

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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SENATE BILL 138

Short Title: Educational Neglect.

(Public)

Sponsors: Senator Perdue.

Referred to: Juveniles/Prevention.

February 15, 1994

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROGRAM TO PROVIDE SCHOOL AND FAMILY ASSISTANCE TO STUDENTS WHO ARE NOT ACHIEVING AT THEIR FULL POTENTIAL DUE TO EDUCATIONAL NEGLECT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 115C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 26A.

"SCHOOL AND FAMILY ASSISTANCE TO UNDERACHIEVING STUDENTS.

"§ 115C-389.1. Findings.

The General Assembly finds that growing numbers of students are not achieving at their full potential and are at risk of academic failure. The best and most cost-effective time to help these students is when the first signs of a problem are evident and before a pattern of failure develops. Although teachers often become aware of signs of a problem such as behavior problems, failure to do homework, and truancy, there is no formal process for identifying these students and providing them with assistance. Meeting the needs of these students is not solely the responsibility of the schools and it is not something that the schools alone can accomplish. The schools must involve the families and caretakers of these students in determining how best to assist these students and helping their families and caretakers provide the needed assistance to them. The families and caretakers have an obligation to provide the assistance the students need to achieve at their full potential and to become successful academically and as citizens of the State. The students also have an obligation to behave appropriately, do their homework, attend school, and cooperate with their schools' and their families' and

1 caretakers' efforts to assist them in achieving at their full potential and becoming
2 successful academically and as citizens of the State.

3 The General Assembly further finds that the State is faced with an explosion of
4 violent crime committed by young people and that the relationship between failure at
5 school and subsequent criminal behavior is clear. The best way to stop this explosion of
6 violent crime in the long term is with long-term, preventive solutions. The State must
7 ensure that the public schools, parents, and students are working together to meet the
8 needs of each and every school child in North Carolina. The students' future and the
9 future well-being of the State depend on it.

10 **"§ 115C-389.2. Identification of an underachieving student.**

11 (a) Any teacher of a student who exhibits chronic behavior problems, fails to do
12 homework, is truant, or exhibits other behaviors that lead the teacher to suspect that the
13 student is continually not achieving at the student's full potential and is at risk of
14 academic failure shall immediately report to the principal of the school in writing that
15 the student may be an underachieving student. The report shall set out the behaviors
16 that lead the teacher to suspect that the student may be an underachieving student.

17 (b) If, after reviewing the teacher's report, the principal agrees that the student
18 may be an underachieving student, the principal shall immediately send a copy of the
19 report to the parent, guardian, or caretaker, as defined in G.S. 7A-517(5), of the student.
20 The principal shall offer in writing and by telephone to meet with the person or to talk
21 to the person by telephone, at a time convenient to the person, to discuss (i) the report,
22 (ii) the student's behaviors that lead the teacher to suspect that the student may be an
23 underachieving student, and (iii) responses that the school and the parent, guardian, or
24 caretaker should make to the behaviors.

25 (c) If, after the principal has discussed the report with the parent, guardian, or
26 caretaker of the student, or after the principal has made a good faith but unsuccessful
27 effort to discuss the report with the person, the student again exhibits behaviors that lead
28 a teacher of the student to suspect that the student is an underachieving student, that
29 teacher shall report to the principal as provided in subsection (a) of this section. The
30 principal shall send the parent, guardian, or caretaker a copy of the report and discuss or
31 attempt to discuss the matter with the person as provided in subsection (b) of this
32 section.

33 (d) If, after the principal has discussed the second report with the parent,
34 guardian, or caretaker of the student, or after the principal has made a good faith but
35 unsuccessful effort to discuss the second report with the person, the student again
36 exhibits behaviors that lead a teacher of the student to suspect that the student is an
37 underachieving student, that teacher shall report to the principal as provided in
38 subsection (a) of this section.

39 **"§ 115C-389.3. Preparation of an education plan for an underachieving student.**

40 (a) Unless the student is a child with special needs, the principal shall direct the
41 teacher or teachers who made the reports on the student and the school guidance
42 counselor to prepare a proposed education plan for the student. The plan may include
43 steps such as adjustment of the school program, supplemental school services,
44 appointment of an adult volunteer to work with the student during the school day,

1 instruction for the parent, guardian, or caretaker of the student to enable that person to
2 help the student, and specific strategies for that person to undertake to help the student.
3 The principal shall immediately send a copy of the proposed plan to the parent,
4 guardian, or caretaker of the student. The principal shall offer in writing and by
5 telephone to meet with the person and the student or to talk to the person and the student
6 by telephone, at a time convenient to the person and the student, to discuss (i) the
7 proposed plan, and (ii) any changes to the plan the person or the student consider
8 appropriate. After discussing the proposed plan with the person and the student, or after
9 making a good faith but unsuccessful attempt to discuss the proposed plan with the
10 person and the student, the principal shall adopt and implement an education plan for
11 the student.

12 (b) If the student is a child with special needs, the multidisciplinary team shall
13 reconsider the student's individual education plan. The multidisciplinary team shall
14 determine whether the plan should include steps such as adjustment of the school
15 program, supplemental school services, appointment of an adult volunteer to work with
16 the student during the school day, instruction for the parent, guardian, or caretaker of
17 the student to enable that person to help the student, and specific strategies for that
18 person to undertake to help the student.

19 **"§ 115C-389.4. Additional steps in the education plan if unsuccessful.**

20 (a) If the principal finds that the education plan for a student who is not a child
21 with special needs is not succeeding because the parent, guardian, or caretaker of the
22 student is not (i) participating in instruction to enable that person to help the student as
23 provided in the education plan or (ii) implementing specific strategies to help the
24 student as provided in the plan, the principal shall report the case of the juvenile to the
25 Director of the Department of Social Services in the county where the juvenile resides
26 or is found as provided in G.S. 7A-543. The report shall include the name and address
27 of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the
28 age of the juvenile; a copy of the education plan; a summary of the efforts made by the
29 principal and teacher to inform the parent, guardian, or caretaker of the education plan
30 and educational requirements and to seek the assistance of the parent, guardian, or
31 caretaker; and the refusal of the parent, guardian, or caretaker to participate in the
32 education plan.

33 (b) If the multidisciplinary team finds that the individual education plan for a
34 child with special needs is not succeeding because the parent, guardian, or caretaker of
35 the student is not (i) participating in instruction to enable that person to help the student
36 as provided in the individual education plan, or (ii) implementing specific strategies to
37 help the student as provided in the plan, the multidisciplinary team shall report the case
38 of the juvenile to the Director of the Department of Social Services in the county where
39 the juvenile resides or is found as provided in G.S. 7A-543. The report shall include the
40 name and address of the juvenile; the name and address of the juvenile's parent,
41 guardian, or caretaker; the age of the juvenile; a copy of the individual education plan; a
42 summary of the efforts made by the principal and teacher to inform the parent, guardian,
43 or caretaker of the individual education plan and educational requirements and to seek

1 the assistance of the parent, guardian, or caretaker; and the refusal of the parent,
2 guardian, or caretaker to participate in the individual education plan.

3 (c) If the principal finds that the education plan for a student who is not a child
4 with special needs is not succeeding because the student refuses to participate in the
5 plan and the student is less than 16 years of age but more than 10 years of age, the
6 principal shall file a complaint and a copy of the education plan with the intake
7 counselor as provided in G.S. 7A-531. The complaint shall provide a summary of the
8 facts and allegations against the juvenile pertaining to the juvenile's refusal to
9 participate in the education plan.

10 (d) If the multidisciplinary team finds that the individual education plan for a
11 child with special needs is not succeeding because the student refuses to participate in
12 the plan and the student is less than 16 years of age but more than 10 years of age, the
13 multidisciplinary team shall file a complaint and a copy of the education plan with the
14 intake counselor as provided in G.S. 7A-531. The complaint shall provide a summary of
15 the facts and allegations against the juvenile pertaining to the juvenile's refusal to
16 participate in the individual education plan."

17 Sec. 2. G.S. 7A-517(21) reads as rewritten:

18 "~~(21) Neglected Juvenile. —A juvenile who does not receive proper care,~~
19 ~~supervision, or discipline from the juvenile's parent, guardian,~~
20 ~~custodian, or caretaker; or who has been abandoned; or who is not~~
21 ~~provided necessary medical care; or who is not provided necessary~~
22 ~~remedial care; or who lives in an environment injurious to the~~
23 ~~juvenile's welfare; or who has been placed for care or adoption in~~
24 ~~violation of law. A juvenile who:~~

- 25 a. Does not receive proper care, supervision, or discipline from the
26 juvenile's parent, guardian, custodian, or caretaker;
27 b. Has been abandoned;
28 c. Is not provided necessary medical care;
29 d. Lives in an environment injurious to the juvenile's welfare;
30 e. Has been placed for care or adoption in violation of law; or
31 f. Has not received educational supervision as required in the
32 education plan of the juvenile established in accordance with
33 G.S. 115C-389.3 and G.S. 115C-389.4.

34 In determining whether a juvenile is a neglected juvenile, it is relevant
35 whether that juvenile lives in a home where another juvenile has died
36 as a result of abuse or neglect or lives in a home where another
37 juvenile has been subjected to sexual abuse or severe physical abuse
38 by an adult who regularly lives in the home."

39 Sec. 3. G.S. 7A-517(28) reads as rewritten:

40 "~~(28) Undisciplined juvenile. —A juvenile less than 16 years of age who is~~
41 ~~unlawfully absent from school; or who is regularly disobedient to his~~
42 ~~parent, guardian, or custodian and beyond their disciplinary control; or~~
43 ~~who is regularly found in places where it is unlawful for a juvenile to~~
44 ~~be; or who has run away from home. A juvenile:~~

- 1 a. Less than 16 years of age who is unlawfully absent from school
2 or less than 16 years of age but more than 10 years of age who
3 has refused to participate in the education plan established
4 pursuant to G.S. 115C-389.3 and G.S. 115C-389.4 to ensure
5 adequate supervision of the juvenile's education;
6 b. Less than 16 years of age who is regularly disobedient to the
7 juvenile's parent, guardian, or custodian and beyond this
8 person's disciplinary control; or
9 c. Less than 16 years of age who has run away from home."

10 Sec. 4. G.S. 7A-647 is amended by inserting two new subdivisions to read:

11 "(2.1) Unless the juvenile is a child with special needs pursuant to Article 9
12 of Chapter 115C of the General Statutes and notwithstanding any law
13 to the contrary, in a case in which the judge adjudicates the juvenile
14 undisciplined as defined in G.S. 7A-517(28)a. for failure to participate
15 in the education plan established pursuant to G.S. 115C-389.3 and
16 G.S. 115C-389.4 to ensure adequate supervision of the juvenile's
17 education, the judge may order the juvenile to attend an alternative
18 school for the remainder of the juvenile's education or until the judge
19 determines that the juvenile is satisfactorily participating in the
20 education plan. The judge may also order that the juvenile shall not be
21 licensed to operate a motor vehicle in the State for as long as the court
22 retains jurisdiction over the juvenile or for any shorter period of time.

23 If the juvenile is a child with special needs pursuant to Article 9 of
24 Chapter 115C of the General Statutes, the judge may request the
25 child's local educational agency to have the appropriateness of the
26 child's placement reconsidered in light of the judge's finding that the
27 juvenile's behavior makes it more appropriate for the juvenile to attend
28 an alternative school and it is in the best interest of the juvenile and the
29 local school administrative unit for the juvenile to attend an alternative
30 school.

31 (2.2) Unless the juvenile is a child with special needs pursuant to Article 9
32 of Chapter 115C of the General Statutes and notwithstanding any law
33 to the contrary, in the case of any juvenile who has not received proper
34 educational care as defined in G.S. 7A-517(21), the judge may order
35 the child be supervised in his own home by the Department of Social
36 Services in accordance with the education plan established pursuant to
37 G.S. 115C-389.3 and G.S. 115C-389.4. If, upon consideration of the
38 facts and circumstances, including the emotional and physical needs as
39 well as the educational needs of the juvenile, the judge determines that
40 the juvenile requires more intensive supervision than the Department
41 of Social Services and the adult volunteer appointed in the education
42 plan can provide in the juvenile's home and it is in the best interest of
43 the juvenile, the judge may place the juvenile in the custody of the
44 Department of Social Services.

1 If the juvenile is a child with special needs pursuant to Article 9 of
2 Chapter 115C of the General Statutes, request the child's local
3 educational agency to have the appropriateness of the child's
4 placement reconsidered in light of the judge's finding that the
5 juvenile's behavior makes it more appropriate for the juvenile to attend
6 an alternative school and it is in the best interest of the juvenile and the
7 local school administrative unit for the juvenile to attend an alternative
8 school."

9 Sec. 5. G.S. 115C-366(b) reads as rewritten:

10 "(b) Each local board of education shall assign to a public school each student
11 qualified for assignment under this section. Except as otherwise provided by G.S. 7A-
12 647(2.1), G.S. 7A-647(2.2), or any other provision of law, the authority of each board of
13 education in the matter of assignment of children to the public schools shall be full and
14 complete, and its decision as to the assignment of any child to any school shall be final."

15 Sec. 6. G.S. 115C-391(e) reads as rewritten:

16 "(e) A decision of a local board under subsection (c) or (d) is final and, except as
17 provided in this subsection, is subject to judicial review in accordance with Article 4 of
18 Chapter 150B of the General Statutes. A person seeking judicial review shall file a
19 petition in the superior court of the county where the local board made its decision.

20 The decision may also be modified in accordance with G.S. 7A-647(2.1) or G.S. 7A-
21 647(2.2)."

22 Sec. 7. G.S. 7A-289.32(2) reads as rewritten:

23 "(2) The parent has abused or neglected the child. The child shall be
24 deemed to be abused or neglected if the court finds the child to be an
25 abused child within the meaning of G.S. 7A-517(1), or a neglected
26 child within the meaning of ~~G.S. 7A-517(21)~~ G.S. 7A-517(21), except
27 as provided in this section. For purposes of this Article, an
28 adjudication of that kind of neglect defined in G.S. 7A-517(f) alone is
29 not a ground for termination of parental rights."

30 Sec. 8. This act becomes effective July 1, 1994. Section 1 of this act applies
31 to all school years beginning with the 1994-95 school year. Sections 2 through 7 of this
32 act apply to causes of action arising on or after July 1, 1994.