



The Parents Guide
A Legal Right to a Sound Basic
Education

North Carolina Justice Center

Education & Law Project

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Overview: A Legal Right to Education¹

During the 2005-2006 academic year, more than 250,000 North Carolina public school students in grades 3-8 failed the end of grade test. Of these, over 112,000 were black students and more than 27,000 were Hispanic students.



These disappointing facts create a sad picture of North Carolina's public school system: failing students; underpaid and overworked teachers; growing suspension and dropout rates; unfair achievement gaps and funding streams. No wonder citizens are questioning whether North Carolina's children are receiving their constitutionally guaranteed "sound basic education."

North Carolina public school students' right to a sound basic education was determined in 1997 when the North Carolina Supreme Court ruled that children are constitutionally guaranteed an equal opportunity to obtain a sound basic education. The Court defined a sound basic education as:

- (1) Sufficient ability to read, write and speak the English language and sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society;
- (2) Sufficient fundamental knowledge of geography, history and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation;
- (3) Sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training;
- (4) Sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.

¹ <http://www.nccare.org/leandro/soundbasiced.htm>

Personal Education Plans

Each year, North Carolina administers End-of-Grade (EOG) and End-of-Course (EOC) tests. These tests are designed to determine if each student has learned what he needs to know to move to the next grade. They also help identify students with special needs.

Under North Carolina law, any child who does not score a 2 or higher on an End of Grade or End of Course test is at risk of academic failure. That student has the right to a Personal Education Plan (PEP). The plan is a special intervention plan that assists teachers and parents in meeting a student needs. It may include smaller classes, tutorial sessions, extended school day, and alternative learning models. The plan requires your child's school to provide specially-designed extra help for your child, free of charge.

Who is Eligible for a Personal Education Plan?

Any student performing below grade level has a right to a Personal Education Plan.

North Carolina law states:

At the beginning of the school year, a personal education plan for academic improvement with focused intervention and performance benchmarks shall be developed for any student not performing at least at grade level, as identified by the State end-of-grade test.

The State Board of Education Policy Manual adds:

School districts shall provide focused intervention to all students who do not meet statewide student accountability standards. This intervention shall involve extended instructional opportunities that are different and supplemental and that are specifically designed to improve these students' performance to grade level proficiency.

How to Get a Personal Education Plan

If a student scores I or II on his end-of-grade tests, his parents should call the principal and say they want a Personal Education Plan for their child. Schools must develop and follow these plans in accordance with North Carolina law and the state constitution.

In addition, parents should be involved in the development of the Personal Education Plan and should get a copy of the final document. Parents should work with their child's teachers to determine how the plan is implemented.

If a parent has difficulty getting a Personal Education Plan for an eligible student, she should call her local Legal Aid of NC office (www.legalaidnc.org).

YOUTH RIGHTS AND RESPONSIBILITIES IN SCHOOL

1. Are youths required to attend school in North Carolina?

According to the North Carolina Compulsory Attendance Law, youths between the ages of 7 and 16 must attend public or private school. Students who fail to attend school regularly may be brought into juvenile court as undisciplined juveniles.

2. If a youth is temporarily unable to attend school due to a physical problem, is home instruction available?

Some school systems provide instruction at home for students who cannot attend regular classes. For information on a specific community, contact the principal of the local school.

3. Is the use of corporal punishment in schools legal in North Carolina?

Corporal punishment is the use of a hand, paddle, strap or other instrument to inflict physical pain on a child. It is legal, except as restricted or prohibited by rules adopted by the local board of education. There are required policies and procedures that local schools must follow when administering corporal punishment, such as where the punishment may be administered and who may administer it. Reasonable force, including corporal punishment, may be used without following these procedures when necessary to control behavior or remove a person from the scene in certain situations. Check your local school board policies on discipline to find out whether your school district permits the use of corporal punishment and for details on policies, procedures and exemptions.

4. Are students subject to dress codes while in school?

Yes, students are subject to the dress code policy as set by their local school boards.

5. How does the constitutional right to freedom of expression relate to students?

Students have the constitutional right to express their opinions. However, individual schools have the right to reasonably limit this right by regulating when and where such expressions can occur. Furthermore, libelous, obscene material that can be predicted to substantially disrupt school activities, as well as material that encourages actions endangering student health or safety, can be forbidden.

6. Must students pay for school property they damage?

If a student willfully destroys school property or takes action that causes the destruction of school property, the student and the parents of the student may be held responsible for the damages.

7. How does the constitutional right to be free from unreasonable searches and seizures relate to students?

A school official may search a student, the student's property or locker without permission if there are reasonable grounds to believe that the student may possess weapons, may have committed a crime or may have violated a school rule and that the search will produce evidence of the crime, contraband or rule violation.

8. What happens if a student brings a weapon to school?

School principals are required to report firearm possession and certain other acts of violence occurring on school property to the local law enforcement agency. A student who carries a firearm or explosive onto school property commits a Class I felony, which is punishable by up to five years in prison, a fine or both. A student who possesses a weapon used to threaten and/or injure another individual commits a Class 1 misdemeanor, which is punishable by up to two years in prison, a fine or both. In addition, the General Assembly has set minimum suspension and expulsion guidelines for students who bring weapons to school. A student who possesses a firearm must be suspended from school for at least 365 days.

9. How can students get involved in preventing violence in their schools?

One way to help is to establish or become a member of a local chapter of SAVE (Students Against Violence Everywhere). This is a student-led, school-based organization created to

promote non-violence in schools and to develop a consistent, non-violent school climate. For more information and other suggestions on violence prevention, contact the North Carolina Center for the Prevention of School Violence by calling toll-free 1-800-299-6054. Staff development for conflict management and for peer mediation programs is available from: North Carolina Department of Public Instruction; North Carolina Peer Helpers Association; Mediation Network of North Carolina; Department of 4-H Youth Development, North Carolina State University; and North Carolina Center for the Prevention of School Violence.

10. What rights do students and their parents have regarding the student's school records?

A student's parents and students who are 18 or older have the following rights:

- a. the right to inspect and review the records;
- b. the right to a response from the school to a reasonable request for explanations and interpretations of the records;
- c. the right to obtain copies of the records from the school if failure to provide copies would effectively prevent inspection;
- d. the right to request amendment of records believed to be inaccurate, misleading or in violation of the student's privacy or other rights;
- e. the right to a hearing if such amendment is denied;
- f. the right to limit who will be able to view the records;
- g. the right to receive a list of those individuals who have been permitted to see the records; and
- h. the right to be informed of these rights by school officials.

11. What procedure must be followed to inspect school records?

The student or the student's parents must make a request to the school to inspect the records, and the school must make the records available within 45 days after the request is made. Most schools require that the records be viewed at the school.

12. If not in agreement or dissatisfied with the contents of a student's records, how may the student or his/her parents have the records changed?

A student's parents or a student who is 18 or older may request that a school change the contents of the student's school records if they are inaccurate, misleading or a violation of the student's rights. If the request is refused, the student or his/her parents must be informed of their right to a hearing, which would be provided by the school.

13. What are the rights of a student who is being suspended or expelled?

If a student is to be suspended for 10 days or less, the school must provide an explanation for the suspension, present the evidence the authorities have for the accusation, allow the student to present his/her version of the situation, and tell the student what evidence the school can produce to support the charges. For any suspension longer than 10 days or for an expulsion, the student and the student's parents have the following rights:

- a. the right to written notice explaining the charges and punishment;
- b. the right to a hearing conducted by an impartial school administrator;
- c. the right to be told ahead of time the date of the hearing;
- d. the right to see and copy any documents to be used at the hearing;
- e. the right to have a record of the hearing;
- f. the right to a decision based only on the evidence shown at the hearing;
- g. the right to appeal the decision to the local school board;
- h. the right to appeal the school board's decision to the District Court; and
- i. the right to complete any homework assignments, make up any tests and take home any necessary books.
- j. There are also possible rights to an attorney and to question witnesses.

14. Who has the power to suspend a student from school?

The principal or a representative of the principal has the authority to suspend a student for up to 10 days. The local school superintendent has the authority to suspend students for more than 10 days.

15. What is required for a student to be expelled from school?

The student must be at least 14 years old and there be clear and convincing evidence that the student's continued presence constitutes a clear threat to the safety of other students or school employees.

16. May a pregnant student remain in school throughout her pregnancy?

A school may not prohibit a student from school attendance or participation in extracurricular activities because of her pregnancy. Some school systems offer special classes and extracurricular activities for pregnant students; other schools may require a medical certificate stating that it is medically acceptable for a particular student to participate in school programs; however, a school may require this only if it requires the same of students with other medical or emotional problems.

Answers for Involved Parents

1. How should I deal with unfriendly school employees?

Your job is to make the school want to help your child. School employees are less likely to want to help you if you blame them, write complaint letters against them, or threaten them with lawsuits. Attend NCCARE trainings to learn tactics and strategies for effective advocacy.

- **Be polite but firm.** Remember that you have a right to be heard and your opinions and needs be considered when decisions are being made.
- **Document your objections.** If you are not satisfied, write a detailed letter.
- **Be factual, not emotional.** Do not attack people.
- **Do not give up.** You may have to repeat your request several times.

2. How do I negotiate with my child's school?

A willingness to negotiate will save you a great deal of time and can help you avoid a hearing. These techniques will be helpful.

- **Listen carefully.** Listening to the other side will give you a good idea about potential solutions.
- **Don't get offended.** Remember that you are there to advocate for your child, not argue.
- **Ask questions.** You are after information about the school's decisions for your child, so ask if you don't completely understand something.
- **Find alternatives.** Be prepared if your negotiation fails to get the results you want by figuring out a different course of action.

Rules for Negotiation with Schools

1. Organize your records.
2. Outline your complaints.
3. Provide evidence on the issues.
4. Know what you want.
5. Make specific requests.

3. What if the school suddenly calls an IEP team meeting?

Attend the meeting, but let them know that you do not know why they have asked for the meeting. Then, ask that they reschedule for another date so you can prepare yourself for the meeting. Take time to figure out your plan and respond in writing.

- Don't agree to anything at the meeting.
- Find out what they want and respond in writing.
- If teachers complain about behavior that is related to your child's disability, request that the school look at:
 - . The program (IEP) and the goals (increased services)
 - . Accommodations
 - . Placement
 - . Staff training

Make sure you participate in writing your child future education plans. If you are aware of what the IEP says, you will know where it needs more information. The more information you can provide in your child's IEP, the easier it is for everyone to understand your child's disability.

4. How do I prepare for a hearing?

A complaint triggers a due process hearing. At the hearing, you should present your case in an organized and factual manner. You do not need to argue like a lawyer. It is best if you present your case as a reasonable parent who is advocating for the rights of your child.

- Keep organized records
- Make short, clear statements about your complaint
- Explain what you want
- Give facts that support your complaint
- Be specific to your set of facts
- Find supporting evidence
- Be convincing

If you present your case in an organized way, but the decision is not in your favor, you are still in a position to prove that the decision was wrong or unfair. A well-planned case, calm attitude and firm goals are all you need to be a great advocate for your child!

If you have questions or need assistance, please contact NCCARE at 919-861-2064 or beth@ncjustice.org

RESOURCES

Action for Children North Carolina recently released the, “*Young Advocates Toolkit: A Guide to Being a Champion for Children.*” The toolkit’s resource section is being re-published here to provide a list of organization’s providing opportunities for North Carolina’s youth. See the entire toolkit at www.ncchild.org.

Action for Children NC

1300 St. Mary’s Street, Suite 500

Raleigh, NC 27605

Phone: (919) 834-6623

Email: (919) 829-7299

<http://www.ncchild.org/>

Action for Children advocates for child well being by educating and engaging people across the state. Action for Children provides education statistics, data and resources for parents and children.

Disability Rights of North Carolina

2626 Glenwood Avenue Suite 550

Raleigh, NC 27608

Phone: (919) 856-2195

Fax: (919) 856-2244

<http://www.cladisabilitylaw.org>

DRNC is a private, tax-exempt, non-profit corporation that offers legal representation to children and adults with mental illness and developmental disabilities

Duke Children’s Law Clinic

201 W. Main St. Suite 202-D

Durham, NC 27701

Phone: (919) 956-2580

Fax: (919) 956-8179

www.law.duke.edu/childedlaw

The Children’s Education Law Clinic is a clinical program of Duke Law School that provides free legal services to low income children and their parents in matters relating to the rights of children in school

NCCU Law Clinic

1512 S. Alston Ave

Durham, NC 27707

Phone: (919) 530-6333

Fax: (919) 530-6339

<http://web.nccu.edu/law/clinic/juvenile.html>

The North Carolina Central University School of Law Juvenile Law Clinic was established in recognition of the large number of Durham County youth who need quality legal and other support services. The clinic provides legal representation for youth in Durham Public School suspension, legal representation for youth in delinquency hearings and other support such as mentors and life skills training.

NC Public School Forum

3739 National Drive Suite 100

Raleigh, NC 27612

Advocates for Children Services (Legal Support)**Legal Aid of North Carolina**

201 West Main Street, Suite 400,

PO Box 2101, Durham, NC 27702

Phone: (919) 226-0052

<http://www.legalaidnc.org/acs>

Advocates for Children Services provides legal services based on the idea that at-risk and/or court-involved children are rights-bearing citizens, who are entitled to safe, permanent homes and should receive the medical and educational services currently promised by law. Children's Advocacy Services works with students who have been suspended or expelled from school to ensure their due process rights were not violated.

UNC Civil Rights Project

UNC School of Law

Van Hecke-Wettach Hall

100 Ridge Rd, CB #3380

Chapel-Hill, NC 27599-3380

(919) 962-5106

www.law.unc.edu/centers/civilrights

The UNC Center for Civil Rights is committed to the advancement of civil rights and social injustice, especially in the American south.

Information and Referral Service
CARE-LINE
Office of Citizen Affairs
N.C. Department of Human Resources
325 N. Salisbury St.
Raleigh, NC 27603
1-800-662-7030

Communities in School
222 North Person Street
Raleigh, NC 27601
Phone: (919) 832-2700 or toll free: (800) 849-8881
<http://www.cisnc.org/>

CISNC is an independently incorporated not-for-profit directed by our own board of directors representing both private and public interests in the state. CISNC assists North Carolina communities in replicating the CIS process of coordinated service delivery, supports the thirty-one local CIS organizations across the state, and advocates for children, youth, and their families. CISNC provides regional and on-site training and technical assistance, builds partnerships with state agencies and organizations to benefit young people, and serves as a resource and information center for local communities concerned about youth at risk of school failure.

El Pueblo, Inc.
4 N. Blount St. Suite 200
Raleigh, NC 27601
(919) 835-1525
<http://www.elpueblo.org/>

El Pueblo is a North Carolina non-profit statewide advocacy and public policy organization dedicated to strengthening the Latino Community. This mission is accomplished through leadership development, proactive and direct advocacy, education, and promotion of cross-cultural understanding in partnerships at the local, state, and national levels.