

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- A serious and unforeseen threat to the public health, safety or welfare.
- The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2023-133, Parts XVII & XVIII
Effective date: 9/22/23
- A recent change in federal or state budgetary policy.
Effective date of change:
- A recent federal regulation.
Cite:
Effective date:
- A recent court order.
Cite order:
- State Medical Facilities Plan.
- Other:

Explain: On September 22, 2023, the General Assembly enacted S.L. 2023-133, which made significant changes to state laws governing interscholastic athletic activities in public school units. The legislation directed the State Board of Education to adopt new temporary rules to implement the requirements of the legislation in time for the 2024-2025 school year. The SBE has adopted these temporary rules to satisfy this legislative requirement and address such topics as the administration of interscholastic athletics, student health and safety, student participation requirements, amateur rules, penalties, and the appeals process.

In accordance with S.L. 2023-133, Section 19.(a), the SBE submitted a request for consultation to the Joint Legislative Commission on Governmental Operations on January 5, 2024, and received feedback from Senior Majority Counsel Andrew Hatch on February 16, 2024. Much of the feedback from the consultation has been incorporated into the final rules adopted by the SBE.

The rules include amendments to two existing rules and the adoption of seven new rules. I have submitted a request to waive RRC Rule 26 NCAC 02C .0102 for the purpose of reusing two rule numbers for rules that have expired, 16 NCAC 06E .0201 and 06E .0205, though I have not received any information as to the status of that waiver request. I believe the waiver is justified because the new rules are on the same subject matter as the expired rules.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Immediate adoption of the rule is required because S.L. 2023-133 mandates that the SBE adopt new temporary rules in time for the 2024-2025 school year. As a practical matter, that means the new rules need to be in place by July 1, 2024, to enable administering organizations and public-school units to prepare for fall sports. In addition, the SBE believes it is necessary to give those affected by the rules (including students) as much advanced awareness of the new rules as possible.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Ryan Collins

Phone: 984-236-2255

E-Mail: ryan.collins@dpi.nc.gov

Agency contact, if any: Denyse Brewington

Phone: 984-236-2259

E-Mail: denyse.brewington@dpi.nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Eric C. Davis

Title: Chair, State Board of Education

E-Mail: eric.davis@dpi.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

1 16 NCAC 06E .0201 is adopted under temporary procedures as follows:

2
3 **SECTION .0200 – INTERSCHOLASTIC ATHLETICS**

4
5 **16 NCAC 06E .0201 DEFINITIONS**

6 As used in this Section, the following definitions apply:

7 (1) “Administering organization” is defined in G.S. 115C-407.50(1).

8 (2) “Aggrieved party” means a student, coach, participating school, PSU, or other party that is directly and
9 adversely affected by a final decision of an administering organization that applies or enforces the rules
10 established by this Section, including a determination of ineligibility under Rule ~~.0207~~ 0207, a penalty imposed
11 under Rule ~~.0209~~ .0209, or a finding of undue influence or a recruiting violation under Rule .0210. If a student
12 is affected, the student’s parent shall be allowed to appeal the final decision pursuant to Rule ~~.0210~~ .0215.

13 (3) “Bona fide purpose” means for a purpose not primarily related to participation in interscholastic athletics.

14 (4) “High school” means a public school offering education in Grades 9 through 12 or 10 through 12.

15 (5) “Initial entry” means:

16 (A) a student’s first day of attendance at a participating school in which the student is enrolled as
17 recorded by that school; or

18 (B) the first day on which a student practices or otherwise participates as a member of an interscholastic
19 athletics team at a participating school.

20 (6) “Interscholastic athletics” or “interscholastic athletic activity” means any extracurricular athletic activity
21 that:

22 (A) involves students in any ~~grade between 6 and 12~~; Grades 6 through 12;

23 (B) is sponsored by an individual school, PSU, or administering organization; and

24 (C) includes students from more than one school or PSU.

25 (7) “Junior high school” means a public school offering education in Grades 7 through 9.

26 (8) “Local superintendent” means the superintendent of a local school administrative unit, as provided in
27 Chapter 115C, Article 18 of the General Statutes, or the staff member with the highest decision-making authority
28 for a PSU, if there is no superintendent.

29 (9) “Middle school” means a public school offering education in Grades 6 through 8.

30 (10) “Parent” is defined in G.S. ~~115C-407.50(6)~~ 115C-407.50(6).

31 (11) “Participating school” ~~is defined in G.S. 115C-407.50(7)~~. means a middle school, junior high school, or
32 high school that elects to participate in interscholastic athletic activities.

33 (12) “Principal” means a school administrator employed as the principal of a school, as provided in Chapter
34 115C, Article 19 of the General Statutes, or the staff member with the highest decision-making authority at a
35 school, if there is no principal.

36 (13) “Public school unit” or “PSU” is defined in G.S. 115C-5(7a).

37 (14) “Student” means a person enrolled in Grade 6 through 12 in any public school.

1

2 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*
3 *115C-407.65; 116-235(b);*

4 *Temporary Adoption Eff. July 1, 2024.*

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8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

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Consultation not required. Cite authority:

No

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Phone: 984-236-2255

E-Mail: ryan.collins@dpi.nc.gov

Agency contact, if any: Denyse Brewington

Phone: 984-236-2259

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10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Eric C. Davis

Title: Chair, State Board of Education

E-Mail: eric.davis@dpi.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

1 16 NCAC 06E .0204 is amended under temporary procedures as follows:

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

5 (a) 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" (PSU) is defined in G.S. 115C 5(7a).~~

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

12 (c) ~~To participate in public school interscholastic athletics, a student shall meet the following requirements:~~

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

19 (2) ~~A student shall meet the age requirements at each grade level to participate. PSUs shall determine~~
20 ~~the age of participating students based on a preponderance of the evidence known to them. A student~~
21 ~~ineligible to participate at one grade level due to age shall be eligible to participate at the next higher~~
22 ~~grade level only, provided no student shall be eligible to participate at the middle school level for a~~
23 ~~period lasting longer than six consecutive semesters, beginning with the student's entry into grade~~
24 ~~6, and no student shall be eligible to participate at the high school level for more than eight~~
25 ~~consecutive semesters, beginning with the student's first entry into grade 9 or participation on a high~~
26 ~~school team, whichever occurs first.~~

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

29 (B) ~~A student shall not participate on a grade 9 through 12 team if the student becomes 19 years~~
30 ~~of age on or before August 31 of that school year.~~

31 (d) ~~To be eligible to participate during any semester in grades 6, 7, or 8, the student shall have passed at least one less~~
32 ~~course than the number of required core courses the prior semester and meet promotion standards established by the~~
33 ~~PSU, provided a student who is promoted from grade 5 to grade 6 shall be deemed to have satisfied the requirement~~
34 ~~set forth in this Paragraph to participate in the first semester of grade 6. To be eligible to compete during any semester~~
35 ~~in grades 9 through 12, the student shall have passed at least five courses (or the equivalent for non-traditional school~~
36 ~~schedules) the prior semester and meet promotion standards established by the PSU, provided a student who is~~

1 promoted from grade 8 to grade 9 shall be deemed to have satisfied the requirement set forth in this Paragraph to
2 participate in the first semester of grade 9.

3 (e) ~~To be eligible to participate, a student shall receive a medical examination every 395 days by a licensed physician,~~
4 ~~nurse practitioner, or physician assistant, subject to the provisions of G.S. 90-9.1, G.S. 90-9.2, G.S. 90-9.3, G.S. 90-~~
5 ~~18.1, and G.S. 90-18.2.~~

6 (f) A student shall not participate in interscholastic athletics after any of the following:

7 (1) ~~graduation, except that the student may continue to participate in playoff and state championship~~
8 ~~contests in spring sports after graduation;~~

9 (2) ~~signing a professional athletic contract, except that the student may continue to participate in any~~
10 ~~sport for which the student has not signed a professional contract;~~

11 (3) ~~receiving remuneration as a participant in an athletic contest, except that the student may accept a~~
12 ~~gift, merchandise, trophy, or other thing of value, provided:~~

13 (A) ~~the value does not exceed two hundred fifty dollars (\$250.00) per student per sports season;~~

14 (B) ~~the item is totally consumable and nontransferable, or labeled in a permanent manner, for~~
15 ~~example, monogrammed or engraved items; and~~

16 (C) ~~the item is approved by the student's principal and superintendent; or~~

17 (4) ~~participating on an all star team or in an all star game that is not sanctioned by the administering~~
18 ~~organization of which the student's school is a member, provided the student shall be ineligible only~~
19 ~~for the specific sport involved.~~

20 (g) Each PSU shall require the principal of a school that participates in interscholastic athletics to sign and date a list
21 of eligible students for each sport. The PSU shall maintain copy of the most current list in the principal's office and
22 the office of the superintendent.

23 (h) A PSU shall impose at least the following penalties on a student, coach, or school official in grades 6 through 12
24 who is ejected from an interscholastic athletic contest:

25 (1) ~~for the first offense, the person shall be reprimanded and suspended from participating in for the next~~
26 ~~game at that level of play (varsity or junior varsity);~~

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

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

30 (4) ~~a coach who is suspended shall not coach any team for any grade level during the period of~~
31 ~~suspension.~~

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

34 (i)(a) ~~PSUs~~ Public school units may allow ~~their schools~~ high schools under their jurisdiction to belong to an
35 administering organization designated by the ~~State Board of Education~~ Superintendent of Public Instruction
36 ("Superintendent").

1 ~~(j)~~(b) An administering organization that has entered into a memorandum of understanding with the ~~State Board of~~
2 ~~Education Superintendent~~ for the purpose of administering interscholastic athletics under this ~~Rule Section~~ shall apply
3 and enforce all of the requirements of this ~~Rule Section~~. An administering organization shall provide training and
4 resources to ensure that all students, parents, and PSU personnel involved in the administration of interscholastic
5 athletics understand and comply with the provisions of this Section.

6 ~~(k)~~(c) ~~The State Board of Education shall delegate to an administering organization its authority over participating~~
7 ~~schools to: If the Superintendent enters a memorandum of understanding with one or more administering organizations~~
8 consistent with G.S. 115C-407.61, the SBE shall delegate to the administering organization(s) its authority over
9 participating high schools to:

10 (1) ~~waive any student eligibility requirement contained in this Rule, if it finds in a particular case that~~
11 ~~the requirement fails to promote academic progress, health, safety, and fair play, or it works an~~
12 ~~undue hardship on a student who has lost eligibility due to circumstances that made participation~~
13 ~~impossible such as prolonged illness or injury or if a waiver is necessary to reasonably accommodate~~
14 ~~a student's disability, as required under the Americans with Disabilities Act, U.S.C. § 1201 et seq.;~~

15 (1) Apply and enforce student participation rules, as established in Rule .0207 of this Section.

16 (2) ~~[waive]~~ Waive any student participation rule as applied to a specific student, in accordance with
17 Rule .0207, Paragraph (k) of this Section.

18 (3) Apply and enforce student health and safety requirements, as established in Rule .0205 of this
19 Section.

20 ~~(2)~~(4) ~~adopt, Adopt, apply, and enforce penalty rules, as defined in G.S. 115C-407.55(3); G.S. 115C-~~
21 ~~407.55(3), that establish a system of demerits that includes reprimands, probations, suspensions,~~
22 ~~forfeitures of contests, forfeitures of titles, and disqualifications; disqualifications, consistent with~~
23 Rule .0209 of this Section.

24 ~~(3)~~(5) ~~adopt, Adopt, apply, and enforce administrative rules, as defined in G.S. 115C-407.55(5); G.S.~~
25 115C-407.55(5).

26 ~~(4)~~(6) ~~adopt, Adopt, apply, and enforce gameplay rules, as defined in G.S. 115C-407.55(6); and G.S. 115C-~~
27 407.55(6).

28 ~~(5)~~(7) ~~establish and collect~~ Collect from all its members a uniform membership fee of either:

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

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

31 ~~(j)~~(d) An administering organization shall:

32 (1) ~~enter~~ Enter into a memorandum of understanding, consistent with the requirements of G.S. 115C-
33 407.55(8) and 115C-407.61, with the ~~State Board of Education Superintendent~~ no later than March 15
34 prior to the academic year in which it is to begin administering interscholastic athletics and no later than
35 the March 15 before the expiration of an existing memorandum of understanding;

36 (2) ~~submit~~ Submit an audit report signed by an independent certified public accountant or accounting firm,
37 which is in good standing with the North Carolina State Board of Certified Public Accountant Examiners

1 and performs no other tasks or functions for the administering organization besides the annual audit, to
2 the State Board of Education no later than March 15 each year;

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

5 (4) ~~provide~~ Provide to the State Board of Education within 30 days any requested organizational records,
6 such as, financial information, annual audit reports, and any matters related to or impacting participating
7 schools;

8 (5) ~~enter~~ Enter into written agreements with PSUs that allow their eligible schools to participate in
9 interscholastic ~~sports, athletics,~~ which agreements shall include an explanation of the fees to be charged,
10 the obligations of the PSU and participating schools, penalties for the violation of this ~~Rule at the high~~
11 ~~school level~~ Section that may be imposed, and an explanation of the process to file an appeal pursuant
12 to Rule .0215 of this Section; and

13 (6) ~~publish~~ Publish the organization's rules through a link on the home page of its website.

14 (e) Any person or PSU seeking to inquire about or report a violation of any rule administered by an administering
15 organization shall direct the initial inquiry or report to the appropriate administering organization in accordance with
16 the procedures adopted by the administering organization. For any matter involving the enforcement of any
17 interscholastic athletics rule provided by this Section, the administering organization shall render a final decision in
18 writing within ten (10) business days. An aggrieved party seeking to file an appeal of a final decision of an
19 administering organization with the Superintendent shall do so in accordance with Rule .0215 of this Section.

20 (f) A PSU, participating school, PSU employee, or student seeking to report allegations of intimidation or harassment
21 by an administering organization shall file a report with the Superintendent. The report shall be in writing and include
22 a detailed description of the factual basis for the allegations.

23 (g) In the event that the Superintendent is unable to enter a memorandum of understanding with one or more
24 administering organizations in accordance with this Rule, the State Board of Education shall delegate all authority and
25 responsibility provided to an administering organization by this Section to the Superintendent.

26 (h) The Superintendent shall be responsible for general oversight of interscholastic athletic activities at participating
27 middle and junior high schools. Public school units shall apply and enforce the requirements of this Section for
28 participating middle and junior high schools under their jurisdiction. A PSU may also waive any student participation
29 rule as applied to a specific student enrolled at a middle or junior high school under the jurisdiction of the PSU, in
30 accordance with Rule .0207, Paragraph (k) of this Section.

31 ~~(m) The State Board of Education will appoint an appeals board to hear and act upon appeals from final decisions of~~
32 ~~an administering organization, or from the Department of Public Instruction if necessary pursuant to G.S. 115C-~~
33 ~~407.60(b), regarding student eligibility, penalties, fees imposed, retaliation, or discrimination. Panels of no fewer than~~
34 ~~three members of the appeals board may hear and decide matters on behalf of the board. A PSU aggrieved by a final~~
35 ~~decision of the administering organization may file an appeal with the State Board of Education's Office of General~~
36 ~~Counsel within five days after receipt of the administering organization's final decision. The final decision shall be~~
37 ~~mailed to the Superintendent or board of trustees of the PSU.~~

1 ~~(1) The administering organization's final decision shall contain:~~

2 ~~(A) findings of fact;~~

3 ~~(B) conclusions of law, including citation to any rules related to the decision;~~

4 ~~(C) a description of any penalties; and~~

5 ~~(D) a statement that the PSU may file a notice of appeal within five days of receipt of the~~
6 ~~administering organization's decision by mailing the notice to the State Board of Education's~~
7 ~~Office of General Counsel, 301 S. Wilmington Street, Raleigh, N.C. 27601, and emailing a~~
8 ~~copy of the notice of appeal to Office of General for the State Board of Education.~~

9 ~~(2) The PSU's appeal shall:~~

10 ~~(A) be in writing;~~

11 ~~(B) include a description of the facts of the dispute;~~

12 ~~(C) include any evidence submitted to the administering organization; and~~

13 ~~(D) present an argument explaining with the PSU believes the administering organization's final~~
14 ~~decision was not based on substantial evidence as defined in G.S. 150B 2(8c) or is affected by~~
15 ~~an error of law.~~

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

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

21 ~~(5) Any hearing shall be recorded.~~

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

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

27 ~~(n) The PSU that has jurisdiction over a school may impose penalties in addition to those required by an administering~~
28 ~~organization.~~

29
30 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50, 115C-407.55; 115C-407.60;*
31 *115C-407.65; 116-235(b);*
32 *Emergency Adoption Eff. August 20, 2019;*
33 *Amended Eff. March 1, 2021;*
34 *Temporary Amendment Eff. July 1, 2022;*
35 *Amended Eff. July 1, 2023;*
36 *Temp. Amend. Eff. July 1, 2024.*
37

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Cite order:
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- Other:

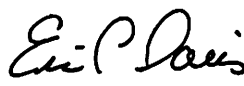
Explain: On September 22, 2023, the General Assembly enacted S.L. 2023-133, which made significant changes to state laws governing interscholastic athletic activities in public school units. The legislation directed the State Board of Education to adopt new temporary rules to implement the requirements of the legislation in time for the 2024-2025 school year. The SBE has adopted these temporary rules to satisfy this legislative requirement and address such topics as the administration of interscholastic athletics, student health and safety, student participation requirements, amateur rules, penalties, and the appeals process.

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8. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	
9. Rule-making Coordinator: Ryan Collins Phone: 984-236-2255 E-Mail: ryan.collins@dpi.nc.gov	10. Signature of Agency Head*:  <hr/> * If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Eric C. Davis Title: Chair, State Board of Education E-Mail: eric.davis@dpi.nc.gov
Agency contact, if any: Denyse Brewington Phone: 984-236-2259 E-Mail: denyse.brewington@dpi.nc.gov	

RULES REVIEW COMMISSION USE ONLY	
Action taken: <input type="checkbox"/> Date returned to agency:	Submitted for RRC Review:

1 16 NCAC 06E .0205 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06E .0205 STUDENT HEALTH AND SAFETY REQUIREMENTS FOR**
4 **INTERSCHOLASTIC ATHLETIC COMPETITION**
5

6 (a) For purposes of this Rule, a concussion is defined as a traumatic brain injury caused by a direct or indirect impact
7 to the head that results in disruption of normal brain function, which may or may not result in loss of consciousness.

8 (b) An administering organization shall, on an annual basis, provide a concussion and head injury information sheet
9 to all coaches, school nurses, athletic directors, first responders, volunteers, and students who participate ~~in~~
10 interscholastic athletic activities, and the parents or legal guardians of those students. The information shall include:

11 (1) The definitions and symptoms of concussions and head injuries;

12 (2) A description of the physiology and the potential short-term and long-term effects of concussions and other
13 head injuries;

14 (3) The medical return-to-play protocol for post-concussion participation in interscholastic athletic activities;
15 and

16 (4) Any other information deemed necessary by the PSU.

17 (c) School employees, first responders, volunteers, and students shall sign the information sheet and return it to the
18 coach before participating in interscholastic athletic activities, including tryouts, practices, or competition. Parents
19 shall sign the information sheet and return it to the coach before a child may participate in any such interscholastic
20 athletic activities. The signed sheets shall be maintained in accordance with Rule .0207, Paragraph (b) of this Section.

21 (d) If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with
22 concussion, the student shall be removed from the activity at the time and shall not be allowed to return to play or
23 practice that day. A student removed from play for exhibiting signs or symptoms consistent with concussion shall not
24 return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such
25 participation from one of the following:

26 (1) A physician licensed under Chapter 90, Article 1 of the General Statutes with training in concussion
27 management;

28 (2) A neuropsychologist licensed under Chapter 90, Article 18A of the General Statutes with training in
29 concussion management and working in consultation with a physician licensed under Chapter 90, Article 34
30 of the General Statutes;

31 (3) An athletic trainer licensed under Chapter 90, Article 34 of the General Statutes;

32 (4) A physician assistant, consistent with the limitations of G.S. 90-18.1; or

33 (5) A nurse practitioner, consistent with the limitations of G.S. 90-18.2.

34 (e) Each participating school shall develop a venue-specific emergency action plan to deal with serious injuries and
35 acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan must be:

36 (1) In writing;

37 (2) Reviewed by an athletic trainer licensed under Chapter 90, Article 34 of the General Statutes;

- 1 (3) Approved by the principal of the school;
- 2 (4) Distributed to all appropriate personnel;
- 3 (5) Posted conspicuously for community and parental awareness at all athletic-sponsored venues; and
- 4 (6) Reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses,
- 5 athletic directors, and volunteers for interscholastic athletic activities.

6 (f) Each participating school’s emergency management plan shall include:

- 7 (1) A delineation of roles;
- 8 (2) Methods of communication;
- 9 (3) Available emergency equipment; and
- 10 (4) Access to and plan for emergency transport.

11 (g) Each school shall maintain complete and accurate records of its compliance with the requirements of this Rule.

12

13 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-*
14 *407.50; 115C-407.55; 115C-407.57; 115C-407.58; 115C-407.60;*
15 *Temporary Rule Eff. July 1, 2024.*

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- A serious and unforeseen threat to the public health, safety or welfare.
- The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2023-133, Parts XVII & XVIII
Effective date: 9/22/23
- A recent change in federal or state budgetary policy.
Effective date of change:
- A recent federal regulation.
Cite:
Effective date:
- A recent court order.
Cite order:
- State Medical Facilities Plan.
- Other:

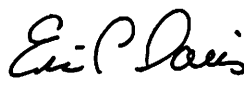
Explain: On September 22, 2023, the General Assembly enacted S.L. 2023-133, which made significant changes to state laws governing interscholastic athletic activities in public school units. The legislation directed the State Board of Education to adopt new temporary rules to implement the requirements of the legislation in time for the 2024-2025 school year. The SBE has adopted these temporary rules to satisfy this legislative requirement and address such topics as the administration of interscholastic athletics, student health and safety, student participation requirements, amateur rules, penalties, and the appeals process.

In accordance with S.L. 2023-133, Section 19.(a), the SBE submitted a request for consultation to the Joint Legislative Commission on Governmental Operations on January 5, 2024, and received feedback from Senior Majority Counsel Andrew Hatch on February 16, 2024. Much of the feedback from the consultation has been incorporated into the final rules adopted by the SBE.

The rules include amendments to two existing rules and the adoption of seven new rules. I have submitted a request to waive RRC Rule 26 NCAC 02C .0102 for the purpose of reusing two rule numbers for rules that have expired, 16 NCAC 06E .0201 and 06E .0205, though I have not received any information as to the status of that waiver request. I believe the waiver is justified because the new rules are on the same subject matter as the expired rules.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Immediate adoption of the rule is required because S.L. 2023-133 mandates that the SBE adopt new temporary rules in time for the 2024-2025 school year. As a practical matter, that means the new rules need to be in place by July 1, 2024, to enable administering organizations and public-school units to prepare for fall sports. In addition, the SBE believes it is necessary to give those affected by the rules (including students) as much advanced awareness of the new rules as possible.

8. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	
9. Rule-making Coordinator: Ryan Collins Phone: 984-236-2255 E-Mail: ryan.collins@dpi.nc.gov	10. Signature of Agency Head*:  <hr/> * If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Eric C. Davis Title: Chair, State Board of Education E-Mail: eric.davis@dpi.nc.gov
Agency contact, if any: Denyse Brewington Phone: 984-236-2259 E-Mail: denyse.brewington@dpi.nc.gov	

RULES REVIEW COMMISSION USE ONLY	
Action taken: <input type="checkbox"/> Date returned to agency:	Submitted for RRC Review:

1 16 NCAC 06E .0206 is amended under temporary procedures as follows:

2
3 **16 NCAC 06E .0206 ATHLETIC TRAINERS**

4
5 (a) Each ~~Local Education Agency (LEA)~~PSU shall designate for each participating high school within its
6 jurisdiction either a licensed athletic trainer who is qualified pursuant to ~~Article 34 of Chapter 90~~Chapter 90, Article
7 ~~34~~ of the General Statutes of North Carolina or a first responder. These persons may be employed on a full-time or
8 part-time basis or may serve as a volunteer.

9 (b) If not a licensed athletic trainer, a first responder shall:

- 10 (1) ~~have completed and continue to~~Complete and maintain certification in cardiopulmonary resuscitation as
11 certified by an organization such as the American Red Cross or the American Heart Association;
12 (2) ~~have completed and continue to~~Complete and maintain certification in first aid as certified by an
13 organization such as the American Red Cross or the American Heart Association;
14 (3) ~~have completed and continue to~~Complete and maintain training in concussion management as offered by
15 an organization such as the National Federation of State High School Associations (~~NFHS~~); (“NFHS”);
16 (4) ~~have completed and continue to~~Complete and maintain continuing education in injury prevention and
17 management as offered by an organization such as the ~~National Federation of State High School~~
18 ~~Associations (NFHS); NFHS;~~ and
19 (5) ~~complete~~Complete 10 hours total of staff development each school year specific to first aid and injury
20 recognition and prevention. The 10 hours may include hours necessary for recertifications or renewals.

21 (c) The licensed athletic trainer or first responder shall not have concurrent coaching responsibilities during the time
22 in which the person is working as a licensed athletic trainer or first responder.

23 (d) A licensed athletic trainer or first responder shall attend all football practices and games, unless excused by the
24 local superintendent due to emergency.

25 (e) Each ~~LEA~~PSU shall monitor the school athletic trainer’s or [the] first responder’s compliance with this Rule.

26
27 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*
28 *115C-407.65; 116-235(b);*
29 *Emergency Adoption Eff. August 20, 2019;*
30 *Eff. March 1, 2021;*
31 *Temporary Amendment Eff. July 1, 2024.*

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- A serious and unforeseen threat to the public health, safety or welfare.
- The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2023-133, Parts XVII & XVIII
Effective date: 9/22/23
- A recent change in federal or state budgetary policy.
Effective date of change:
- A recent federal regulation.
Cite:
Effective date:
- A recent court order.
Cite order:
- State Medical Facilities Plan.
- Other:

Explain: On September 22, 2023, the General Assembly enacted S.L. 2023-133, which made significant changes to state laws governing interscholastic athletic activities in public school units. The legislation directed the State Board of Education to adopt new temporary rules to implement the requirements of the legislation in time for the 2024-2025 school year. The SBE has adopted these temporary rules to satisfy this legislative requirement and address such topics as the administration of interscholastic athletics, student health and safety, student participation requirements, amateur rules, penalties, and the appeals process.

In accordance with S.L. 2023-133, Section 19.(a), the SBE submitted a request for consultation to the Joint Legislative Commission on Governmental Operations on January 5, 2024, and received feedback from Senior Majority Counsel Andrew Hatch on February 16, 2024. Much of the feedback from the consultation has been incorporated into the final rules adopted by the SBE.

The rules include amendments to two existing rules and the adoption of seven new rules. I have submitted a request to waive RRC Rule 26 NCAC 02C .0102 for the purpose of reusing two rule numbers for rules that have expired, 16 NCAC 06E .0201 and 06E .0205, though I have not received any information as to the status of that waiver request. I believe the waiver is justified because the new rules are on the same subject matter as the expired rules.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Immediate adoption of the rule is required because S.L. 2023-133 mandates that the SBE adopt new temporary rules in time for the 2024-2025 school year. As a practical matter, that means the new rules need to be in place by July 1, 2024, to enable administering organizations and public-school units to prepare for fall sports. In addition, the SBE believes it is necessary to give those affected by the rules (including students) as much advanced awareness of the new rules as possible.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Ryan Collins

Phone: 984-236-2255

E-Mail: ryan.collins@dpi.nc.gov

Agency contact, if any: Denyse Brewington

Phone: 984-236-2259

E-Mail: denyse.brewington@dpi.nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Eric C. Davis

Title: Chair, State Board of Education

E-Mail: eric.davis@dpi.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

1 16 NCAC 06E .0207 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06E .0207 STUDENT PARTICIPATION RULES FOR INTERSCHOLASTIC ATHLETICS**

4 (a) A student ~~in grades 6 through 12~~ shall not participate in interscholastic athletics on behalf of a North Carolina
5 public school unless the student has satisfied the eligibility requirements set forth in this Rule. PSUs are authorized to
6 determine whether and to what extent students ~~in grades 6 through 12~~ under their jurisdiction may participate in
7 interscholastic athletics, not inconsistent with the requirements of this Rule.

8 (b) Each PSU shall require the principal of a participating school to sign and date a list of eligible students for each
9 sport. The PSU shall maintain a copy of the most current list in the principal's office and the office of the
10 superintendent.

11 (c) Residency Requirements

12 (1) For purposes of this Rule, a student's primary residence shall be determined as follows:

13 (A) If the student lives with both parents, the residence of both parents.

14 (B) If the student lives with a single parent, the residence of that parent.

15 (C) If the student's parents are separated or divorced, the residence of the parent to whom a court of
16 competent jurisdiction has awarded primary custody of the student. If no custody order has been
17 entered, the student's primary residence shall be deemed to be that at which the student is residing
18 more than half-time at the beginning of the school year.

19 (D) If a student lives with an individual to whom a court of competent jurisdiction has awarded legal
20 guardianship of the student, the residence of that individual.

21 (E) If a student has been emancipated in accordance with Chapter 7B, Article 35 of the General Statutes,
22 the student's residence at the time of emancipation.

23 (F) If a student is a foreign national participating in a foreign exchange program authorized by federal
24 and state law, the residence to which the student is assigned by the program or host PSU.

25 (2) A student shall not participate in interscholastic athletics following a change in primary residence unless ~~it is~~
26 the change was made for a bona fide purpose, purpose and with the intent that it be permanent. A bona fide
27 purpose means that the change in primary residence was made with the intent that it be permanent and not
28 primarily for athletic purposes. An administering organization shall resolve, by a preponderance of the
29 evidence, any disputes regarding a high school student's primary residence or whether a change in a student's
30 primary residence was for a bona fide purpose.

31 (d) Enrollment Requirements

32 (1) A student who attends a school supervised by a local board of education shall only participate in
33 interscholastic athletics on behalf of the school to which the student is assigned under G.S. 115C-366.

34 (2) A student enrolled in a charter school, regional statewide public school, or school operated by the University
35 of North Carolina shall meet all the enrollment criteria for that school and attend that school. A student who
36 attends a school described in this Subparagraph shall not participate in interscholastic athletics on behalf of
37 that school unless the student's primary residence is within either:

1 (A) the county in which the school is located, or

2 (B) twenty-five (25) miles of the school as determined by an administering organization.

- 3 (3) A local board of education may by policy allow ~~students who are~~ a person who is enrolled in Grade 6 through
4 12 in a home school, as defined in G.S. 115C-563(a), and whose primary residence is within the board's
5 jurisdiction to participate in interscholastic athletics on behalf of a participating school under the board's
6 jurisdiction, provided that the board either agrees to cover any ~~home school student~~ such person whom it
7 allows to participate under its catastrophic athletic accident insurance policy or verifies that the ~~student~~ person
8 is independently covered by catastrophic accident insurance.

9 (e) Transfer Requirements

- 10 (1) After a student's initial entry into ~~grade~~ Grade 9, and absent a change in residence for a bona fide purpose as
11 provided in Paragraph (c) of this Rule:

12 (A) a student who transfers from one school to another school within the same PSU shall not participate
13 in interscholastic athletics for 365 calendar days following the student's enrollment in the new
14 school, unless the governing authority of the PSU has adopted a policy allowing immediate
15 eligibility for students who are assigned by the PSU to a different school within the same PSU.

16 (B) a student who transfers from a school in one PSU to a school in a different PSU shall not participate
17 in interscholastic athletics for 365 calendar days following the student's enrollment in the new
18 school, except by mutual agreement of the governing authorities of each PSU.

- 19 (2) ~~If~~ After a student's initial entry into Grade 9, if a student transfers to a new school within 365 calendar days
20 after that school hires a coach for an interscholastic athletics team who was previously employed as a coach
21 for an equivalent sport by the school from which the student is transferring, the student shall be ineligible to
22 participate in interscholastic athletics for that ~~sport~~. sport for 365 calendar days following the student's
23 enrollment in the new school. An administering organization may waive this ~~requirement upon petition by~~
24 ~~the student's PSU if~~ restriction it determines by a preponderance of the evidence that the student's transfer
25 was ~~for a bona fide purpose~~. for a bona fide purpose.

- 26 (3) A student who receives priority enrollment as the child of a full-time employee of a charter school pursuant
27 to G.S. 115C-218.45(f)(3) shall not be eligible to participate in interscholastic athletics for that charter school
28 if the Department of Public Instruction determines that the parent's employment was a fraudulent basis for
29 the student's priority enrollment. A student determined to be ineligible under this Subparagraph shall be
30 ~~ineligibility~~ ineligible to participate in interscholastic athletics for 365 calendar days following discovery of
31 the violation.

- 32 (4) For purposes of this Paragraph, if a student transfers from a public school to a nonpublic school, including a
33 home school as defined in G.S. 115C-563(a), and within 365 calendar days transfers to a different public
34 school, the transfer from the nonpublic school shall be treated as a transfer from a public school.

- 35 (5) A student who transfers to the North Carolina School of Science and Mathematics is exempt from the
36 requirements of this Paragraph upon initial entry into that school.

1 (6) No student shall participate in more than one season of interscholastic athletics per year in the same sport,
2 regardless of the school on behalf of which the student participated.

3 (f) Scholastic Requirements

4 (1) To be eligible to participate in interscholastic athletics, a student must be in good academic standing. For
5 purposes of this Rule, a student shall be deemed to be in good academic standing under the following
6 circumstances:

7 (A) The student ~~has no more than nine unexcused absences in the current school year; attended at least 85~~
8 percent of the total number of instructional days in the PSU during the previous semester;

9 (B) The student passed at least 70 percent of the courses taken in the preceding semester; and

10 (C) The student is ~~on track to advance to the next grade level or graduate~~ making sufficient progress toward
11 meeting the academic and curricular requirements of the PSU and the State Board of Education to be
12 promoted to the next grade level or to graduate within the next calendar year.

13 (2) For the purpose of determining good academic standing during the fall semester, a student may count courses
14 that the student passed in a summer school session in which the student was enrolled during the same calendar
15 year toward the total number of courses passed in the preceding spring semester, provided that summer school
16 courses shall not affect the total number of courses attempted in the preceding spring semester.

17 ~~(2)~~ (3) A student who is promoted from ~~grade~~ Grade 5 to ~~grade~~ Grade 6 shall be deemed to have satisfied the
18 requirements set forth in this Paragraph to participate in the first semester of ~~grade~~ Grade 6.

19 ~~(3)~~ (4) A student who is promoted from ~~grade~~ Grade 8 to ~~grade~~ Grade 9 shall be deemed to have satisfied the
20 requirements set forth in this Paragraph to participate in the first semester of ~~grade~~ Grade 9.

21 (5) For interscholastic athletic activities occurring between July 1, 2024, and December 31, 2024, any student
22 who has satisfied the requirements of 16 NCAC 06E .0204(d), as it was written on June 30, 2024, shall be deemed
23 to have satisfied the requirements of this Paragraph.

24 (g) Age Requirements

25 (1) Each PSU shall determine the age of a student participating in interscholastic athletics based on a
26 preponderance of the evidence known to the PSU.

27 (2) A student who is ineligible to participate at one grade level due to age shall be eligible to participate at the
28 next higher grade level only, subject to the following restrictions: provided that a student:

29 (A) ~~A student shall~~ Shall be eligible to participate at the middle school level for no more than six
30 consecutive semesters, beginning with the student's initial entry into Grade 6.

31 (B) ~~A student shall~~ Shall be eligible to participate at the high school level for no more than eight
32 consecutive semesters, beginning with the student's initial entry into Grade 9.

33 (C) ~~A student shall~~ Shall not participate on a ~~grade 6, 7, or 8~~ middle school team if the student becomes
34 15 years of age before August 31 of that school year.

35 (D) ~~A student shall~~ Shall not participate on a ~~grade 7, 8, or 9~~ junior high school team if the student
36 becomes 16 years of age on or before August 31 of that school year.

1 (E) ~~A student shall~~ Shall not participate on ~~any grade 9, 10, 11, or 12~~ a high school team if the student
2 becomes 19 years of age on or before August 31 of that school year.

3 (3) A student in ~~grade~~ Grade 6 shall not participate in tackle football.

4 (h) Biological Requirements. All students participating in interscholastic athletics shall comply with the biological
5 participation requirements as provided in G.S. 115C-407.59.

6 (i) Medical Requirements. To be eligible to participate in interscholastic athletics, a student shall receive a medical
7 examination every 395 days by a licensed physician, nurse practitioner, or physician assistant, subject to the provisions
8 of ~~G.S. 90-9.1, G.S. 90-9.2, G.S. 90-9.3, G.S. 90-18.1, and G.S. 90-18.2.~~ Chapter 90 of the General Statutes.

9 (j) A student shall not participate in interscholastic athletics after pleading guilty or “no contest” to, or being ~~finally~~
10 convicted of, a felony under the laws of North Carolina, the United States, or any other state. Prior to deeming the
11 student ineligible, an administering organization shall receive a certified copy of a criminal record reflecting the
12 conviction and verify that the student is the same individual identified in the criminal record.

13 (k) An administering organization shall, in an individual student’s case, waive any eligibility requirement contained
14 in this Rule ~~upon a petition by the student’s PSU and a finding by the administering organization~~ if it finds that
15 enforcing the requirement:

16 (1) fails to promote academic progress, health, safety, and fair play;

17 (2) works an undue hardship on a student who has lost eligibility due to circumstances that made participation
18 impossible, such as prolonged illness or injury; or

19 (3) prevents the reasonable accommodation of a student’s disability, as required by the Americans with
20 Disabilities Act, 42 U.S.C. § 12101 et seq.

21
22 *History Note:* *Authority* G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;
23 115C-407.65; 116-235(b)

24 *Temporary Rule Eff. July 1, 2024.*



**TEMPORARY RULE-MAKING
FINDINGS OF NEED**
[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Board of Education

2. Rule citation & name: 16 NCAC 06E .0208 (Amateur Rules for Interscholastic Athletics)

3. Action: Adoption Amendment Repeal

4. Was this an Emergency Rule: Yes No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 1/5/24
- b. Proposed Temporary Rule published on the OAH website: 1/12/24
- c. Public Hearing date: 2/23/24
- d. Comment Period: 1/12/24 – 2/23/24
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 1/12/24
- f. Adoption by agency on: 3/7/24
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: 7/1/24
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- A serious and unforeseen threat to the public health, safety or welfare.
- The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2023-133, Parts XVII & XVIII
Effective date: 9/22/23
- A recent change in federal or state budgetary policy.
Effective date of change:
- A recent federal regulation.
Cite:
Effective date:
- A recent court order.
Cite order:
- State Medical Facilities Plan.
- Other:

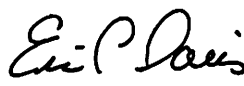
Explain: On September 22, 2023, the General Assembly enacted S.L. 2023-133, which made significant changes to state laws governing interscholastic athletic activities in public school units. The legislation directed the State Board of Education to adopt new temporary rules to implement the requirements of the legislation in time for the 2024-2025 school year. The SBE has adopted these temporary rules to satisfy this legislative requirement and address such topics as the administration of interscholastic athletics, student health and safety, student participation requirements, amateur rules, penalties, and the appeals process.

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8. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	
9. Rule-making Coordinator: Ryan Collins Phone: 984-236-2255 E-Mail: ryan.collins@dpi.nc.gov	10. Signature of Agency Head*:  <hr/> * If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Eric C. Davis Title: Chair, State Board of Education E-Mail: eric.davis@dpi.nc.gov
Agency contact, if any: Denyse Brewington Phone: 984-236-2259 E-Mail: denyse.brewington@dpi.nc.gov	

RULES REVIEW COMMISSION USE ONLY	
Action taken: <input type="checkbox"/> Date returned to agency:	Submitted for RRC Review:

1 16 NCAC 06E .0208 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06E .0208 AMATEUR RULES FOR INTERSCHOLASTIC ATHLETICS**

4 (a) As used in this Rule, the phrase “name, image, or likeness” or “NIL” shall refer to the use of a student’s name,
5 image, or likeness for commercial purposes and in exchange for compensation to the student. Compensation may
6 include cash, in-kind gifts, or other tangible benefits to the student.

7 (b) No student participating in interscholastic athletics shall enter into any agreement to use the student’s name, image,
8 or likeness in any of the following ways:

- 9 (1) Public appearances or commercials.
- 10 (2) Autograph signings.
- 11 (3) Athletic camps and clinics.
- 12 (4) Sale of non-fungible tokens (“NFTs”).
- 13 (5) Product or service endorsements.
- 14 (6) Promotional activities, including in-person events and social media advertisements.

15 (c) A student shall not participate in interscholastic athletics after any of the following:

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

29 (d) A student shall not be deemed ineligible under this Rule for payment by an administering organization, PSU, or
30 athletic booster club affiliated with the student’s school or PSU for essential expenses arising from a specific
31 interscholastic athletic contest in which the student participates. Essential expenses shall include the reasonable cost
32 of meals, lodging, and transportation.

33 (e) A student shall not be deemed ineligible under this Rule for receipt of a nominal, standard fee or salary for
34 instructing, supervising, or officiating an organized youth sports program, recreational activities, playground, or camp,
35 whether or not affiliated with a PSU.

36
37 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*

- 1 *115C-407.65; 116-235(b)*
- 2 *Temporary Rule Eff. July 1, 2024.*

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- A serious and unforeseen threat to the public health, safety or welfare.
- The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2023-133, Parts XVII & XVIII
Effective date: 9/22/23
- A recent change in federal or state budgetary policy.
Effective date of change:
- A recent federal regulation.
Cite:
Effective date:
- A recent court order.
Cite order:
- State Medical Facilities Plan.
- Other:

Explain: On September 22, 2023, the General Assembly enacted S.L. 2023-133, which made significant changes to state laws governing interscholastic athletic activities in public school units. The legislation directed the State Board of Education to adopt new temporary rules to implement the requirements of the legislation in time for the 2024-2025 school year. The SBE has adopted these temporary rules to satisfy this legislative requirement and address such topics as the administration of interscholastic athletics, student health and safety, student participation requirements, amateur rules, penalties, and the appeals process.

In accordance with S.L. 2023-133, Section 19.(a), the SBE submitted a request for consultation to the Joint Legislative Commission on Governmental Operations on January 5, 2024, and received feedback from Senior Majority Counsel Andrew Hatch on February 16, 2024. Much of the feedback from the consultation has been incorporated into the final rules adopted by the SBE.

The rules include amendments to two existing rules and the adoption of seven new rules. I have submitted a request to waive RRC Rule 26 NCAC 02C .0102 for the purpose of reusing two rule numbers for rules that have expired, 16 NCAC 06E .0201 and 06E .0205, though I have not received any information as to the status of that waiver request. I believe the waiver is justified because the new rules are on the same subject matter as the expired rules.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Immediate adoption of the rule is required because S.L. 2023-133 mandates that the SBE adopt new temporary rules in time for the 2024-2025 school year. As a practical matter, that means the new rules need to be in place by July 1, 2024, to enable administering organizations and public-school units to prepare for fall sports. In addition, the SBE believes it is necessary to give those affected by the rules (including students) as much advanced awareness of the new rules as possible.

1 16 NCAC 06E .0209 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06E .0209 PENALTY RULES FOR INTERSCHOLASTIC ATHLETICS**

4 (a) A PSU shall impose at least the following penalties on a student, coach, or school official in ~~grades~~ Grades 6
5 through 12 who is ejected from an interscholastic athletic contest:

6 (1) for the first offense, the person shall be reprimanded and suspended from participating in the next ~~game at~~
7 ~~that level of play (varsity or junior varsity);~~ game;

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

10 (3) for a third offense, the person shall be suspended from participation in interscholastic athletics for one
11 calendar year;

12 (4) a coach who is suspended shall not coach any team for any grade level during the period of suspension.

13 (b) Penalties shall be cumulative from sport to sport and from sport season to sport season. If no member of the
14 school's coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by forfeit.

15 (c) The PSU that has jurisdiction over a participating school may impose penalties in addition to those required by an
16 administering organization.

17
18 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*
19 *115C-407.65; 116-235(b);*
20 *Temporary Rule Eff. July 1, 2024.*

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- A serious and unforeseen threat to the public health, safety or welfare.
- The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2023-133, Parts XVII & XVIII
Effective date: 9/22/23
- A recent change in federal or state budgetary policy.
Effective date of change:
- A recent federal regulation.
Cite:
Effective date:
- A recent court order.
Cite order:
- State Medical Facilities Plan.
- Other:

Explain: On September 22, 2023, the General Assembly enacted S.L. 2023-133, which made significant changes to state laws governing interscholastic athletic activities in public school units. The legislation directed the State Board of Education to adopt new temporary rules to implement the requirements of the legislation in time for the 2024-2025 school year. The SBE has adopted these temporary rules to satisfy this legislative requirement and address such topics as the administration of interscholastic athletics, student health and safety, student participation requirements, amateur rules, penalties, and the appeals process.

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8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes
Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Ryan Collins

Phone: 984-236-2255

E-Mail: ryan.collins@dpi.nc.gov

Agency contact, if any: Denyse Brewington

Phone: 984-236-2259

E-Mail: denyse.brewington@dpi.nc.gov

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Eric C. Davis

Title: Chair, State Board of Education

E-Mail: eric.davis@dpi.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

1 16 NCAC 06E .0210 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06E .0210 LIMITATIONS ON RECRUITING AND UNDUE INFLUENCE**

4 (a) ~~No student participating in interscholastic athletics shall be subject~~ student, coach, professional educator, or other
5 employee of a PSU or administering organization shall subject a student to undue influence by any other student,
6 coach, principal, local superintendent, or other PSU employee for the purpose of inducing or causing the student to
7 transfer from one participating school to another to participate in interscholastic athletics on behalf of the receiving
8 school.

9 (b) For purposes of this Rule, “undue influence” means communication or conduct undertaken for the purpose and
10 intent of soliciting or encouraging a student to enroll in a participating school, including the following:

11 (1) Initiating or arranging communication or contact in any form, including letters, email, or phone calls, with
12 the student or a member of the student’s family.

13 (2) Visiting or entertaining the student or a member of the student’s family.

14 (3) Providing or arranging for transportation for the student or member of the student’s family to visit a
15 participating school or meet with anyone associated with the participating school.

16 (4) ~~(4)~~ Communicating to a student or a member of the student’s family, either implicitly or explicitly, that a
17 participating school’s athletic program or sports team is superior to that of another participating school, or
18 that it would be advantageous for the student to participate in athletics at a specific participating school. Such
19 communication may be oral, written, or audiovisual in format.

20 (c) A party alleging undue influence shall direct the initial inquiry or report to the appropriate administering
21 organization in accordance with the procedures adopted by the administering organization. The party alleging undue
22 influence bears the burden of proving undue influence by a preponderance of the evidence.

23 (d) If the administering organization finds by a preponderance of the evidence that the accused party has engaged in
24 undue influence, the administering organization shall impose penalties consistent with its regulations and with Rule
25 .0209 of this Section.

26
27 *History Note:* *Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*
28 *115C-407.65; 116-235(b);*
29 *Temporary Rule Eff. July 1, 2024.*



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Board of Education

2. Rule citation & name: 16 NCAC 06E .0215 (Appeals)

3. Action: Adoption Amendment Repeal

4. Was this an Emergency Rule: Yes No Effective date:

5. Provide dates for the following actions as applicable:

a. Proposed Temporary Rule submitted to OAH: 1/5/24

b. Proposed Temporary Rule published on the OAH website: 1/12/24

c. Public Hearing date: 2/23/24

d. Comment Period: 1/12/24 – 2/23/24

e. Notice pursuant to G.S. 150B-21.1(a3)(2): 1/12/24

f. Adoption by agency on: 3/7/24

g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: 7/1/24

h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- A serious and unforeseen threat to the public health, safety or welfare.
- The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2023-133, Parts XVII & XVIII
Effective date: 9/22/23
- A recent change in federal or state budgetary policy.
Effective date of change:
- A recent federal regulation.
Cite:
Effective date:
- A recent court order.
Cite order:
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- Other:

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8. Rule establishes or increases a fee? (See G.S. 12-3.1)

Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

9. Rule-making Coordinator: Ryan Collins

Phone: 984-236-2255

E-Mail: ryan.collins@dpi.nc.gov

Agency contact, if any: Denyse Brewington

Phone: 984-236-2259

E-Mail: denyse.brewington@dpi.nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Eric C. Davis

Title: Chair, State Board of Education

E-Mail: eric.davis@dpi.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

1 16 NCAC 06E .0215 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06E .0215 APPEALS**

4 (a) The Superintendent of Public Instruction (“Superintendent”) shall appoint an independent interscholastic athletics
5 appeals board (“appeals board”) to hear and act upon appeals from a final decision of an administering ~~organization,~~
6 organization or PSU, or from the Department of Public Instruction if necessary pursuant to Rule .0204, Paragraph (g)
7 of this Section, regarding student eligibility to participate in interscholastic athletics; violations of limitations on
8 recruiting or undue influence; penalties or fees imposed on students, coaches, or participating schools; ~~retaliation, or~~
9 ~~discrimination, or other enforcement of rules pursuant to this Section.~~

10 (b) The administering organization’s final decision shall contain:

11 (1) Findings of fact.

12 (2) Conclusions of law, including citation to and a copy of any rules related to the decision.

13 (3) A description of any penalties imposed.

14 (4) A statement that the aggrieved party may file a notice of appeal within five days of receipt of the
15 administering organization’s decision by sending the notice to the Superintendent via ~~email and~~
16 electronic mail or the United States Postal Service.

17 ~~(b)~~ (c) An aggrieved party may file an appeal with the Superintendent within five days after receipt of the administering
18 organization’s final decision. The final decision shall be mailed to the aggrieved party, with a copy to the local
19 superintendent and principal with jurisdiction over the aggrieved party.

20 (d) The aggrieved party’s appeal shall:

21 (1) Be in ~~writing;~~ writing.

22 (2) Include a description of the facts of the ~~dispute;~~ dispute.

23 (3) Include any evidence submitted to the administering ~~organization, and~~ organization.

24 (4) Present an argument explaining with the aggrieved party believes the administering organization’s final
25 decision was not based on substantial evidence, as defined in G.S. 150B-2(8c), or is affected by an error
26 of law.

27 (e) The administering organization may file a response to the aggrieved party’s submissions within five days. The
28 ~~panel appeals board~~ may shorten the time for filing the administering organization’s response if the decision affects a
29 student’s or coach’s eligibility to participate in an intervening athletic contest.

30 (f) All documents filed in the appeal shall be simultaneously served on all parties via email and the United States
31 Postal Service. If the aggrieved party is a student, parent, or coach, the parties shall also ~~serve~~ provide copies of the
32 documents ~~on~~ via electronic mail or the United States Postal Service to the local superintendent and principal with
33 jurisdiction over the aggrieved party.

34 (g) Panels of no fewer than three members of the appeals board may hear and decide matters on behalf of the appeals
35 board. The panel may conduct a live hearing in person or via teleconference. Any hearing so conducted shall be
36 recorded.

1 (h) No later than 30 days after the Superintendent’s receipt of the appeal, the panel shall issue its decision. The panel
2 shall affirm the administering organization’s final decision unless a majority of the panel determines that the final
3 decision is not supported by substantial evidence or is affected by an error of law. The panel may also remand the
4 decision to the administering organization for further review if there is an intervening change in any relevant law or
5 if the panel determines that additional information is necessary to inform its decision.

6 (i) The Superintendent, or the Superintendent’s authorized designee, may stay a determination of ineligibility or a
7 penalty imposed by the administering organization pending the final decision of the appeals board.

8 ~~(j)~~ (j) The panel’s decision shall be final.

9

10 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*
11 *115C-407.65; 116-235(b);*
12 *Temporary Rule Eff. July 1, 2024.*