in the student's need for accommodations or services.

School staff members will always strive to maintain a respectful school climate and not allow physical or verbal harassment of any individual or group by another individual or group. This includes taunts directed against a person living with HIV infection, a person perceived as having HIV infection or a person associated with someone with HIV infection.

Student athletics

The privilege of participating in physical education classes, athletic programs, competitive sports and recess is not conditional on a person's HIV status. School authorities will make reasonable accommodations to allow students living with HIV infection to participate in school-sponsored physical activities.

All employees must consistently adhere to infection control guidelines in locker rooms and all play and athletic settings. Rulebooks will reflect these guidelines. First aid kits that include personal protective equipment for preventing exposure to bloodborne pathogens must be on hand at every athletic event.

Physical education teachers and athletic program staff members should complete an approved first aid and injury prevention course or training that includes implementation of infection control guidelines. Student orientation about safety on the playing field will include guidelines for avoiding HIV infection.

Related services

Students will have access to voluntary, confidential, and age and developmentally appropriate counseling about matters related to HIV infection. School administrators will maintain confidential linkage and referral mechanisms to facilitate voluntary student access to appropriate HIV counseling and testing programs and to other HIV-related services as needed. Public information about resources in the community will be kept available for voluntary student use.

Privacy

State regulations require that the superintendent, school nurse or other health professional who receives notice of a minor's human immunodeficiency virus (HIV) infection must keep the information strictly confidential. Violation of the confidentiality requirements is a violation of state law.

Students or staff members are not required to disclose HIV infection status to anyone in the education system. HIV antibody testing is not required for any purpose.

Every employee has a duty to treat as highly confidential any knowledge or speculation concerning the HIV status of a student or other staff member. Violation of medical privacy is cause for disciplinary action, criminal prosecution and/or personal liability for a civil suit.

No information regarding a person's HIV status will be divulged to any individual or organization without a court order or the informed, written, signed and dated consent of the person with the HIV infection (or the parent/legal guardian of a legal minor). The written consent must specify the name of the recipient of the information and the reason for disclosure.

All health records, notes and other documents that reference a person's HIV status will be kept under lock and key. Access to these confidential records is limited to those individuals named in written permission from the person (or parent/legal guardian) and to emergency medical personnel. Information regarding HIV status will not be added to a student's permanent educational record.

Head lice (Pediculosis)

If a teacher suspects a child of having head lice, he/she will notify the school nurse or principal's designee. If the student has an active infestation, school personnel will notify the parent/legal guardian by telephone or in writing with recommendations for treatment procedures.

The school will inform parents/legal guardians, teachers, school nurses and administrators of the following.

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- recommendations for treatment procedures
- documentation required for readmission to school

Readmission to school

The district prohibits a student who is sent home with head lice from returning to school until he/she meets the following conditions.

- The student shows evidence of treatment as determined by the school.
- The student passes a physical screening by the school nurse or principal's designee that shows the absence of head lice.

At no time will a student be allowed to return to school without proof of treatment and a screening.

Cf. EBBA, GBGA, IHAM, JRA

Adopted ^ ______________________________

Legal references:

A. South Carolina Code, 1976, as amended:
   1. Section 44-29-200 - Attendance of teachers or pupils with contagious or infectious disease may be prohibited.
   2. Section 44-29-195 - Requirements for returning to school after having head lice; department to provide treatment vouchers.
   3. Section 44-29-135(f) - Confidentiality of sexually transmitted disease records.
   4. Section 59-10-220 - Adoption and notification of Centers for Disease Control and Prevention (CDC) recommendations on universal precautions for bloodborne disease exposure.

B. Federal regulations:
   1. U. S. Occupational Safety and Health Administration, CFR 1910.134 - Respiratory protection.
   2. U. S. Occupational Safety and Health Administration, CFR 1910.1030 - Bloodborne pathogens.

C. South Carolina Department of Health and Environmental Control Regulations:
   1. R-61-20 - Communicable diseases.
   2. R-61-21 - Sexually transmitted diseases.

POINT OF SALE

Effective date: June 14, 2011

Summary: The General Assembly this year enacted legislation aimed at putting to rest the ongoing point-of-sale debate with a compromise amendment to H.3713 affecting only commercial and second home (six percent) properties. Governor Haley signed the bill into law on June 14.

For the past several years, real estate interests have attempted to eliminate the point-of-sale provision from state law. The point-of-sale provision under the 2006 Property Tax Relief Act (Act 388) requires that property be reassessed each time when there is an assessable transfer of interest or when it changes hands in ownership and that it be valued at the sales price for taxing purposes.

Throughout the debate on this issue, SCSBA's concern was the financial impact of any legislative change on the ability of school districts to provide the programs and services for already cash-strapped public schools. The compromise point-of-sale plan is estimated to have an annual statewide fiscal impact to local governments of $11.2 million; of this amount, the impact on school districts will be an estimated 52 percent.

With the compromise, property tax breaks brought on by the 15 percent reassessment cap will not be passed on to new property owners, resulting in no additional tax shifts to those owning properties with slowly appreciating values. The compromise also includes more flexibility for local elected officials in the administration of the millage cap provision and millage rollback calculation.

Highlights of the point-of-sale compromise

- There will be no change for owner-occupied (four percent) residential property.

- At the point-of-sale, taxable value of commercial properties and second homes (six percent property) will be determined as follows.

  The new taxable value is based on a 25 percent exemption off the assessor's fair market value at the point of sale, but this new taxable value may not be less than the fair market value determined by the most recent assessment prior to the sale.

  Example on six percent property

  - Current owner's taxable value is $700,000.
  - Current owner's fair market value is $850,000 (higher than taxable value because the value has been capped by the 15 percent reassessment cap).
  - Property sells for $1,000,000.
  - New owner's taxable value is $850,000.

  Since a 25 percent exemption off of $1,000,000 is $750,000 and the new taxable value cannot be less than the current owner's fair market value, the new owner's fair market value

at point of sale is $850,000 and at the next reassessment can increase no more than 15 percent due to the reassessment cap (or to $977,500).

- Flexibility to "bank" millage increases for future use, if needed. This allows school districts flexibility to raise millage in one year by up to the previous three years of increases allowed by law but not previously imposed by the school board. This will mitigate the "use it or lose it" millage increase Act 388 encourages.

- Millage rollback calculation corrections.

  - Corrects the millage rollback formula for cities, counties and schools so that the increase in taxable value for all property sold in a reassessment year is treated the same in the year of reassessment as in all other years.
  - Recognizes that 100 percent of property taxes billed are not collected.

- Clarification on calculating rollback millage increases in multi-county cities.

  Codifies current practice for calculating millage rates in cities that cross multiple county lines.

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

Policy reference: DB (Annual Budget).

Text: **Commercial real property, property tax exemption**
SECTION 1. Article 25, Chapter 37, Title 12 of the 1976 Code is amended by adding:
Section 12-37-3135. (A) As used in this section:
(1) 'ATI fair market value' means the fair market value of a parcel of real property and any improvements thereon as determined by appraisal at the time the parcel last underwent an assessable transfer of interest.
(2) 'Current fair market value' means the fair market value of a parcel of real property as reflected on the books of the property tax assessor for the current property tax year.
(3) 'Exemption value' means the ATI fair market value when reduced by the exemption allowed by this section.
(4) 'Fair market value' means the fair market value of a parcel of real property and any improvements thereon as determined by the property tax assessor by an initial appraisal, by an appraisal at the time the parcel undergoes an assessable transfer of interest, and as periodically reappraised pursuant to Section 12-43-217.
(5) 'Property tax value' means fair market value as it may be adjusted downward to reflect the limit imposed pursuant to Section 12-37-3140(B).
(B)(1) When a parcel of real property and any improvements thereon subject to the six percent assessment ratio provided pursuant to Section 12-43-220(e) and which is currently subject to property tax undergoes an assessable transfer of interest after 2010, there is allowed an exemption from property tax of an amount of the ATI fair market value of the parcel as determined in the manner provided in item (2) of this subsection. Calculation of property tax value for such parcels is based on exemption value. The exemption allowed by this section applies at the time the ATI fair market value first applies.

(2)(a) The exemption allowed by this section is an amount equal to twenty-five percent of ATI fair market value of the parcel. However, no exemption value calculated pursuant to this section may be less than current fair market value of the parcel.
(b) If the ATI fair market value of the parcel is less than the current fair market value, the exemption otherwise allowed pursuant to this section does not apply and the ATI fair market value applies as provided pursuant to Section 12-37-3140(A)(1)(b).
(C) The exemption allowed in this section does not apply unless the owner of the property, or the owner's agent, notifies the county assessor that the property will be subject to the six percent assessment ratio provided pursuant to Section 12-43-220(e) before January thirty-first for the tax year for which the owner first claims eligibility for the exemption. No further notifications are necessary from the current owner while the property remains subject to the six percent assessment ratio.

Cap on property tax millage increases revised
SECTION 2. A. Section 6-1-320(A) of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:
(A)(1) Notwithstanding Section 12-37-251(E), a local governing body may increase the millage rate imposed for general operating purposes above the rate imposed for such purposes for the preceding tax year only to the extent of the increase in the average of the twelve monthly consumer price indices for the most recent twelve-month period consisting of January through December of the preceding calendar year, plus, beginning in 2007, the percentage increase in the previous year in the population of the entity as determined by the Office of Research and Statistics of the State Budget and Control Board. If the average of the twelve monthly consumer price indices experiences a negative percentage, the average is deemed to be zero. If an entity experiences a reduction in population, the percentage change in population is deemed to be zero. However, in the year in which a reassessment program is implemented, the rollback millage, as calculated pursuant to Section 12-37-251(E), must be used in lieu of the previous year's millage rate.
(2) There may be added to the operating millage increase allowed pursuant to item (1) of this subsection any such increase, allowed but not previously imposed, for the three property tax years preceding the year to which the current limit applies.
B. Section 6-1-320 of the 1976 Code, as last amended by Act 410 of 2008, is further amended by adding at the end:
(F) The restriction contained in this section does not affect millage imposed to pay bonded indebtedness or operating expenses of a special tax district established pursuant to Section 4-9-30(5), but the special tax district is subject to the millage rate limitations in Section 4-9-30(5).

Rollback millage calculation revised, uniform millage imposed
SECTION 3. A. Section 12-37-251(E) of the 1976 Code is amended to read:
(E) Rollback millage is calculated by dividing the prior year property taxes levied as adjusted by abatements and additions by the adjusted total assessed value applicable in the year the values derived from a countywide equalization and reassessment program are implemented. This amount of assessed value must be adjusted by deducting assessments added for property or improvements not previously taxed, for new construction, for renovation of existing structures, and assessments attributable to increases in value due to an assessable transfer of interest.
B. Section 12-37-251 of the 1976 Code, as last amended by Act 388 of 2006, is further amended by adding at the end:
(G) If the boundaries of a municipality extend into more than one county and those counties implement the countywide appraisal and equalization programs required pursuant to Section 12-

43-217 on different schedules, then the governing body of the municipality shall set an equivalent millage to be used to compute municipal ad valorem property taxes. The equivalent millage to be set by the municipal governing body must be determined by methodology established by the respective county auditors which must be consistent with the methodology for calculating equivalent millage to be established by the Department of Revenue for use in these situations for the purpose of equalizing the municipal property tax on real property situated in different counties.

C. This section takes effect for rollback millage calculated for property tax years beginning after 2010.

SCHOOL DISTRICT FLEXIBILITY

Effective date: See below

Summary: This year legislators again passed several joint resolutions directed at providing school districts flexibility in dealing with state budget cuts and the lagging national economy.

A joint resolution has the same force of law as an Act, but is a temporary measure, dying when its subject is completed. It does require the same legislative process as a bill, but does not become an Act when it is passed.

Flexibility joint resolutions passed this year included provisions for district and school report cards, salary freezes for teachers and administrators, and teacher notification of employment. A summary of each of the three joint resolutions is provided below, including any changes from previous year versions.

District and school report cards (effective June 7)

The General Assembly again passed a "catch-all" joint resolution which, among other things, paved the way for district and school report card flexibility and extended the grace period for some recipients of a South Carolina Teacher Loan. Provisions include the following.

- The South Carolina Department of Education is not mandated to provide printed copies of the 2011 district and school report cards. Districts or schools, if they possess parent/legal guardian email addresses in their databases, are to email links to the report cards to parents/legal guardians. Also, they must notify parents/legal guardians about the report cards through newsletters or other regular communication channels. Upon request, districts or schools must provide a printed copy of the report card free of charge.

- Districts or schools are not required to advertise 2011 report card results in the newspaper. However, results must be provided to the editor of a newspaper of general circulation in the school or district's area.

- The South Carolina Department of Education is to suspend, for the 2011-12 school year, writing assessments in grades three, four, six and seven. These assessments may be administered only to students in grades five and eight. Writing assessments are not to be used in Education Accountability Act growth calculations.

- High schools may offer state funded WorkKeys to tenth grade students using funds appropriated for the assessment of PSAT or PLAN. The selection of the test for each student should be guided by the student's individual graduation plan, cluster selection, guidance counselor advisement and parent/legal guardian consent.

- For fiscal year 2011-12, a grace period is established under certain conditions for some recipients of a South Carolina Teacher Loan.

The joint resolution mandates that funds saved through the suspension of report card printing requirements for SDE as well as the suspension of writing assessments must be allocated to the

school districts based on the weighted pupil units, as opposed to the Education Finance Act formula as directed in last year's joint resolution.

Salary freeze for teachers and administrators (effective May 23)

This year the General Assembly again took the necessary measure of allowing school districts the flexibility to freeze local teacher salary step increases in order to cut costs and, perhaps, preserve jobs. This resolution allows districts to do the following.

- For the current fiscal year, school boards may opt to pay teachers based on the salary step in the state salary schedule they were paid in the prior fiscal year or 2010-11.

- If a district opts to do this - by providing notice on its website and public vote of the school board - then it must apply uniformly to all teachers and the board may not give salary raises to district and school administrators. Teacher experience credit cannot be impacted, and districts must continue to pay teachers and school/district administrators for changes in their education level.

- The pay limitations for administrators if a board freezes teacher step increases does not, however, prevent a board from returning the salary of a district/school administrator to the previous year's base salary if he/she was subject to a furlough, or if the administrator's position changed within the district in the prior academic year.

District and school administrators are defined by the South Carolina Department of Education using the Professional Certified Staff (PCS) System.

Teacher notification of employment (effective April 12)

Legislators for the third year in a row extended the statutory timeline for when school boards must notify teachers of their employment - as well as the timeline for acceptance - in order to accommodate budget uncertainties. Under the joint resolution, boards must notify teachers in writing concerning their employment for the 2011-12 school year by May 15, 2011. Teachers have 10 days following receipt of the notice to accept the contract.

The joint resolution was modified this year to include a provision intended to align recommendations for formal evaluations in the following year with notification of employment for teachers.

In addition, districts are authorized to uniformly negotiate salaries below the district salary schedule for the 2011-12 school year for retired teachers who are not participants in the Teacher and Employee Retention Incentive (TERI) program.

Local district action required: Because these are joint resolutions effective for one year, SCSBA is not recommending any policy changes.

Policy reference: NA

Text: Flexibility provisions
Be it enacted by the General Assembly of the State of South Carolina:

DISTRICT AND SCHOOL REPORT CARDS

District and school report card publication
SECTION 1. Notwithstanding Section 59-18-930, the State Department of Education is not required to provide printed copies of 2011 district and school report cards. The district or school shall email parents a link to the report cards if the school maintains parent email addresses in its student information system database. The district or school shall notify parents about the report cards through its newsletters and other regular communication channels. If a parent requests from the district or school a printed copy of the report card, the district or school shall provide a printed copy without cost to the parent.

District and school report card publication
SECTION 2. Notwithstanding Section 59-18-930(B), a public school or district board is not required to inform the community of the school's and district's 2011 report card by advertising the results in at least one South Carolina daily newspaper of general circulation in the area. However, the results must be provided to the editor of a newspaper of general circulation in the school's or district's area.

Suspension of writing assessments for certain grades
SECTION 3. For the 2011-2012 school year, the State Department of Education shall suspend the writing assessments in grades three, four, six, and seven. Writing assessments may be administered only to students in grades five and eight. The writing assessments may not be used in Education Accountability Act growth calculations.

WorkKeys offered
SECTION 4. Notwithstanding Section 59-18-340, high schools also may offer state-funded WorkKeys to tenth grade students using funds appropriated for the assessment of PSAT or PLAN. The selection of the test for each student should be informed by the student's individual graduation plan, cluster selection, guidance counselor advisement, and parent or legal guardian consent.

Grace period for repayment of teacher loans
SECTION 5. For Fiscal Year 2011-2012, an individual who received a South Carolina Teacher Loan pursuant to Section 59-26-20(j), who completed an undergraduate or graduate degree in education in Calendar Year 2010 or 2011, and who was not employed in a public school in South Carolina by September 1, 2011, or the 2011-2012 school year may elect to receive a one-year grace period that allows the individual to defer making loan repayments for one calendar year. Interest must be accrued during this deferral period. The South Carolina Student Loan Corporation shall develop the forms and procedures to implement and monitor the grace period.

Allocation of savings by State Department of Education
SECTION 6. The State Department of Education shall allocate the funds from savings generated from the enactment of Sections 1 and 3 of this joint resolution to school districts based on the weighted pupil units.

SALARY FREEZE FOR TEACHERS AND ADMINISTRATORS

Teacher salaries and school and district administrator salaries
SECTION 1.A. For Fiscal Year 2011-2012 a local school district board of trustees may determine that all teachers employed by the district must be paid based on the step they were paid in the prior fiscal year, without a negative impact resulting to their experience credit. This decision must be voted on by the local school district board of trustees in a public school board meeting with public notice posted on the school district website.
B. Application of this provision must be applied uniformly for all teachers within the school district. If a local school district board of trustees takes advantage of the provisions of SECTION 1.A. of this joint resolution, it may not provide for an increase in salary for district administrators and school administrators and their compensation may not be higher than the actual amount received in Fiscal Year 2010-2011. A local school district board of trustees may, however, return the salary of a district or school administrator to the previous year's base salary if he was subject to a furlough or increase the salary of a district or school administrator if he changed his position within the district in the prior academic year.
C. For purposes of this joint resolution, district administrators and school administrators are defined by the Department of Education using the Professional Certified Staff (PCS) System. For individuals not coded in PCS, the determination must be based upon whether the individual performs the functions outlined in position codes identified by the department as administration.
D. Notwithstanding any other provision of this joint resolution, a local school district board of trustees shall continue to pay teachers and school and district administrators for changes in their education level.

TEACHER NOTIFICATION OF EMPLOYMENT

Notification of teacher employment by May 15, 2011
SECTION 1. Notwithstanding Section 59-25-410, the boards of trustees of the several school districts shall decide and notify, in writing, the teachers, as defined in Section 59-1-130, in their employ concerning their employment for the 2011-2012 school year by May 15, 2011.

Notification of teacher acceptance of employment offer
SECTION 2. Notwithstanding Section 59-25-420, any teacher who is reemployed by written notification pursuant to Section 59-25-410 shall notify the board of trustees in writing of his acceptance of the contract for the 2011-2012 school year no later than ten days following receipt of written notification. 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.

Negotiation of retired teacher salaries
SECTION 3. Notwithstanding another provision of law, school districts uniformly may negotiate salaries below the school district salary schedule for the 2011-2012 school year for retired teachers.

Notification of teachers who are recommended for formal evaluation
SECTION 4. Notwithstanding regulation 43-205.1, a continuing-contract teacher who is being recommended for formal evaluation the following school year must be notified in writing on or before the date the school district issues the written offer of employment or reemployment.

SCHOOL DISTRICT FUND BALANCES (GASB 54)

Effective date: See below

Summary: School district fund balances have become a major issue at the General Assembly in recent years especially as districts are cutting programs and personnel in this down economy. A recent statement issued by the Governmental Accounting Standards Board (GASB), Statement No. 54, is targeted at improving financial reporting by establishing fund balance classifications that are easier to understand and apply.

All government bodies, including school districts, must comply with the GASB standards. Regulations reflecting Statement No. 54 were first issued March 2009 and most, if not all, districts are aware of or have implemented the new standards for reporting. School districts are required to implement GASB 54 for fiscal years first ending June 30, 2011.

GASB 54 establishes five fund balance classifications that comprise a hierarchy based primarily on the extent to which a district is bound to observe constraints imposed upon the use of the resources reported in governmental funds. The new classifications are nonspendable, restricted, committed, assigned and unassigned and are based on the relative strength of the constraints that control how specific amounts can be spent. Descriptions of the new classifications are as follows.

- *Nonspendable fund balance* - amounts that are not in a spendable form (such as inventory) or are required to be maintained intact (such as the principle of an endowment fund)

- *Restricted fund balance* - amounts constrained to specific purposes by their providers (such as grantors, bondholders and higher levels of government) through constitutional provisions or by enabling legislation; this includes categorical funds

- *Committed fund balance* - amounts constrained to specific purposes by a government itself, using its highest level of decision-making authority (the governing board); to be reported as committed, amounts cannot be used for any other purpose unless the government takes the same highest-level action to remove or change the constraint

- *Assigned fund balance* - amounts a government intends to use for a specific purpose; intent can be expressed by the governing body or by an official or body to which the governing body delegates the authority

- *Unassigned fund balance* - amounts that are available for any purpose; these amounts are reported only in the general fund

GASB reports that the focus of statement No. 54 is on the reporting of district funds in general purpose external financial reports in conformity with generally accepted accounting principles (GAAP). Districts may continue to use any funds they choose or are required to for their internal accounting or for special purpose reporting.

GASB 54 also requires other disclosures such as added detail regarding the purposes of restrictions, commitments and assignments, if the required level of detail is not met through display on the face of the balance sheet; the decision-making authority and formal action, if any,

that results in commitments of fund balance; the bodies or persons with the authority to express intended uses of resources that result in assigned fund balance; the order in which a district assumes restricted, committed, assigned and unassigned amounts are spent when amounts in more than one classification are available for a particular purpose; information about minimum fund balance policies, if a district has one; and the purpose for each major special revenue fund, identifying which revenues and other resources are reported in each of those funds.

Establishing specific policy language that guides the order in which amounts from various fund balance classifications are spent as outlined in GASB 54 is **optional** for a board. However, if a board opts **not** to do this, then the statement says that a default policy will be applied in which restricted amounts are used first, followed by committed, assigned and unassigned amounts in that order, for purposes of reporting fund balance.

As noted above, many districts have already implemented the new GASB 54 standards for fund balance reporting.

Information about GASB 54 can be found at the Governmental Accounting Standards Board website at http://www.gasb.org/st/summary/gstsm54.html.

Local district action required: No specific policy action is required unless a board chooses to adopt a specific policy related to fund balance. If so, SCSBA will provide sample district policies on this topic upon request.

Policy reference: DFAC (Fund Balance).

SCIENCE COURSE REQUIREMENTS FOR HIGH SCHOOL DIPLOMA

Effective date: May 6, 2011

Summary: The General Assembly this year passed a joint resolution aimed at temporarily clarifying the specific science course requirements needed to receive a South Carolina high school diploma. The measure is applicable to the graduating classes of 2011 and 2012 only.

The Education Accountability Act (EAA) requires students, among other things, to pass a high school credit course in science in which end-of-course examinations are administered to earn a state high school diploma. The state is currently transitioning from requiring students to take physical science with an end-of-course test, to requiring biology and an end-of-course test.

The joint resolution, in essence, states that students in graduating classes of 2011 and 2012 who earn a unit of credit in either biology or physical science can count that credit as the science requirement needed for graduation.

Local district action required: SCSBA recommends no policy changes due to this joint resolution.

Policy reference: IKF (Graduation Requirements).

Text: Physical science to biology course requirement transition
SECTION 1. The State is transitioning from requiring all students to take physical science with its associated end-of-course test to requiring students to take biology with its associated end-of-course test.

Current science requirement
SECTION 2. Section 59-18-310 requires students to pass a science course in a subject in which the end-of-course assessment is administered to earn a state high school diploma.

Lack of clarity in science requirement
SECTION 3. The State Board of Education further defined the high school diploma requirement to be the course in which a federally approved end-of-course test is administered. Currently, the federal government has not given final approval to the biology assessment, although the biology end-of-course exam is being administered to meet federal accountability requirements. Due to the delay by the federal government, there is lack of clarity and certainty as to which course is required for graduation.

Physical science or biology course satisfies requirement
SECTION 4. To provide clarity and certainty for high school students, for the graduation classes of 2011 and 2012, students who earn a unit of credit in either biology or physical science shall count that course credit as the required science course for graduation purposes.

COURT DECISIONS

Effective date: N/A

Summary: Several court decisions issued during 2011 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.

Youths' Miranda rights

The U.S. Supreme Court on June 16 handed down a ruling that police need to consider a suspect's age when deciding whether they must give him/her Miranda warnings. The ruling broadened the use of the Miranda warning for suspects, extending it to children questioned by police in school.

The case, *J.D.B. v. North Carolina*, involved a 13 year-old special education student attending middle school in North Carolina. He was pulled out of his classroom by a uniformed officer and escorted to a conference room where he faced a police investigator, the assistant principal and two other school officials. For more than half an hour, the investigator interrogated J.D.B. about a string of local burglaries. The boy's legal guardian, his grandmother, was never contacted, and he was not given a Miranda warning which is routinely given by police to criminal suspects once they are taken into custody. While the police officer later told J.D.B. that he was free to leave, he also told the boy that the police could get a court order to put him in juvenile detention, and the school's assistant principal advised the boy to "do the right thing."

J.D.B. eventually confessed to the thefts. At trial, his lawyer unsuccessfully attempted to suppress the confession on the grounds that given J.D.B.'s age and the circumstances of the interrogation, the confession was, in essence, coerced, and that the boy should have been advised of his right to an attorney and to remain silent. The state countered that the boy had been free to leave; that he, therefore, was not in custody; and that age should not be considered in determining whether police warn suspects of their rights. The North Carolina courts agreed.

The U.S. Supreme Court, in a 5-4 split, ruled that the age of a child subjected to police questioning is relevant to the custody analysis. Writing for the majority, Justice Sotomayer said, "Our history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults." Children are different: less mature, less capable of judgment and more susceptible to influence. As a result, Sotomayor determined that police and judges must consider age in determining whether a child should have been advised of his/her legal rights.

When police come to school to interview a student, administrators are placed between the competing interests of the police, on the one hand, and the student and parents/legal guardians on the other. Police want - and expect - the school's cooperation in making an investigation efficient and effective. Meanwhile, parents/legal guardians expect the school to act in the best interest of their child. While *J.D.B. v. North Carolina* did not establish a standard to address the difficult position in which educators find themselves when law enforcement officials show up to interview a student at school, it did hold that students have special rights with regard to such

custodial settings. SCSBA recommends school districts have agreements in place with local law enforcement on how they're going to handle the at-school interview or even arrest of a student.

Local district action required: SCSBA does not recommend specific policy changes based on the *J.D.B. v. North Carolina* decision.

Policy reference: JIH (Student Interrogations, Searches and Arrests). KLG (Relations with Law Enforcement Authorities).

Public employee grievance rights

In a ruling favorable to public employers such as school districts, the U.S. Supreme Court on June 20 held that a public employee cannot use the First Amendment's Petition Clause to claim retaliation by a public employer, making it more difficult for public employees to gain First Amendment protections for their workplace grievances.

The case, *Borough of Duryea v. Guarnieri*, held that a government employer's alleged retaliation against a worker does not create liability under the First Amendment's petition clause unless the employee's petition is about a matter of public concern. The *Duryea* case raised the question of whether the petition clause, which says Congress will not abridge the right of the people "to petition the government for a redress of grievances," provides a different standard or stronger protection for public-employee workplace grievances.

The case was brought by a police chief who was fired by the Duryea (Pa.) Borough Council. He won his job back in a grievance procedure, but the council then sought to impose directives on him affecting his pay and his working conditions. He sued under the First Amendment's petition clause, and a jury ruled that the borough council had retaliated against him for winning the earlier grievance. The Third Circuit Court of Appeals upheld the lower ruling. The Supreme Court, in vacating and remanding the appellate court opinion, held that a government employer's allegedly retaliatory actions against an employee do not give rise to liability under the petition clause unless the employee's petition relates to a matter of public concern.

According to the National School Boards Association, the case is particularly relevant to school districts, collectively the largest employers in the country, where the internal grievance process is a common way of resolving employment disputes. In arguing that school employees have ample protection from retaliation, NSBA in a friend-of-the-court brief it filed in the case, expressed its concern that every employee grievance, on matters such as working conditions, pay, discipline, promotions, leave, vacations and terminations, could become a federal case under the broader view of the petition clause that the Court was rejecting. In picking up on NSBA's argument, Justice Kennedy wrote for the Court, "Unrestrained application of the Petition Clause in the context of government employment would subject a wide range of government operations to invasive judicial superintendence." He stressed, however, that the petition clause had important historical roots and that petitions by government employees that were about matters of public concern deserved protection.

Local district action required: SCSBA does not recommend specific policy changes based on the *Borough of Duryea v. Guarnieri* decision.

Policy reference: GBK (Staff Concerns/Complaints/Grievances).

Taxpayer standing in tuition tax credit lawsuit

Arizona taxpayers lacked standing to bring suit challenging the state's tuition tax credit law on Establishment Clause grounds, according to a ruling handed down April 4 by the U.S. Supreme Court. South Carolina lawmakers for years have rejected a similar law.

A group of taxpayers in *Arizona Christian Sch. Tuition Org. v. Winn* filed suit in federal court claiming that Arizona's tuition tax credit law, providing private taxpayers with a tax credit for contributions made to a "school tuition organization" (STO), violates the U.S. Constitution's Establishment Clause. They argued that the law is unconstitutional because it impermissibly subsidizes religious schools.

In recent years, voucher and tuition tax credit proponents have pushed a similar scheme in the South Carolina Legislature providing, among other things, private taxpayers with income tax credits for contributions made to scholarship granting organizations.

In *Arizona Christian*, the taxpayer group argued that the statute allows money to be diverted from state coffers and given to STOs that in turn limit scholarships to students attending religious schools. Ninety-four percent of the funds donated the first year the law was in effect went to STOs that limit grants to students attending religious schools. The lower federal district court dismissed the suit for failure to state a claim. The Ninth Circuit Court of Appeals reversed and held that the taxpayers had standing under a previous U.S. Supreme Court ruling. The Supreme Court reversed the Court of Appeals.

The Supreme Court, in reviewing the case, never reached the issue of violation of the Establishment Clause. The Court, instead, examined whether the plaintiffs had standing despite "the general rule that taxpayers lack standing to object to expenditures alleged to be unconstitutional." "Standing" is a legal doctrine that focuses on whether someone can show that some personal legal interest has been invaded by the defendant. In general, it is not enough that a person is merely interested as a member of the general public in the resolution of the dispute. The person must have a personal stake in the outcome of the controversy.

Analyzing the taxpayers' claims under a two-part test previously outlined by the Court in *Flast v. Cohen*, the Court concluded that "tax credits and governmental expenditures do not both implicate individual taxpayers in sectarian activities." It stressed that under this program Arizona taxpayers choose to contribute to STOs. They spend their own money, not money the state has collected from the plaintiffs or other taxpayers. "The STO tax credit is not tantamount to a religious tax or to a tithe and does not visit the injury identified in *Flast* [in which government funds were directly paid to religious schools]," and "[i]It follows that respondents have neither alleged an injury for standing purposes under general rules nor met the *Flast* exception."

The *Arizona Christian* case is of interest due to the continued efforts to enact tuition tax credit and voucher legislation in South Carolina. It is disappointing in that the Court did not take the opportunity to address the Establishment Clause issue. The case does not have policy implications for school districts.

Local district action required: SCSBA does not recommend specific policy changes based on the *Arizona Christian Sch. Tuition Org. v. Winn* decision.

Policy reference: NA

Cyber-bullying and student off-campus speech

In this age of increasing awareness of the issue of cyber-bullying, a three-judge panel of the Fourth Circuit Court of Appeals issued a ruling July 27 holding that a West Virginia school district that disciplined a student for off-campus online speech did not violate that student's free speech rights under the First Amendment.

Rulings by the Fourth Circuit Court of Appeals have the force of law in South Carolina.

In the case of *Kolwalski v. Berkeley County Schools*, a high school senior created a MySpace page using her home computer. She invited other students to post rude and vulgar pictures and comments about one particular classmate. Following an investigation by the school, she was disciplined through suspension from school as well as school-related social activities. Further, she was found to be in violation of the district's bullying, harassment and/or intimidation policy. The student argued that school officials violated her free speech rights under the First Amendment by punishing her for speech that occurred outside the school.

In analyzing the First Amendment free speech issue, the Court applied the "substantial disruption" standard established by the U.S. Supreme Court in the 1969 case of *Tinker v. Des Moines Independent Community School District*, which recognizes "the need for regulation of speech that interfered with the school's work and discipline, describing that interference as speech that 'disrupts classwork,' 'creates substantial disorder' or 'collid[es] with' or 'inva[des]' 'the rights of others.'" The panel found that *Tinker's* language supports the conclusion that public schools have a compelling interest in regulating speech that interferes with or disrupts the work and discipline of the school, including discipline for student harassment and bullying. All branches of the federal government have recognized that student-on-student harassment and bullying is a major concern, noted the panel, and that school officials have a duty to protect their students from it.

The panel concluded that the student's speech was disruptive and caused interference within the meaning of *Tinker* and, therefore, did not enjoy First Amendment protection. Addressing her argument that the speech was, nonetheless, protected because it took place at home and after school hours, the panel stated that it ignored the reality of Internet activity which allows the speech created to be published beyond the student's home and could "reasonably be expected to reach the school or impact the school environment."

In *Kowalski*, the district's anti-bullying policy did not provide notice that such off-campus activity was prohibited and the Court made note of this. However, it concluded that the issue need not be resolved because *Tinker* provided the district with all the authorization it needs to discipline the student, regardless of where her speech originated due to its impact on the school's learning environment.

While all districts have anti-bullying and harassment policies in place, the *Kowalski* case points out the need to ensure that these policies include language stating off-campus activity may lead to disciplinary action in certain circumstances.

Local district action required: Based on the Court's discussion in *Kowalski*, SCSBA recommends that boards add language addressing cyberbullying done off-campus to their bullying policy (districts may want to review their acceptable use policy as well for any corresponding changes). The purpose of the language is to clearly put parents/legal guardians, students and school officials on notice that certain off-campus conduct - particularly in relation to Internet use - may be subject to disciplinary action.

Policy references: JICFAA (Harassment, Intimidation or Bullying). IJNDB (Use of Technology Resources in Instruction).

Model policy follows this section.

Volunteers under the Fair Labor Standards Act (FLSA)

In a significant ruling for school districts, a three-judge panel of the Fourth Circuit Court of Appeals on March 10 ruled that a high school safety and security assistant, who also holds the position of varsity boys golf coach, is not an employee in his capacity as a coach under the Fair Labor Standards Act (FLSA), but rather a volunteer and, therefore, is not entitled to overtime pay under the FLSA.

Rulings by the Fourth Circuit have the force of law in South Carolina.

The case, *Purdham v. Fairfax County School Board*, involved James Purdham, a non-exempt employee under the FLSA who worked as a safety and security assistant for the Fairfax County Public Schools and volunteered to coach a high school golf team. Purdham, who was paid about $2,000 annually to coach, sued the Fairfax County School Board claiming he should have been paid overtime because he also is a support staff employee. The U.S. District Court for the Eastern District of Virginia ruled the stipend was small enough to deem Purdham a volunteer and that he was not subject to the overtime pay requirements of the FLSA. The Fourth Circuit agreed.

FLSA-related actions have been increasing in recent years and Fairfax County schools had conducted an audit to determine if coaches were being managed correctly. Eventually, following guidance issued by the U.S. Department of Labor, Fairfax determined that full-time non-exempt employees were properly deemed "volunteers" in connection with their coaching activities and thus not eligible for overtime compensation. The lawsuit followed.

The Fourth Circuit panel agreed with the district court that in his capacity as golf coach Purdham was properly classified as a "volunteer" and, thus, not eligible for overtime payments under FLSA. The panel pointed out that under FLSA "where a public employee engages in services different from those he or she is normally employed to perform, and receives 'no compensation' or only a 'nominal fee,' such work is exempt from the FLSA and the public employee is deemed a volunteer." The panel found that Purdham's coaching stipend does not "compensate" for services rendered, within the meaning of the term under FLSA; is not tied to productivity; and, based on the number of hours devoted to coaching activities, amounts to less than minimum wage for the hours spent coaching. The panel held "the stipend Purdham receives is a 'nominal fee' as permitted for volunteers under the FLSA."

The *Purdham v. Fairfax County School Board* ruling is significant to school districts in providing greater clarity to FLSA requirements as they determine whether to give nominal volunteer stipends.

Local district action required: SCSBA recommends adding the following legal reference to the policy listed below.

Purdham v. Fairfax Co. Sch. Bd., 637 F.3d 421, 427 (4th Cir. 2011).

Policy reference: GDBC (Support Staff Supplementary Pay Plans/Overtime).

Academic credit for off-campus religious instruction

A federal district court in upstate South Carolina ruled March 5 that a school district's award of academic credit for off-campus religious instruction does not violate the First Amendment's Establishment Clause. The school district's released time policy was a passive measure aimed at satisfying the constitutionally permissible purpose of accommodating students' religious beliefs.

The case, *Moss v. Spartanburg County School District 7*, is currently on appeal to the Fourth Circuit Court of Appeals. SCSBA is providing this brief for informational purposes.

In 2006, the state legislature enacted the South Carolina Released Time Credit Act (SCRTCA), authorizing public schools to award high school students with elective credit for released time religious instruction. Spartanburg 7 adopted a policy based in part on the language in the Act and a model policy provided by SCSBA. Spartanburg High School began offering religious instruction through Spartanburg County Bible Education in School Time (SCBEST) at a local private sectarian school. A group of parents and students, along with the Freedom from Religion Foundation, filed suit against the district challenging its adoption and implementation of its released time policy. The plaintiffs did not challenge the constitutionality of the Act. Specifically, the plaintiffs argued that District 7's adoption and implementation of its released time policy cannot withstand constitutional scrutiny because: "(1) it lacks a predominately secular purpose; (2) its principal effect is to advance religion; and (3) it fosters excessive entanglement with religion."

The district court granted Spartanburg 7's motion for summary judgment and the appeal followed. The district court's ruling, according to a write-up by NSBA, subjected the policy to analysis under the three-prong test enunciated in the 1971 U.S. Supreme Court case of *Lemon v. Kurtzman*, under which the court must determine whether the policy: (1) has secular purpose; (2) has the principal or primary effect of advancing or inhibiting religion; and (3) fosters excessive government entanglement with religion.

Addressing the *purpose* prong, the district court stated that it presented a "fairly low hurdle" for a governmental entity to satisfy by finding a "plausible secular purpose." It found that Spartanburg 7's expressed purpose for adopting the policy - to accommodate parents/legal guardians and students' desire to receive religious instruction - indisputably constituted a legitimate secular purpose. Turning to the *effect* prong, the court concluded, "… Plaintiffs have failed to show that the school district's cooperation with SCBEST was anything more than a passive response to the development of a neutral released time policy that comports with the First Amendment." In analyzing *Lemon's entanglemen*t prong, the court concluded that the

plaintiffs failed to show how Spartanburg 7's passive acceptance of academic credit for religious instruction constitutes excessive entanglement with religion.

Plaintiffs in this case filed an appeal from the district court's ruling in May with the Fourth Circuit.

Local district action required: SCSBA will follow this appeal and keep districts updated on any policy implications.

Policy reference: JHCB (Released Time for Religious Instruction).

Administrator reassignment issues

The South Carolina Supreme Court on January 18 issued a favorable ruling for school districts on the issue of administrator reassignments and the due process rights afforded administrators affected by such decisions. Boards and superintendents often find it necessary to reassign administrators for reasons ranging from the opening and closing of schools to the need to cut costs by eliminating positions.

In the case of *Henry-Davenport v.The School District of Fairfield County*, the Supreme Court concluded that administrators who are reassigned for the subsequent school year, even with a reduction in pay, are not entitled to the hearing rights provided under the Teacher Employment and Dismissal Act. In this case, the plaintiff sought a grievance hearing with the school board after she had been demoted from a deputy superintendent position to director of food services, a move that included a salary reduction. The board denied her request for a hearing and she filed suit in federal court alleging, among other things, that she was entitled to the same hearing rights as are granted to certified educators whose contracts are not renewed under the Teacher Employment and Dismissal Act.

Although a federal court case, the parties agreed to certify to the State Supreme Court the question of whether statutory Section 59-24-15 of the Education Accountability Act of 1998 affords a certified educator employed as an administrator rights as available under the Employment and Dismissal Act when she is denied a hearing to contest her administrative demotion and salary reduction. The EAA provision states as follows.

> *Certified personnel who are employed as administrators on an annual or multi-year contract will retain their rights as a teacher under the provisions of Article 3 of Chapter 19 and Article 5 of Chapter 25 of this title but no such rights are granted to the position or salary of administrator. Any such administrator who presently is under a contract granting such rights shall retain that status until the expiration of that contract.*

Previous to the enactment of the above provision, the Supreme Court held in the 1994 case of *Johnson v. Spartanburg County School Dist. No. 7* that an administrator who was reassigned and suffered a loss in pay was entitled to the due process protections of the Employment and Dismissal Act, specifically a board hearing.

Certainly, clarity was needed on this issue of administrator reassignments and the due process rights afforded administrators affected by such decisions, particularly when salary reductions were involved and in light of the EAA's Section 59-24-15.

The Supreme Court in *Henry-Davenport v.The School District of Fairfield County* found that the Legislature, in enacting Section 59-24-15, overruled the *Johnson* case.

The Court stated, "We believe the 1998 enactment - specifically the provision 'but no such rights are granted to the position or salary of administrator' - is clear and manifestly reflects legislative intent to expressly exclude such rights to an administrator."

"The legislature enacted section 59-24-15 after the *Johnson* decision, and the plain language of the statute directly contradicts the holding in *Johnson*. The statute plainly states that an administrator has no rights in her 'position or salary,' and the legislature made no exception or distinction concerning the administrator's status as a certified educator," the Court continued.

The *Henry-Davenport* case clarifies a district's authority to assign administrators on a yearly basis as best serves the needs of the district and to pay the administrator the salary that is appropriate for the position to which the administrator is assigned. Reduction in force policies should be followed whenever position elimination results in an administrative reassignment.

Local district action required: SCSBA does not recommend specific policy language due to the *Henry-Davenport* case; however, SCSBA does recommend adding the following legal reference to the policy listed below.

Henry-Davenport v. The School District of Fairfield County, 391 S.C. 85, 705 S.E.2d 26 (S.C. 2011).

Policy reference: GCFB (Hiring of Administrative Staff).

HARASSMENT, INTIMIDATION OR BULLYING

Code **JICFAA** *Issued* **MODEL/11**

Purpose: To establish the basic structure for maintaining a safe, positive environment for students and staff that is free from harassment, intimidation or bullying.

The board prohibits acts of harassment, intimidation or bullying of a student by students, staff and third parties that interfere with or disrupt a student's ability to learn and the school's responsibility to educate its students in a safe and orderly environment whether in a classroom, on school premises, on a school bus or other school-related vehicle, at an official school bus stop, at a school-sponsored activity or event whether or not it is held on school premises, or at another program or function where the school is responsible for the student.

For purposes of this policy, harassment, intimidation or bullying is defined as a gesture, electronic communication, or a written, verbal, physical or sexual act reasonably perceived to have the effect of either of the following.

- harming a student physically or emotionally or damaging a student's property, or placing a student in reasonable fear of personal harm or property damage

- insulting or demeaning a student or group of students causing substantial disruption in, or substantial interference with, the orderly operation of the school

Any student who feels he/she has been subjected to harassment, intimidation or bullying is encouraged to file a complaint in accordance with procedures established by the superintendent. Complaints will be investigated promptly, thoroughly and confidentially. All school employees are required to report alleged violations of this policy to the principal or his/her designee. Reports by students or employees may be made anonymously.

The district prohibits retaliation or reprisal in any form against a student or employee who has filed a complaint or report of harassment, intimidation or bullying. The district also prohibits any person from falsely accusing another as a means of harassment, intimidation or bullying.

The board expects students to conduct themselves in an orderly, courteous, dignified and respectful manner. Students and employees have a responsibility to know and respect the policies, rules and regulations of the school and district. Any student or employee who is found to have engaged in the prohibited actions as outlined in this policy will be subject to disciplinary action, up to and including expulsion in the case of a student or termination in the case of an employee. Individuals may also be referred to law enforcement officials. The district will take all other appropriate steps to correct or rectify the situation.

Students, parents/legal guardians, teachers and staff members should be aware that the district may take disciplinary actions for conduct initiated and/or created off-campus involving the

inappropriate use of the Internet or web-based resources if such conduct poses a threat or substantially interferes with or disrupts the work and discipline of the schools, including discipline for student harassment and bullying.

The superintendent will be responsible for ensuring notice of this policy is provided to students, staff, parents/legal guardians, volunteers and members of the community, including its applicability to all areas of the school environment as outlined in this policy.

The superintendent will also ensure that a process is established for discussing the district policy with students.

Cf. GBEB, JIC, JICDA

Adopted ^

Legal references:

A. S. C. Code, 1976, as amended:
   1. Section 16-3-510 - Organizations and entities revised (hazing unlawful; definitions).
   2. Section 59-19-90 - General powers and duties of school trustees.
   3. Sections 59-63-210 through 270 - Grounds for which trustees may expel, suspend or transfer pupils; petition for readmission; notices and parent conferences; expulsion for remainder of year and hearings; transfer of pupils; corporal punishment; regulation or prohibition of clubs or like activities.
   4. Section 59-63-275 - Student hazing prohibited.
   5. Section 59-67-240 - Other duties of bus driver; discipline of students for misconduct.
   6. Section 59-63-110, et. seq. - Safe School Climate Act.

B. State Board of Education Regulations:
   1. R-43-279 - Minimum standards of student conduct and disciplinary enforcement procedures to be implemented by local school districts.

C. Court cases:
   1. *Purdham v. Fairfax Co. Sch. Bd.*, 637 F.3d 421, 427 (4th Cir. 2011).

LOCAL LAW REPORT

Below is an alphabetized list of local laws passed this session. Please check the legislative web site at *www.scstatehouse.gov* for the most recent status and for more details of each bill, or contact Scott Price at SCSBA.

S.337	**Chester County School District**, revise the filing date for candidates running for school board, effective March 16.
S.628	**Dorchester County School Districts Two and Four**, millage limitation revision, effective March 16.
S.721	**Edgefield County School District**, compensation of school board trustees, effective April 12.
H.3290	**Florence County School District Two**, citizens' meetings, effective February 2.
S.920	**Florence County School District Three**, school board election to coincide with general election, terms, effective June 17.
H.3243	**Greenwood School District 50**, election to Greenwood 50 board, effective March 16.
S.584	**Lexington County School Districts,** extend the one cent sales tax, effective May 9.
H.3806	**Lexington County School Districts One and Four**, property tax credit for owner occupied properties, effective April 12.
S.890	**Pickens County School District**, revise election districts, effective June 7.
S.430	**Pickens County School District**, exemption from make-up requirement, effective March 16.

REGULATIONS

Effective date: see table

Summary: During the 2011 legislative session, the General Assembly amended three state board of education regulations. 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. 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 appropriate.

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 South Carolina Department of Education website at www.ed.sc.gov. Click on agency, state board and the appropriate regulations chart dealing with the 2010-11 regulations. Click on the regulation or the document number. You will be able to view the document or print it in its entirety.

Regulation 43-62 - Requirements for Additional Areas of Certification (Document No. 4157)
Policy reference: N/A

Amendments to this regulation, approved by joint resolution of the general assembly, impacted two areas. First, new add-on certification requirements were added in Early Childhood Special Education (ECSE). Second, several course revisions were included in the add-on certification requirements for Visual Impairment. The name for this certification has also been changed from Visual Impairment to Education of Blind and Visually Impaired.

SCSBA action: No policy action is required.

Regulation 43-64 - Requirements for Certification at the Advanced Level (Document No. 4158)
Policy reference: N/A

Amendments to this regulation provide an alternative pathway to principal certification for career changers. The addition of the alternative route to the principalship necessitated the addition of tiered certificates (Tier 1 and Tier 2) to both the traditional and the alternative routes to delineate between initial and professional certification. While this regulation has been amended, the department training program for the alternate route approach will not be available until after July 1, 2012.

SCSBA action: No policy action is required.

Regulation 43-165.1 Program for Assisting, Developing and Evaluating Principal Performance (PADEPP) (Document No. 4156)
Policy reference: GCO (Evaluation of Professional Staff)

Revisions to this regulation were made due to changes in other state regulations governing principal preparation and certification (see changes to Regulation 43-64 in this section), as well as federal programs impacting principal evaluation. The evaluation process for principals with Tier 1 and Tier 2 certifications was added to this regulation as well as an annual evaluation for principals after the induction year.

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

Model policy and administrative rule follow this section.

EVALUATION OF PROFESSIONAL STAFF

Code **GCO** *Issued* **MODEL/11**

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

The district will use standards and procedures adopted by the state board of education for the purpose of conducting 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 district may use an approved alternative evaluation process that meets state standards and national standards.

The district will establish an annual Professional Development Plan (PDP) for a principal based on the state evaluation program's performance standards and criteria and the school's renewal plan.

The district will utilize the results from principal evaluations in decisions regarding principal development, compensation, promotion, retention and removal. Satisfactory performance on an evaluation does not guarantee reemployment as a principal.

Adopted ^

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/11**

Evaluation cycle

The evaluation cycle will be consistent with the school year as defined by law. After the induction year, principals will be evaluated annually (induction principals are those serving for the first time as building-level principals and are considered probationary until completion of the requirements of the Principal Induction Program (PIP) and receipt of an overall rating of proficient or exemplary on the PADEPP evaluation instrument in the second year of employment as a principal). A full evaluation using the PADEPP performance standards will be conducted every other year. Evaluations on years between full evaluations will include Performance Standard 2 Instructional Leadership, performance standards rated the previous year as needs improvement, and any additional performance standards identified for growth in the principal's professional development plan. Full evaluations may be conducted each year as determined by the superintendent.

Principals with Tier 1 certification

First-year principal

A first-year principal will participate in PIP. The superintendent or his/her designee will provide the first-year principal with written and oral feedback relative to each performance standard and criterion at least at mid-year and end-of-year conferences. The superintendent or his/her designee will observe, collect relevant data, consult with the principal on a regular and consistent basis, and provide the principal with an informal written evaluation.

Second-year principal

A second-year principal will enter the evaluation cycle. Upon completing PIP in year one and receiving an overall rating of proficient or exemplary on the PADEPP evaluation instrument in the second year of employment, the principal will be eligible for Tier 2 principal certification. If the overall rating on the PADEPP evaluation instrument in the second year of employment as a principal is needs improvement, the principal will remain on Tier 1 certification until the district verifies to the department of education that the principal has achieved an overall rating of proficient or exemplary on PADEPP.

Principals with Tier 2 certification

The superintendent or his/her designee will evaluate Tier 2 principals annually. The evaluation will address each of the nine PADEPP performance standards and accompanying criteria. A full evaluation using all PADEPP performance standards will be conducted every other year. The evaluations conducted in years between full evaluations will include Performance Standard 2 Instructional Leadership, performance standards rated the previous year as needs improvement

and any additional performance standards identified for growth in the principal's PDP. Full evaluations may be conducted each year as determined by the superintendent. The principal will receive feedback regarding his/her performance at least at mid-year and end-of-year conferences.

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 ^

2011 STATE REGULATIONS STATUS TABLE

	Reg. No. 43 -	Doc. No.	Title	ACTION
1.	62	4157	Requirements for Additional Areas of Certification	Effective date 6/24/11
2.	64	4158	Requirements for Certification at Advanced Level	Effective date 6/24/11
3.	165.1	4156	Principal Evaluation Program	Effective date 6/24/11

Source: South Carolina State Department of Education, 2011.

TEMPORARY PROVISOS

Effective date: July 1, 2011

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.gov.

There are no policy implications for these temporary provisos.

EFA formula/base student cost inflation factor (1.3)

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

1.3. (SDE: EFA Formula/Base Student Cost Inflation Factor) To the extent possible within available funds, it is the intent of the General Assembly to provide for one hundred percent of full implementation of the Education Finance Act to include an inflation factor projected by the Division of Budget and Analyses to match inflation wages of public school employees in the Southeast. The base student cost for the current fiscal year has been determined to be $1,788. In Fiscal Year 2011-2012, the total pupil count is projected to be 690,111. The average per pupil funding is projected to be $4,834 state, $1,215 federal, and $5,705 local. This is an average total funding level of $11,754 excluding revenues of local bond issues. For Fiscal Year 2011-2012 the South Carolina Public Charter School District shall receive and distribute state EFA funds to the charter school as determined by one hundred percent of the current year's base student cost, as funded by the General Assembly multiplied by the weighted students pupils enrolled in the charter school, which must be subject to adjustment for student attendance.

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

PSAT/PLAN reimbursement (1.25)

This proviso was amended this year to delete the requirement that assessment funds be used to pay for administering PSAT or PLAN tests to 10th grade students. For the current fiscal year, PSAT/PLAN was suspended and savings directed to the EFA.

1.25. (SDE: Assessment) For the current fiscal year PSAT/PLAN shall be suspended and savings generated from suspension of PSAT/PLAN Reimbursement shall be allocated to the Education Finance Act. The department is authorized to carry forward into the current fiscal year, prior year state assessment funds for the purpose of paying for state assessment activities not completed by the end of the fiscal year including the scoring of the spring statewide accountability assessment.

School districts and special schools flexibility (1.40 and 1A.22)

The flexibility proviso was amended this year to include language stating that funds allocated specifically for state level maintenance of effort requirements under IDEA could not be transferred.

1.40 (SDE: School Districts and Special Schools Flexibility) Due to the length of this proviso, see www.scstatehouse.gov for the entire proviso.

School district furlough (1.47)

This proviso was amended this year to remove limiting language as to when a school district could implement employee furloughs and to require Internet posting of the district policy manual and administrative rules.

1.47 (SDE: School District Furlough) School districts may institute employee furlough programs for district-level and school-level professional staff. Before any of these employees may be furloughed, the chairman of the governing body of the school district must certify that all fund flexibility provided by the General Assembly has been utilized by the district and that the furlough is necessary to avoid a year-end deficit and a reduction in force. The certification must include a detailed report by the superintendent of the specific action taken by the district to avoid a year-end deficit. The certification and report must be in writing and delivered to the State Superintendent of Education and a copy must be forwarded to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee.

The local school district board of trustees may implement a furlough of personnel once certification to the State Superintendent documents all funding flexibility has been exhausted and continued year-end deficits exist. Local school boards of trustees shall have the authority to authorize furloughs of these employees in the manner in which it sees fit. However, instructional personnel may be furloughed for up to five noninstructional days if not prohibited by an applicable employment contract with the district and provided district administrators are furloughed for twice the number of days. District administrators may only be furloughed on noninstructional days and may not be furloughed for a period exceeding ten days. District administrators shall be defined by the Department of Education using the Professional Certified Staff (PCS) System. For individuals not coded in PCS, the determination shall be made based upon whether the individual performs the functions outlined in position codes identified by the department as administration. Educators who would have received a year's experience credit had a furlough not been implemented, shall not have their experience credit negatively impacted because of a furlough implementation.

During any furlough, affected employees shall be entitled to participate in the same benefits as otherwise available to them except for receiving their salaries. As to those benefits that require employer and employee contributions, including, but not limited to, contributions to the South Carolina Retirement System or the optional retirement program, the district will be responsible for making both employer and employee contributions if coverage would otherwise be interrupted; and as to those benefits which require only employee contributions, the employee remains solely responsible for making those contributions. Placement of an employee on furlough under this provision does not constitute a grievance or appeal under any employee grievance procedure. The district may allocate the employee's reduction in pay over the balance of the fiscal year for payroll purposes regardless of the pay period within which the furlough occurs.

Each local school district must prominently post on the district's internet website and make available for public viewing and downloading the most recent version of the school district's policy manual and administrative rule manual.

This proviso shall not abrogate the terms of any contract between any school district and its employees.

Residential treatment facilities student enrollment and funding (1.66)

This proviso was amended this year to include a 2.10 weighting for homebound pupils as well as a $45 per day per student cap on the reimbursement rate. New language also outlines provisions for when a residential district does not pay reimbursement and disallows EFA distribution for out-of-state students.

1.66 (SDE: Residential Treatment Facilities Student Enrollment and Funding) Due to the length of this proviso, see www.scstatehouse.gov for the entire proviso.

High school driver education (1.70)

This proviso continues the suspension of the requirement that high schools provide driver education courses.

1.70 (SDE: High School Driver Education) For the current fiscal year, the requirement for high schools to provide a course in driver education is suspended however, high schools may continue to offer driver education courses if they choose to do so.

Transportation (1.87)

This new proviso requires various state agencies and legislative committees to explore school bus privatization in South Carolina.

1.87 (SDE: Transportation) In Fiscal Year 2011-2012, and from appropriated or authorized funds, the Department of Education, the Senate Finance Committee, the House Ways and Means Committee, and the Governor's Office will work together to explore privatization of all or part of the state school bus transportation system while ensuring that all students are served and there are long term cost savings.

South Carolina Public Charter School District funding (1.89)

This new proviso establishes how students attending the state public charter school district are to be funded.

1.89 (SDE: South Carolina Public Charter School District Funding) The funds appropriated in Part IA, Section X - South Carolina Public Charter School District must be allocated in the following manner: Pupils enrolled in virtual charter schools sponsored by the South Carolina Public Charter School District shall receive $1,700 per weighted pupil and pupils enrolled in brick and mortar charter schools sponsored by the South Carolina Public Charter School District shall receive $3,250 per weighted pupil. Any unexpended funds, not to exceed ten percent of the prior year appropriation, must be carried forward from the prior fiscal year and expended for the same purpose.

Student health and fitness (1.91)

This new proviso directs distribution of state funding under the Student Health and Fitness Act of 2005.

1.91 (SDE: Student Health and Fitness) Funds appropriated for Student Health and Fitness shall be allocated to school districts to increase the number of physical education teachers to the extent possible and to provide licensed nurses for elementary public schools. Twenty-seven percent of the funds shall be allocated to the districts based on average daily membership of grades K-5 from the preceding year for physical education teachers. The remaining funds will be made available through a grant program for school nurses and shall be distributed to the school districts on a per school basis.

One-year suspension of programs (1.92)

This new proviso suspends the SAT/ACT Improvement program for one year.

1.92 (SDE: One-Year Suspension of Programs) The following program will be temporarily suspended for Fiscal Year 2011-2012: SAT/ACT Improvement. Funds appropriated to this program must be allocated to districts based on the number of weighted pupil units.

Education Foundation supplement (1.98)

This new proviso was adopted to establish a $20 million "hold harmless" for districts that would lose funding under the implementation of a new method of calculating the Index of Taxpaying Ability.

1.98 (SDE: Education Foundation Supplement) Funds appropriated in the Education Foundation Supplement are to be distributed to public school districts which would in the current fiscal year recognize a loss in State financial requirement of the foundation program by utilizing an Index of Taxpaying Ability which imputes the assessed value of owner occupied property compared to the State financial requirement of same Index of Taxpaying Ability as utilized in the prior fiscal year. Funds in the Education Foundation Supplement must be distributed to the school districts receiving a loss, in an amount equal to the amount of the loss. This supplement shall not require a local financial requirement.

Impute index value (1.99)

This new proviso establishes a new method for calculating the Index of Taxpaying Ability by imputing the value of owner-occupied homes into the calculation based on the three-tiered state reimbursement under Act 388. The Department of Revenue is directed to exclude the use of sales ratio data in calculating the ITA.

1.99 (SDE: Impute Index Value) For Fiscal Year 2011-2012 and for the purposes of calculating the index of taxpaying ability the Department of Revenue shall impute an index value for owner-occupied residential property qualifying for the special four percent assessment ratio by adding the second preceding taxable year total school district reimbursements for Tier 1, 2, and Tier 3(A) and not to include the supplement distribution. The Department of Revenue shall not include sales ratio data in its calculation of the index of taxpaying ability. The methodology for

the calculations for the remaining classes of property shall remain as required pursuant to the EFA and other applicable provisions of law.

EFA state share (1.101)

This new proviso was enacted to ensure that every district receives some distribution of funding under the Education Finance Act.

1.101 (SDE: EFA State Share) A school district that does not recognize a State share of the EFA financial requirement shall be supplemented with an amount equal to seventy percent of the school district with the least State financial requirement.

Health education (1.102)

This Senate floor proviso requires compliance with current state law regarding the Comprehensive Health Education Act.

1.102 (SDE: Health Education) Each school district is required to ensure that all comprehensive health education, reproductive health education, and family life education conducted within the district, whether by school district employees or a private entity, must utilize curriculum that complies with the provisions contained in Chapter 32, Title 59. Any person may complain in a signed, notarized writing to the chairman of the governing board of a school district that matter not in compliance with the requirements of Chapter 32, Title 59 is being taught in the district. Upon receiving a notarized complaint, the chairman of the governing board must ensure that the complaint is immediately investigated and, if the complaint is determined to be founded, that immediate action is taken to correct the violation. If corrective action is not taken, then the district must have its base student cost reduced by one percent.

Teacher salaries/SE Average (1A.6)

This continuing proviso stipulates the projected Southeastern average teacher salary to be $49,007, and directs that the minimum teacher salary schedule used by districts will be the one used in Fiscal Year 2008-09.

1A.6 (SDE-EIA: XI.C.2.-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 $49,007. The statewide minimum teacher salary schedule used in Fiscal Year 2008-09 will continue to be used in Fiscal Year 2011-2012. 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.

Aid to districts (1A.48)

This new proviso distributes EIA aid to districts funds based on the number of weighted pupil units.

1A.48 (SDE-EIA: Aid to Districts) Funds appropriated in Part IA, Section 1, XI.A.1 Aid to Districts shall be dispersed to school districts based on the number of weighted pupil units.

IDEA maintenance of effort (1A.54)

This new proviso states that $45 million from the aid to districts fund be directed to schools for special education services as mandated by the federal IDEA.

1A.54 (SDE-EIA: IDEA Maintenance of Effort) Prior to the dispersal of funds appropriated in Section XI.A.1 Aid to Districts according to Proviso 1A.48 for Fiscal Year 2011-2012, the department shall direct $45,481,854 of the funds appropriated in Section XI.A.1 Aid To Districts to school districts and special schools for support of programs and services for students with disabilities, to meet the estimated maintenance of effort for IDEA. The department shall distribute these funds using the current fiscal year one hundred thirty-five day Average Daily Membership. For continued compliance with the federal maintenance of efforts requirements of the IDEA, funding for children with disabilities must, to the extent practicable, be held harmless to budget cuts or reductions to the extent those funds are required to meet federal maintenance of effort requirements under the IDEA. In the event cuts to funds that are needed to maintain fiscal effort are necessary, when administering such cuts, the department must not reduce funding to support children with disabilities who qualify for services under the IDEA in a manner that is disproportionate to the level of overall reduction to state programs in general. By December 1, 2011, the department must submit an estimate of the IDEA MOE requirement to the General Assembly and the Governor.

Building fund flexibility (1A.55)

This new proviso allows districts to flex school building aid program funds.

1A.55 (SDE-EIA: Building Fund Flexibility) For Fiscal Year 2011-2012, a school district may flex funds appropriated pursuant to the School Building Aid Program.

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