



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 06G .0601 Remote Academies Hardware and Software Fees

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: 02/02/2023
- b. Proposed Temporary Rule published on the OAH website: 02/08/2023
- c. Public Hearing date: 02/16/2023
- d. Comment Period: 03/10/2023
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 02/08/2023
- f. Adoption by agency on: 04/06/2023
- 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]: 05/01/2023
- 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. 2022-59 Chapter 134; G.S. 115C-234.1(b)(1)
Effective date: July 8, 2022
- 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: Effective July 8, 2022, S.L. 2022-59, Part II, amended Article 16 of Chapter 115C to authorize the State Board of Education to approve local school administrative units' applications to operate remote academies beginning with the 2023-24 school year. Remote academies must meet the requirements outlined in G.S. § 115C-234.10. G.S. § 115C-234.10(b)(1) requires remote academies to provide students with any hardware and software needed to participate in the remote academy. G.S. 115C-23410(b)(1) states: "Students may not be charged rental fees but may be charged damage fees for abuse or loss of hardware or software under rules adopted by the State Board of Education." The State Board of Education has adopted this temporary rule to define rental fees and damage fees for hardware and software provided to students enrolled in remote academies. The effect of the rule will be to permit local school administrative units to charge students enrolled in remote academies for damage to school issued hardware or software.

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

S.L. 2022-59, Part II, Sec. (2)d. requires the State Board of Education to approve remote academic beginning with the 2023-24 school year. At its February 2023 meeting, the State Board of Education approved forty-two remote academies to begin operations in the 2023-24 school year. Local school administrative units need to know as soon as possible what rules will apply to the operation of the remote academies so that they can plan for the administration of those schools. Parents need to know as soon as possible what rules will govern the operation of those remote academies so that they can decide whether to enroll their children in remote academies in the 2023-24 school year. It is particularly important for parents to know whether there will be any additional costs associated with enrolling their children in remote academies. Once this temporary rule is in place, the difference between prohibited "rental fees" and permitted "damage fees" will be clear. Local school administrative units can then adopt local policies regarding recovering the cost for damage to essential devices and software and inform parents of those policies. Delaying adoption of this rule is contrary to the public interest because it would deprive both local school administrative units and parents of information necessary to plan for the opening of the remote academies in August 2023. Immediate adoption of the rule is required to give local school administrative units the time to communicate with parents about remote academies and to give parents the time to evaluate their children's educational opportunities and make decisions about whether to enroll their children in a remote academy for the 2023-24 school year.

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

Yes

No – As defined in the rule, a "damage fee" is not a "charge for the rendering of any service or fulfilling of any duty to the public." G.S. 12-3.1(a). Nevertheless, on February 8, 2023, the agency submitted the attached request for consultation.

9. Rule-making Coordinator: Thomas Ziko

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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 Davis

Title: Chair, State Board of Education

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RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

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

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0601

DEADLINE FOR RECEIPT: April 14, 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:

You have identified G.S. 150B-21.1(a)(2) (“the effective date of a recent act of the General Assembly”) as the reason for a temporary rule. Pursuant to G.S. 150B-21.1(a2) “recent act” means “an act . . . occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission.” S.L. 2022-59 appears to have become effective when it became law on July 8, 2022, and 210 days after the law became effective was February 3, 2023. As a result, G.S. 150B-21.1(a)(2) does not provide authority to adopt this as a temporary rule. What other authority allows for temporary rulemaking on this subject?

Under G.S. 115C-234.10(b)(1), students “may be charged damage fees for abuse or loss of hardware or software under rules adopted by the State Board of Education.” This rule provides further definition to words used in the statute but does not establish how damage fees may be charged. How are damage fees to be charged?

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

Seth Ascher
Commission Counsel
Date submitted to agency: April 11, 2023

1 16 NCAC 06G.0601 is adopted under temporary procedures as follows:

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3 **16 NCAC 06G .0601 REMOTE ACADEMIES HARDWARE AND SOFTWARE FEES**

4 (a) Definitions:

5 (1) "Damage fee" means "any mandatory payments that a local school administrative unit charges a
6 student enrolled in a remote academy for injury to, abuse of, or loss of hardware or software that the
7 local school administrative unit has provided to the student other than degradation arising from
8 normal use, wear and tear, provided the payments cannot exceed the actual cost of repair or fair
9 market value of the hardware or software, whichever is less."

10 (2) "Rental fee" means "any mandatory payments that a local school administrative unit requires
11 students enrolled in remote academies to make before the local school administrative unit will give
12 a student access to or possession of any hardware and software needed to participate in the remote
13 academy."

14 (b) Local administrative units shall not charge students enrolled in remote academies rental fees for use of hardware
15 or software needed to participate in the remote academy but may charge them damage fees.

16 *History Note: Authority G.S. § 115C-234.10(1)(b)*

17 *Eff. May 1, 2023*

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