

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

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06E .0204

DEADLINE FOR RECEIPT: Thursday, February 9, 2023.

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:

In (a)(3), line 8, I would move the parenthetical with the abbreviation for “public school unit” here, rather than down in (b), line 9.

In (d), p.2, line 11, please identify which Paragraph the requirement being referenced is in. I think you mean “this Paragraph”, but I’m not entirely sure.

In (e), line 13, the reference to G.S. 90-9 is incorrect, as 90-9 was repealed in 2007. Please correct.

In (g), line 30, how shall the principal “certify” the list? Signature, notarization, etc?

In (h), p.2, with respect to the rules allowing a PSU to impose penalties upon students, coaches, and schools, do your rules otherwise provide for how notice is to be given of the infraction? Or how these penalties may be appealed? G.S. 115C-407.55(4) states that appeals rules “shall establish an appeals process for enforcement of rules that provides for... notice of the infraction....” I see in (m) that there are notice provisions for when an AO imposes penalties, but it doesn’t seem that these apply to PSUs.

Do these rules provide a route for appeals for anyone other than a PSU from a decision made by an AO?

In (k), p.3, line 15, the Rule states that the Board “may” delegate the following list of things to the administering organization. How is this delegation made? Is it in the MOU? Under what circumstances will the Board decide to delegate?

In (k)(1), line 18, what are the “purpose[s]” of the student eligibility requirements? I don’t see them identified in this Rule, or in any statute. How can the administering organization make the determination that the requirement is not accomplishing its purpose when those purposes have not been identified?

In (k)(1), line 18, please define “undue hardship”.

Brian Liebman
Commission Counsel

Date submitted to agency: January 26, 2023

In (k)(2), line 23, consider adding a cross reference to G.S. 115C-407.55(3), as you made a similar cross reference in (k)(2) and (3).

Are the penalties referenced in (k)(2) different from those referenced in (h)? If not, then how is it decided which set of rules are enforced?

In (l)(1), am I correct in understanding that the MOU has to be renewed no later than March 15 every 4 years?

In (l)(2), line 34, define or delete “reputable”.

In (l)(4), p.4, line 2, please consider “such as” rather than “including.”

In (l)(6), line 9, what do you mean by “the first page” of a website?

In (m), does the language regarding appeals comply with the version of 115C-407.55(4) in the SL? The language of the SL says that the Board “shall establish an appeals process for enforcement of rules....” While Paragraph (m) does establish an appeals board, it limits its jurisdiction to “appeals from final decisions of an administering organization...” I understand that the Board has entered into a MOU with an AO, but the MOU is for a definite term (4 years, per Section 1.(c) of SL 2021-184 and G.S. 115C-407.60(a)), and G.S. 115C-407.60(b) does provide that if an MOU is not in place, the administration of HS athletics goes to DPI. Should the Rule not also provide for appeals from DPI, in the event the existing MOU is not renewed? Otherwise, in 4 years if for some reason you are unable to reach agreement on a renewed MOU, your Rule will need to be amended. Also see my note on (n) regarding schools not subject to an AO.

In (m)(1), what is the “administering organization’s notice”? It seems like this is notice from the AO to the PSU of the imposition of a penalty, but this is out of context, given that (m) governs appeals.

In (m)(2)D., line 29, please delete the first instance of “believe”.

Also in (m)(2)D., line 30, and in (m)(6), p. 5, lines 3-4, delete or define “substantial” in “substantial evidence”.

Similarly, on in (m)(2)D., line 30, and (m)(6), p.5, line 4, what does it mean for the decision to be “affected” by an error of law?

In (m)(3), line 33, delete “to” between “time” and “for”.

In (n), line 6, against whom is the PSU imposing penalties? The school? The principal? The coach? The student athlete? Would these penalties be appealable under the provisions of (m)?

Brian Liebman
Commission Counsel

Date submitted to agency: January 26, 2023

*In (n), lines 7-9, you state that if there is no AO governing a group of schools, the PSU may impose penalties. If the AO doesn't govern, then who adopts and enforces the rules that have been delegated to the AO in (k)? Moreover, because (m) limits jurisdiction of the appeals board to "hear and act upon appeals **from final decisions of an administering organization**" would schools not part of an AO have no right to an appeal?*

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

1 16 NCAC 06E .0204 is amended as published in 37:09 NCR 664-666 as follows:

2
3 **16 NCAC 06E .0204 INTERSCHOLASTIC ATHLETICS AND ADMINISTERING ORGANIZATIONS**
4 **FOR HIGH SCHOOL ATHLETICS**

5 (a) ~~Local Education Agencies (LEAs)~~Definitions:

6 (1) "Administering organization" is defined in G.S. 115C-407.50(1).

7 (2) "Participating school" is defined in G.S. 115C-407.50(7).

8 (3) "Public school unit" is defined in G.S. 115C-5(7a).

9 (b) Public school units (PSUs) are authorized to determine whether and to what extent students in grades ~~6-12~~ 6
10 through 12 may participate in interscholastic ~~athletics; provided, however, that~~athletics, provided students in ~~sixth~~
11 grade 6 are not eligible to participate in ~~tackle~~ football. This Rule shall not apply to charter school athletic programs
12 in kindergarten through grade 8.

13 ~~(b)(c) In order to qualify for participation~~To participate in public school interscholastic athletics, a student shall meet
14 the following requirements:

15 (1) ~~The~~A student shall meet the residence criteria of G.S. 115C-366(a) who attends a school supervised
16 by a local board of education ~~The student shall only participate only at in~~ the school to which the
17 student is assigned ~~by the LEA or, if under G.S. 115C-366. A student enrolled in a charter, regional,~~
18 statewide public school, or school operated by the University of North Carolina, must meet all the
19 enrollment criteria for that school and attend that school. If a student is over the age requirements,
20 for the school the student attends, the student may participate at the school to which the student
21 would be assigned or attend at the next higher grade level.

22 (2) ~~The~~A student shall meet the age requirements at each grade level to participate. The principalPSUs
23 shall have determine the age of participating students based on a preponderance of the evidence of
24 the legal birth date of the student known to them. A student ~~who is~~ineligible to participate at one
25 grade level due to age ~~is~~shall be eligible to participate at the next higher grade level ~~only.~~
26 ~~However, only, provided~~ no student isshall be eligible to participate at the middle school level for a
27 period lasting longer than six consecutive semesters, beginning with the student's entry into ~~sixth~~
28 grade-grade 6, and ~~None~~ no student shall be eligible to participate at the high school level for more
29 than eight consecutive semesters, beginning with the student's first entry into grade ~~nine~~9 or
30 participation on a high school team, whichever occurs first.

31 (A) A student shall not participate on a ~~sixth, seventh, or eighth~~grade 6, 7, or 8 team if the
32 student becomes 15 years of age on or before August 31 of that school year.

33 (B) A student shall not participate on a ~~ninth~~grade 9 through 12 ~~junior high school~~team if the
34 student becomes ~~16~~19 years of age on or before August 31 of that school year.

35 (C) ~~A student is eligible to participate in high school athletic contests during a school year if~~
36 ~~the student does not reach his or her 19th birthday on or before August 31 of that school~~
37 ~~year.~~

1 ~~(e)~~(d) To be eligible to ~~compete~~participate during any semester in grades 6, 7, ~~and~~ 8, the student shall have passed
2 at least one less course than the number of required core courses the ~~immediate~~-prior semester and meet promotion
3 standards established by the LEA-PSU, provided a student who is promoted from grade 5 to grade 6 shall be deemed
4 to have satisfied the requirement set forth in this Paragraph to participate in the first semester of grade 6. To be eligible
5 to compete during any semester in grades ~~9-12~~9 through 12, the student shall have passed at least five courses (or the
6 equivalent for non-traditional school schedules) the ~~immediate~~-prior semester and meet promotion standards
7 established by the LEA. ~~Regardless of the school organization pattern, PSU, provided a student who is promoted from~~
8 ~~the fifth grade to the sixth grade automatically meets the courses passed requirement for the first semester of the sixth~~
9 ~~grade. Regardless of the school organization pattern,~~ a student who is promoted from ~~the eighth grade~~ 8 to the ninth
10 grade 9 automatically meets the courses passed requirement for the first semester of the ninth grade shall be deemed
11 to have satisfied the requirement set forth in Paragraph to participate in the first semester of grade 9.

12 ~~(d)~~(e) ~~The~~To be eligible to participate, a student shall receive a medical examination ~~each year~~every 395 days by a
13 licensed physician, nurse practitioner, or physician assistant, subject to the provisions of G.S. 90-9, 90-18.1, and 90-
14 18.2.

15 ~~(e)~~(f) ~~The~~A student shall not participate in interscholastic athletics after any of the following:

- 16 (1) ~~graduation;~~ graduation, except that the student may continue to participate in playoff and state
17 championship contests in spring sports after graduation;
- 18 ~~(2)~~ ~~becoming eligible to graduate;~~
- 19 ~~(3)~~(2) signing a professional athletic ~~contact;~~contract, except that the student may continue to participate
20 in any sport for which the student has not signed a professional contract;
- 21 ~~(4)~~(3) receiving remuneration as a participant in an athletic ~~contest, or~~contest, except that the student may
22 accept a gift, merchandise, trophy, or other thing of value, provided:
 - 23 (A) the value does not exceed two hundred fifty dollars (\$250.00) per student per sports season;
 - 24 (B) the item is totally consumable and nontransferable, or labeled in a permanent manner, for
25 example, monogrammed or engraved items; and
 - 26 (C) the item is approved by the student's principal and superintendent; or
- 27 ~~(5)~~(4) participating on an all-star team or in an all-star game that is not sanctioned by the
28 association~~administering organization~~ of which the student's school is a ~~member. The~~member,
29 provided the student is ~~shall be~~ ineligible only for the specific sport involved.

30 ~~(f)~~(g) Each PSU shall require the principal of a school that participates in interscholastic athletics ~~shall~~to certify a list
31 of eligible students for each sport.

32 ~~(g)~~(h) ~~Any~~A PSU shall impose at least the following penalties on a student, student athlete, coach, or school official
33 in grades ~~6-12~~6 through 12 who is ejected from ~~any~~an interscholastic athletic contest ~~shall at least be penalized as~~
34 follows:

- 35 (1) for the first offense, the person shall be reprimanded and suspended from participating in~~for~~ the next
36 game at that level of play (varsity or junior varsity); ~~varsity~~ and for any intervening games at either
37 level;

1 (2) for a second offense, the person shall be placed on probation and suspended from participating in
2 for the next two games at that level of play (varsity or junior varsity); varsity) and for any intervening
3 games at either level;

4 (3) for a third offense, the person shall be suspended for one calendar year; and

5 (4) a coach who is suspended at any level of grades 6-12 (middle school, junior high or high school)
6 shall not coach any team for in any other grade level in grades 6-12 during the period of suspension.

7 ~~(5)~~ Penalties are cumulative from sport to sport and from sport season to sport season. If no member of the school's
8 coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.

9 ~~(h)(i)~~ LEAs PSUs may allow their schools to belong to the North Carolina High School Athletic Association
10 (NCHSAA), which has established as a minimum the rules adopted by the SBE, an administering organization
11 designated by the State Board of Education. The NCHSAA

12 (j) An administering organization that has entered into a memorandum of understanding with the State Board of
13 Education for the purpose of administering interscholastic athletics under this Rule must apply and enforce all of the
14 requirements of this Rule.

15 (k) The State Board of Education may delegate to an administering organization its authority over participating schools
16 to:

17 (1) waive any student eligibility requirement contained in this Rule, ~~except the age requirement,~~ if it
18 finds that the ~~rule~~ requirement fails to accomplish its purpose, or it works an undue hardship on a
19 student who has lost eligibility due to circumstances that made participation impossible such as
20 prolonged illness or injury. The NCHSAA may enforce penalties for the violation of this Rule at the
21 high school level. injury or if a waiver is necessary to reasonably accommodate a student's
22 disability, as required under the Americans with Disabilities Act, U.S.C. § 1201 et seq.;

23 (2) adopt, apply, and enforce penalty rules that establish a system of demerits that includes reprimands,
24 probations, suspensions, forfeitures of contests, forfeitures of titles, and disqualifications;

25 (3) adopt, apply, and enforce administrative rules, as defined in G.S. 115C-407.55(5);

26 (4) adopt, apply, and enforce gameplay rules, as defined in G.S. 115C-407.55(6); and

27 (5) establish and collect from all its members a uniform membership fee of either:

28 (A) one thousand dollars (\$1,000) for each participating school, or

29 (B) one dollar (\$1.00) for each student enrolled in a participating school.

30 (l) An administering organization shall:

31 (1) enter into a memorandum of understanding with the State Board of Education no later than March
32 15 prior to the academic year in which it is to begin administering interscholastic athletics and before
33 each subsequent renewal of a memorandum of understanding;

34 (2) be audited by a reputable independent auditing firm and submit the audit to the State Board of
35 Education no later than March 15 each year;

36 (3) broadcast the meetings of its membership and board of directors in a manner that is announced on
37 its website and which may be viewed electronically by any member of the public;

1 (4) provide to the State Board of Education within 30 days any requested organizational records,
2 including, financial information, annual audit reports, and any matters related to or impacting
3 participating schools;

4 (5) enter into written agreements with PSUs that allow their eligible schools to participate in
5 interscholastic sports, which agreements shall include an explanation of the fees to be charged, the
6 obligations of the PSU and participating schools, penalties for the violation of this Rule at the high
7 school level that may be imposed, and an explanation of the process to contest or appeal adverse
8 decisions; and

9 (6) publish the organization's rules through a link on the first page of its website.

10 (m) The State Board of Education will appoint an appeals board to hear and act upon appeals from final decisions of
11 an administering organization regarding student eligibility, penalties, fees imposed, retaliation, or discrimination.
12 Panels of no fewer than three members of the appeals board may hear and decide matters on behalf of the board. A
13 PSU aggrieved by a final decision of the administering organization may file an appeal with the State Board of
14 Education's Office of General Counsel within five days after receipt of the administering organization's final decision.
15 The notice shall be mailed to the Superintendent or board of trustees of the PSU.

16 (1) The administering organization's notice shall contain:

17 A. findings of fact;

18 B. conclusions of law, including citation to any rules related to the decision;

19 C. a description of any penalties; and

20 D. a statement that the PSU may file a notice of appeal within five days of receipt of the
21 administering organization's decision by mailing the notice to the State Board of
22 Education's Office of General Counsel, 301 S. Wilmington Street, Raleigh, N.C. 27601,
23 and emailing a copy of the notice of appeal to Office of General for the State Board of
24 Education.

25 (2) The PSU's appeal shall:

26 A. be in writing;

27 B. include a description of the facts of the dispute;

28 C. include any evidence submitted to the administering organization; and

29 D. present an argument explaining why the PSU believe believes the administering
30 organization's final decision was not based on substantial evidence or is affected by an
31 error of law.

32 (3) The administering organization may file a response to the PSU's submissions within five days. The
33 panel may shorten the time to for filing the administering organization's response if the decision
34 affects a student's or coach's eligibility to participate in an intervening athletic contest.

35 (4) All documents filed in the appeal shall be simultaneously served on all parties in the manner
36 prescribed in G.S. 1A-1, Rule 5 of the North Carolina Rules of Civil Procedure.

37 (5) Any hearing shall be recorded.

1 (6) No later than 30 days after the State Board of Education's receipt of the appeal, a panel of the appeals
2 board shall issue its decision. The panel shall affirm the administering organization's final decision
3 unless a majority of the panel determines that the final decision is not supported by substantial
4 evidence or is affected by an error of law.

5 (7) The panel's decision shall be final.

6 ~~(n)~~ The LEAPSU that has jurisdiction over the high-a school may impose additional penalties, penalties in addition
7 to those imposed by an administering organization. If there is no administering organization governing a group of
8 schools, a PSU LEAs or conferences may adopt and impose penalties at the middle and junior high school levels for
9 schools under its jurisdiction.

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11 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50, 115C-407.55; 115C-407.60;*
12 *115C-407.65; 116-235(b);*
13 *Emergency Adoption Eff. August 20, 2019;*
14 *Amended Eff. March 1, 2021;*
15 *Temporary Amendment Eff. July 1, 2022*
16 *Amended Eff. July 1, 2023.*
17