

§ 115C-45. Judicial functions of board.

(a) Power to Subpoena and to Punish for Contempt. – Local boards of education shall have power to issue subpoenas for the attendance of witnesses. Subpoenas for the attendance of witnesses may be issued in any and all matters which may lawfully come within the powers of the board and which, in the discretion of the board, require investigation. Local boards of education may request the chief district court judge or the judge's designee to grant approval for the local board of education to issue a subpoena for the production of all tangible things in matters where an employee is suspected of committing job-related misconduct and which, in the discretion of the board, require investigation. Subpoenas for the production of tangible things may 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 shall consider the following: (i) whether the subpoena allows reasonable time for compliance; (ii) if the subpoena requires disclosure of privileged or other protected matter and if any exception or waiver applies to the privilege or protection; (iii) whether the individual would be subject to undue burdens or expenses; and (iv) whether the subpoena is otherwise unreasonable or oppressive.

It shall be the duty of the sheriff or any process serving officer to serve any such subpoenas upon payment of their lawful fees.

Local boards of education shall have power to punish for contempt for any disorderly conduct or disturbance tending to disrupt them in the transaction of official business.

(b) Witness Failing to Appear; Misdemeanor. – Any witness who shall wilfully and without legal excuse fail to appear before a local board of education to testify in any manner under investigation by the board shall be guilty of a Class 3 misdemeanor.

(c) Appeals to Board of Education and to Superior Court. – An appeal shall lie to the local board of education from any final administrative decision in the following matters:

- (1) The discipline of a student under G.S. 115C-390.7, 115C-390.10, or 115C-390.11;
- (2) An alleged violation of a specified federal law, State law, State Board of Education policy, State rule, or local board policy, including policies regarding grade retention of students;
- (3) The terms or conditions of employment or employment status of a school employee; and
- (4) Any other decision that by statute specifically provides for a right of appeal to the local board of education and for which there is no other statutory appeal procedure.

As used in this subsection, the term "final administrative decision" means a decision of a school employee from which no further appeal to a school administrator is available.

Any person aggrieved by a decision not covered under subdivisions (1) through (4) of this subsection shall have the right to appeal to the superintendent and thereafter shall have the right to petition the local board of education for a hearing, and the local board may grant a hearing regarding any final decision of school personnel within the local school administrative unit. The local board of education shall notify the person making the petition of its decision whether to grant a hearing.

In all appeals to the board it is the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

The board of education may designate hearing panels composed of not less than two members of the board to hear and act upon such appeals in the name and on behalf of the board of education.

An appeal of right brought before a local board of education under subdivision (1), (2), or (4) of this subsection may be further appealed to the superior court of the State on the grounds that the local board's decision is in violation of constitutional provisions, is in excess of the statutory authority or jurisdiction of the board, is made upon unlawful procedure, is affected by other error of law, is unsupported by substantial evidence in view of the entire record as submitted, or is arbitrary or capricious. (1955, c. 1372, art. 5, ss. 15-17; 1971, c. 647; 1981, c. 423, s. 1; 1993, c. 539, s. 881; 1994, Ex. Sess., c. 24, s. 14(c); 2001-260, s. 1; 2001-500, s. 6; 2011-282, s. 5; 2013-360, s. 9.6(c); 2014-115, s. 65; 2016-116, s. 2.)