

Burgos, Alexander N

Subject: FW: [External] Re: SBE Temp Rule Request for Changes
Attachments: 16NCAC~1.DOC

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, January 18, 2024 2:36 PM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Collins, Ryan <Ryan.Collins@dpi.nc.gov>
Subject: FW: [External] Re: SBE Temp Rule Request for Changes

Attached is a final revised version of temporary rule 16 NCAC 06D .0510.

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Thursday, January 18, 2024 2:13 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Brewington, Denyse <Denyse.Brewington@dpi.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: SBE Temp Rule Request for Changes

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Seth,

My apologies, I didn't realize I was working off a prior draft. My work computer for some reason hates the names I give these documents so sometimes it's a hassle just to get them to save. In any event, the attached version should be correct.

Since this is an adoption rather than an amendment, shouldn't it just be strikethroughs and underlines without the highlighting? Or is adopting a temporary rule to replace an emergency rule considered an amendment?

Ryan

Burgos, Alexander N

Subject: FW: [External] Re: SBE Temp Rule Request for Changes

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Thursday, January 18, 2024 12:25 PM

To: Collins, Ryan <Ryan.Collins@dpi.nc.gov>; Brewington, Denyse <Denyse.Brewington@dpi.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] Re: SBE Temp Rule Request for Changes

Ryan,

This addresses my substantive concern. However, the version you sent of the new rule does not contain the correct history note or history note. It looks like you edited the emergency rule submission rather than the temporary rule submission. Please resend the corrected version of the rule.

Additionally, on line 12, you need to include the removed language struck through and highlighted. The new language should be underlined and highlighted. I.e. “at the beginning of the 2024-2025 school year or thereafter on or after July 1, 2024.”

Examples are also on our website if that is helpful. <https://www.oah.nc.gov/rule-format-examples#RuleFormatExamplesforPublicationintheNCAdministrativeCode-6054>

Let me know if you have any questions.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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Burgos, Alexander N

Subject: FW: [External] Re: SBE Temp Rule Request for Changes
Attachments: SBE Temp Rule RFC (Agency Response)_2024.01.docx; 16NCAC~1.DOC

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Wednesday, January 17, 2024 10:13 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Brewington, Denyse <Denyse.Brewington@dpi.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] Re: SBE Temp Rule Request for Changes

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Hi Seth,

I've attached a response to the Request for Changes as well as an updated version of 16 NCAC 06D .0510 consistent with my response to your request on that rule. Please see my response to your request on 16 NCAC 06G .0701. I'm happy to discuss further if you still have concerns.

Ryan

1 16 NCAC 06D .0510 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06D .0510 THREE-YEAR GRADUATION**

4 (a) For the purposes of this Rule, the following definitions shall apply:

5 (1) “Public school unit” or “PSU” is defined in G.S. 115C-5(7a). This Rule shall not apply to a charter school
6 unless the charter school has elected to offer a three-year sequence of courses under G.S. 115C-218.85, or to a
7 regional school unless the regional school has elected to offer a three-year sequence of courses under G.S. 115C-
8 238.66.

9 (2) “Superintendent” means the superintendent of a local school administrative unit or the staff member with the
10 highest decision-making authority for a public school unit, if there is no superintendent.

11 (b) A student enrolled in a PSU who requests to graduate from high school 3 years after entering Grade 9 shall do so
12 in accordance with this Rule. This Rule shall apply to a student who enters Grade 11 on or after July 1, 2024, and is
13 at least 16 years of age at the time of graduation.

14 (c) The student shall complete and sign a 3-year graduation request form provided by the student’s PSU. The form
15 must be signed by the student’s parent or legal guardian, unless the student is at least 18 years of age or has been
16 emancipated in accordance with Chapter 7B, Article 35 of the General Statutes.

17 (d) An administrator from the student’s high school or the PSU shall meet with the student and, if the student is under
18 18 years of age and not emancipated, the student’s parent or legal guardian, to discuss the implications of graduating
19 after three years. The administrator shall address, at minimum, the following topics:

20 (1) Plans for transitioning into higher education, employment, or enlistment in the Armed Forces of the
21 United States;

22 (2) Discontinued access to high school services and programming, including extracurricular activities and
23 interscholastic athletics; and

24 (3) Support structures available to the student in the high school environment, such as nutrition and school
25 counseling services, which will no longer be available upon graduation.

26 (e) The superintendent or designee shall verify that the student has met the minimum graduation requirements
27 established by the State Board of Education (“SBE”), as defined in 16 NCAC 06D .0503.

28 (f) The superintendent shall approve the request upon verification of the student’s eligibility and compliance with the
29 procedures set forth above, no later than 45 school days after receipt of a request. If the request is approved during the
30 semester after classes have started, the student may elect to graduate immediately or graduate at the end of the
31 semester. However, if the student does not submit the request until after classes have started, the student shall be
32 required to complete the current semester.

33 (g) PSUs shall provide students with information on how to graduate from high school within three years prior to the
34 student selecting the student’s course schedule for Grade 9. Such information shall include the topics listed in
35 Paragraph (d) in this Rule as well as a recommended course schedule to allow the student to satisfy the minimum
36 graduation requirements established by the SBE.

1

2 History Note: Authority G.S. 115C-12(9d); 115C-218.85; 115C-238.66;

3 Emergency Adoption Eff. Nov. 16, 2023.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06D .0510

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On lines 12 and 13, what defines “the beginning of the 2024-2025 school year”?

I have amended the text to say, “on or after July 1, 2024.” The revised rule is attached.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel

Date submitted to agency: January 16, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0701

DEADLINE FOR RECEIPT: January 26, 2024

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Regarding items (a)(4) and (a)(6), why does the rule create separate definitions for “practice” and “procedure”? Under your definitions, it appears that all procedures are practices, and the rule seems to handle complaints about practices and procedures in the same manner.

Chapter 115C, Article 7B, Part 4, as enacted by S.L. 2023-106, requires the governing bodies of public school units to adopt several procedures related to student physical and mental health, support services, and age appropriate instruction. G.S. 115-76.60 also requires those bodies to adopt procedures by which a parent can notify the principal of the parent’s child’s school “regarding concerns about a public school unit’s procedure or practice under this Part[.]” Subdivision (b)(1) of that section sets forth the process for parents to request a parental concern hearing from the SBE if the public school unit fails to resolve the parent’s concern regarding its “procedure or practice” within 30 days.

Given that the statute uses both the terms “procedure” and “practice,” the SBE felt it was important to define those terms in the rule to clarify what the SBE perceives is the intended scope of the right to a parental concern hearing. Using a combination of common dictionary definitions and the manner in which the term is used in other parts of the statute, the SBE defined a “procedure” as something the public school unit has formally adopted through policy. However, a public school unit may engage in a regular course of conduct, one that is *not* set forth in policy, that nevertheless falls within the scope of the right to a parental concern hearing. An informal but regular course of conduct is consistent with the dictionary definition of a practice. Thus, while I agree that the definitions are similar and the remedies are identical, the distinction is important for defining the scope of the right to a parental concern hearing.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Seth Ascher
Commission Counsel

Date submitted to agency: January 16, 2024

Burgos, Alexander N

From: Ascher, Seth M
Sent: Tuesday, January 16, 2024 4:43 PM
To: Collins, Ryan; Brewington, Denyse
Cc: Burgos, Alexander N
Subject: SBE Temp Rule Request for Changes
Attachments: SBE Temp Rule RFC.docx

Ryan,

I've reviewed the Temporary Rules submitted by the State Board of Education for the January 2024 RRC meeting. The RRC will formally review these Rules at its meeting on Wednesday, January 31, 2024, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Note that in this case, additional background information may be sufficient to answer the questions presented. Please submit the responses and any revised Rules and forms to me via email, no later than 5 p.m. on January 26, 2024.

Let me know if you have any questions.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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