



HOUSE BILL 561: School System Authority Re: Legal Proceedings.

2015-2016 General Assembly

Committee:		Date:	August 5, 2016
Introduced by:		Prepared by:	Kara McCraw Staff Attorney
Analysis of:	S.L. 2016-116		

OVERVIEW: *S.L. 2016-116 permits, effective October 1, 2016, a state or federal administrative agency with a quasi-judicial function or a court of law to inspect confidential portions of a school employee's personnel file if all of the following apply:*

- *A current or former employee has filed a claim against the local board of education or a school official or employee for any alleged act or omission arising during the course and scope of the employee's official duties or employment.*
- *In the discretion of the superintendent or superintendent's designee, disclosure is necessary to adequately defend against the employee's claim.*
- *Disclosure is limited to that employee's records, and only to the extent necessary for the defense of the local board of education.*

The act also provides, effective October 1, 2016, that local boards of education can request the chief district court judge or designee to grant approval for the local board to issue subpoenas for the production of all tangible items in matters where an employee is suspected of committing job-related misconduct and which, in the discretion of the local board, requires investigation. In making the determination to approve the subpoena, the judge must consider the following:

- *Whether there is reasonable time for compliance.*
- *If disclosure of privileged or other protected matter is required and if any exceptions apply to the privilege or protection.*
- *Whether the person would be subject to undue burdens or expenses.*
- *Whether the subpoena is otherwise unreasonable or oppressive.*

The act also directs the Program Evaluation Division to study the statutory procedures for resolving education funding disputes between local boards of education and boards of county commissioners. The study must include a historical review of funding requests and appropriations; fund balances; past use of mediation and litigation; current impacts on county budgeting procedures; dispute resolution processes in other states where local boards of education are fiscally dependent on other local governments; alternative ways for local boards of education to receive local funds; and recommendations for alternative ways to resolve education funding disputes or modifications to the current process.

Except as otherwise provided, this act became effective July 28, 2016.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 561

Page 2

PRIOR LAW: G.S. 115C-321 previously required information in personnel files of employees of local boards of education be kept confidential, with certain exceptions. Information required to be kept confidential was limited to inspection and examination by the following:

- (1) The employee, applicant for employment, former employee, or the employee's agent;
- (2) The superintendent and supervisory personnel;
- (3) Members of the local board of education and the local board attorney; and
- (4) A party by authority of a subpoena or court order.

Confidential information could also be made available to law enforcement in specified circumstances, and certain information could be released in the discretion of the local board of education if the board determined that such release was essential to maintaining the board's integrity or maintaining the level or quality of services provided by the board, as set out in a memorandum.

G.S. 115C-45 provided local boards of education with the power to issue subpoenas for the attendance of witnesses in any and all matters that may lawfully come within the powers of the board and which, in the discretion of the board, require investigation.

BILL ANALYSIS: S.L. 2016-116 made the following changes:

Section 1 permits a state or federal administrative agency with a quasi-judicial function or court of law to inspect confidential portions of an employee's personnel file if all of the following apply:

- 1) A current or former employee has filed a claim against the local board of education or a school official or employee for any alleged act or omission arising during the course and scope of the employee's official duties or employment.
- 2) In the discretion of the superintendent or superintendent's designee, disclosure is necessary to adequately defend against the employee's claim.
- 3) Disclosure is limited to that employee's records, and only to the extent necessary for the defense of the local board of education.

Section 2 provides that local boards of education can request the chief district court judge or the judge's designee to grant approval for the local board to issue subpoenas for the production of all tangible items in matters where an employee is suspected of committing job-related misconduct and which, in the discretion of the board, requires investigation. The types of tangible things to be subpoenaed can include but are not limited to: documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic communications, electronic data processing records, artifacts, or other documentary material, regardless of physical form or characteristics. In making the determination to approve the subpoena, the judge must consider the following: (i) whether there is reasonable time for compliance; (ii) if disclosure of privileged or other protected matter is required and if any exceptions apply to the privilege or protection; (iii) whether the person would be subject to undue burdens or expenses; and (iv) whether the subpoena is otherwise unreasonable or oppressive.

Section 3 directs the Program Evaluation Division of the General Assembly to study the statutory procedures for resolving education funding disputes between local boards of education and boards of county commissioners. The study must include a historical review of funding requests made by local boards of education and the amounts appropriated by boards of county commissioners; fund balances; how often mediation and litigation have been used to resolve funding differences; how the current process impacts county budgeting procedures; dispute resolution processes in other states where local boards of education are fiscally dependent on other local governments; alternative ways for local boards

House Bill 561

Page 3

of education to receive local funds; and recommendations for alternative ways to resolve education funding disputes or modifications to the current process.

EFFECTIVE DATE: Sections 1 and 2 of the act become effective October 1, 2016. The remainder of the act became effective July 28, 2016.

Drupti Chauhan, counsel to House Education, and Jan Paul, counsel to Senate Judiciary II, substantially contributed to this summary.