

Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, December 4, 2024 3:57 PM
To: Schilling, Michelle
Cc: Burgos, Alexander N
Subject: 12 NCAC 09B .0405
Attachments: 2024.12 CJETS Request for Changes 12 NCAC 09B .0405.docx

Good afternoon,

Attached please find the request for changes for the above captioned rule.

As always, if you have any questions please feel free to contact me.

William W. Peaslee
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Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, December 4, 2024 3:39 PM
To: Schilling, Michelle
Cc: Burgos, Alexander N
Subject: Perplexity AI's version of 12 NCAC 09B .0405 (f)

Academic Performance Requirements

Trainees must demonstrate proficiency in academic tests by achieving a minimum score of 70% on each assessment. If a trainee fails to meet this standard, the following procedures apply:

Remediation and Reexamination Process

1. **Initial Failure:** Upon failing a test, the trainee will undergo remediation, which involves re-teaching of concepts and skills in the specific topical area(s) where the passing score was not achieved.
2. **Reexamination Opportunity:** Following remediation, the trainee will have one additional opportunity to retake the test.
3. **Limit on Failures:** A trainee is permitted to fail, undergo remediation, and retake exams in a maximum of seven topical areas.

Dismissal Policy

If a trainee fails an eighth topical area test:

1. No further remediation or reexamination will be allowed.
2. The trainee will be immediately dismissed from the current course.
3. To continue training, the trainee must complete a subsequent delivery of the Basic Law Enforcement Training (BLET) program in its entirety.

This revised structure maintains the original content while presenting it in a more organized, clear, and professional manner.

Per our telephone conversation, obviously it cannot be formatted like this, but isn't this much clearer?

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Burgos, Alexander N

Subject: FW: [External] Re: 12 NCAC 09B .0404

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Thursday, December 5, 2024 11:12 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: 12 NCAC 09B .0404

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Thank you.



MICHELLE SCHILLING

Deputy Director

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MSchilling@ncdoj.gov

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, December 5, 2024 11:11 AM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Schilling, Michelle <mschilling@ncdoj.gov>
Subject: FW: [External] Re: 12 NCAC 09B .0404

Good morning,

It is my intention to recommend that the attached revision satisfies the RRC's November 2024 objection without substantial change.

As always if you have any questions please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Re: 12 NCAC 09B .0404
Attachments: 12 NCAC 09B .0404 Trainee Attendance 120424.docx

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Thursday, December 5, 2024 10:48 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Draper, Steven <SDRAPER@NCDOJ.GOV>; Cardoza, Holly <hcardoza@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: 12 NCAC 09B .0404

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

Good morning,

Attached please find the update rule with clarification.

Michelle



MICHELLE SCHILLING

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12 NCAC 09B .0404 is amended, with changes, as published in 38:24 NCR 1638-1639 as follows:

12 NCAC 09B .0404 TRAINEE ATTENDANCE

(a) Each trainee enrolled in a ~~certified~~-Commission-accredited Basic Law Enforcement Training Course shall attend all class sessions. The school director shall monitor the trainee's attendance at criminal justice training courses in which the trainee is enrolled.

(b) The school director may excuse a trainee from attendance at specific class ~~sessions~~, sessions for just cause. For purposes of this Rule, just cause means accident, illness, emergency, or other circumstances which precluded the trainee from attending a class session. However, in no case may excused or unexcused absences exceed five percent of the total class hours for the course offering. A trainee shall not be eligible for administration of the State comprehensive examination and shall be dismissed from the course if the cumulative total of class absences exceeds five percent regardless of the prior completion of make-up work.

(c) If the school director grants an excused absence from a class session, he or she shall schedule make-up work and ensure the completion of such work during the current course presentation. The school director shall schedule instructors and reimburse those instructors for the purpose of completion of the make-up work. ~~Absences that occur during the last 40 hours of the training course may be made up in a subsequent delivery; however, the school director shall notify the Standards Division prior to scheduling the make-up work. Make-up work shall consist of an in-person, one-hour instruction period for each hour of missed training, in the lesson plan where the missing training occurred, and shall be taught by an instructor certified to teach that block of instruction. Make-up work shall be documented on the F-26 BLET Student Absence/Make Up Training Report. The F-26 BLET Student Absence/Make Up Training Report shall contain the following:~~

- (1) School/Academy Name;
- (2) Class Name;
- (3) Student name and ACADIS ID number;
- (4) Course topic, date, and hours missed;
- (5) Reason for missed time;
- (6) Student and School Director signatures;
- (7) Course topic and hours made up; and
- (8) Instructor name and signature

(d) If the Governor declares a State of Emergency pursuant to G.S. 166A-19.3(19), the Director of the Criminal Justice Standards Division shall allow additional breaks in instruction for an individual trainee in a specific course delivery, not to exceed 90 hours, when the Director determines that doing so is necessary based on consideration of the following factors:

- (1) Whether instruction has begun in the course or whether course initiation may be postponed;
- (2) The risk of harm to students that may be caused by continuation of the course;
- (3) Whether those enrolled in the course have been or will likely be called to action to help address the State of Emergency;

(4) The specific need for the waiver; and

(5) The degree of benefit to the public in allowing a break in instruction.

Notice of waivers granted pursuant to this Section shall be posted on the CJETS website at <https://ncdoj.gov/law-enforcement-training/criminal-justice/>. The waivers granted pursuant to this Section shall only apply to courses that began during the effective period of the State of Emergency.

(e) the School Director shall provide the following information to the Director of the Criminal Justice Standards Division for consideration of a waiver under Paragraph (d) of this Rule:

(1) a memorandum justifying the absence waiver;

(2) specific documentation related to the trainee's request; and

(3) a training completion plan pursuant to Paragraph (c) of this Rule.

(f) A school director ~~may~~ shall terminate a trainee from course participation or ~~may~~ shall deny certification of successful course completion where the trainee is tardy to or departs early from four class meetings or field exercises.

(g) Where a trainee is enrolled in a program as required in 12 NCAC 09B .0212, .0213, .0214, .0215, .0218, .0219, .0220, .0221, .0222, .0237, .0238, .0239, or .0240, and the scheduled course hours exceed the requirements of the Commission, the trainee, upon the authorization of the school director, ~~may~~ shall be deemed to have satisfactorily completed the required number of hours for attendance provided the trainee's attendance is not less than 100 percent of the instructional hours as required by the Commission.

(h) A trainee enrolled in a presentation of the "Criminal Justice Instructor Training Course" under Rule .0209 of this Subchapter shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course completion.

(i) A trainee, enrolled in a presentation of the "Specialized Firearms Instructor Training" course under Rule .0226 of this Subchapter, the "Specialized Driver Instructor Training" course under Rule .0227 of this Subchapter, the "Specialized ~~Subject Control Arrest Techniques~~ Compliance and Control Tactics Instructor Training" course under Rule .0232 of this Subchapter, ~~or the~~ "Specialized Physical Fitness Instructor Training" course under Rule .0233 of this Subchapter, the "Specialized Explosives and Hazardous Materials Emergencies Instructor Training" course under Rule .0417 of this Subchapter, or the "Juvenile Justice Specialized Instructor Training – Restraints, Controls and Defensive Techniques" course under Rule .0241 of this Subchapter shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course completion. Make-up work must be completed during the current course presentation for all absenteeism. Make-up work shall consist of an in-person, one-hour instruction period for each hour of missed training, in the lesson plan where the missing training occurred, and shall be taught by an instructor certified to teach that block of instruction.

(j) Where a trainee is enrolled in a program as required in 12 NCAC 09B .0209, .0226, .0227, .0232, .0233, or .0417, the ~~The~~ Director of the Criminal Justice Standards Division ~~may~~ shall grant a waiver for completion of course requirements in a course delivery scheduled within 12 months, for just cause based upon the circumstances that created the need for the absence. For the purposes of this Rule, "just cause" includes an accident, illness,

1 emergency, or course cancellation that precluded the student from completing the entire course in one continuous
2 course delivery.

3 (k) A trainee, enrolled in a presentation of the "RADAR Instructor Training Course" under Rule .0210 of this
4 Subchapter, the "Time-Distance Instructor Training Course" under Rule .0211 of this Subchapter, or the "LIDAR
5 Instructor Training Course" under Rule .0237 of this Subchapter shall not be absent from class attendance for
6 more than 10 percent of the total scheduled delivery period in order to receive successful course completion.
7 Make-up work must be completed during the current course presentation for all absenteeism. Make-up work shall
8 consist of an in-person, one-hour instruction period for each hour of missed training, in the lesson plan where the
9 missing training occurred, and shall be taught by an instructor certified to teach that block of instruction.

10
11 *History Note: Authority G.S. 17C-6; 17C-10;*

12 *Eff. January 1, 1981;*

13 *Amended Eff. November 1, 1981;*

14 *Readopted Eff. July 1, 1982;*

15 *Amended Eff. February 1, 2006; May 1, 2004; August 1, 2000; April 1, 1999; November 1,*
16 *1993;*

17 *July 1, 1989; February 1, 1987; June 1, 1986;*

18 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
19 *2019;*

20 *Amended Eff. January 1, 2025; April 1, 2022; August 1, 2021.*

Burgos, Alexander N

Subject: FW: [External] Re: Perplexity AI's version of 12 NCAC 09B .0405 (f)

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Thursday, December 5, 2024 8:50 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] Re: Perplexity AI's version of 12 NCAC 09B .0405 (f)

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Good morning,

Thank you for recommending the PerplexityAI website. I have already found it useful in another task.

I appreciate your assistance.

Michelle



MICHELLE SCHILLING

Deputy Director

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Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, December 4, 2024 2:33 PM
To: Schilling, Michelle
Cc: Burgos, Alexander N
Subject: Telephone call

Good afternoon,

Thank you for speaking with me on the telephone today. In addition to speaking about the benefits of using AI in rule drafting generally, we discussed the forthcoming request for changes specifically the post-publication changes to Paragraph (b) and the concept of substantial change.

If I am missing anything, please let me know by reply email.

Thank you.

William W. Peaslee
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Burgos, Alexander N

Subject: FW: [External] Re: 12 NCAC 09B .0232 and .0404

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Wednesday, December 4, 2024 11:05 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: 12 NCAC 09B .0232 and .0404

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Thank you.



MICHELLE SCHILLING

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Wednesday, December 4, 2024 11:04 AM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Schilling, Michelle <mschilling@ncdoj.gov>
Subject: FW: [External] Re: 12 NCAC 09B .0232 and .0404

Good morning,

It is my present intention to recommend that the RRC find that the attached rule has satisfied its objections of November 2024 without substantial change.

As always if you have any questions please feel free to contact me.

William W. Peaslee
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(984) 236-1939
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Burgos, Alexander N

Subject: FW: [External] Re: 12 NCAC 09B .0232 and .0404
Attachments: 12 NCAC 09B .0232 Specialized Compliance and Control Tactics Instructor Training.docx; Response to the Rules Review Commission for 12 NCAC 09B .0404.docx; Response to the Rules Review Commission for 12 NCAC 09B .0232.docx; 12 NCAC 09B .0404 Trainee Attendance.docx

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Wednesday, December 4, 2024 10:38 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Draper, Steven <SDRAPER@NCDOJ.GOV>; Cardoza, Holly <hcardoza@ncdoj.gov>
Subject: [External] Re: 12 NCAC 09B .0232 and .0404

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Good morning,

Attached please find the responses to the rule objections and updated draft rules for 12 NCAC 09B .0232 and 12 NCAC 09B .0404.

Please let me know if you have any questions.

Michelle



MICHELLE SCHILLING

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1 12 NCAC 09B .0232 is being amended, with changes, as published in 38:24 NCR 1636-1637 as follows:

3 12 NCAC 09B .0232 SPECIALIZED COMPLIANCE AND CONTROL TACTICS

4 ~~SUBJECT CONTROL ARREST TECHNIQUES~~ INSTRUCTOR TRAINING

5 (a) The instructor training course required for Specialized Compliance and Control Tactics ~~Subject Control~~
6 ~~Arrest Techniques~~ Instructor Certification shall consist of a minimum of 29 hours of classroom instruction plus
7 time required to complete the tasks associated with Compliance and Control Tactics ~~Subject Control Arrest~~
8 ~~Techniques~~ Instructional Methods and ~~Demonstration~~ Demonstration, presented during a continuous period of not
9 more than two weeks. If the Governor declares a State of Emergency pursuant to G.S. 166A-19.3(19), the
10 Director of the Criminal Justice Standards Division shall allow ~~additional~~ breaks in a specific course delivery
11 when the Director determines that doing so is necessary based on consideration of the following factors:

- 12 (1) Whether instruction has begun in the course or whether course initiation may be postponed;
- 13 (2) The risk of harm to students that may be caused by continuation of the course;
- 14 (3) Whether those enrolled in the course have been or will likely be called to action to help address
15 the State of Emergency;
- 16 (4) The specific need for the waiver; and
- 17 (5) The degree of benefit to the public in allowing a break in instruction.

18 Notice of waivers granted pursuant to the Section shall be posted on the CJETS website [https://ncdoj.gov/law-](https://ncdoj.gov/law-enforcement-training/criminal-justice/)
19 [enforcement-training/criminal-justice/](https://ncdoj.gov/law-enforcement-training/criminal-justice/). The waivers granted pursuant to this Section shall only apply to courses
20 that began during the effective period of the State of Emergency.

21 (b) Each Specialized Compliance and Control Tactics ~~Subject Control Arrest Techniques~~ Instructor Training
22 course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal
23 justice Specialized Compliance and Control Tactics ~~Subject Control Arrest Techniques~~ Instructor in a the
24 Commission-accredited Basic Law Enforcement Training Course or a Law Enforcement Officers' Annual In-
25 Service Training Program.

26 (c) Each applicant for Specialized Compliance and Control Tactics ~~Subject Control Arrest Techniques~~ Instructor
27 Training shall:

- 28 (1) have completed the Criminal Justice Instructor Training ~~course;~~ course, pursuant to 12 NCAC 09B
29 .0209;
- 30 (2) present a letter from a ~~licensed physician~~ physician, physician assistant, or nurse practitioner,
31 who holds a current license in the United States to practice medicine, as issued by a state
32 medical board, stating the applicant's physical fitness to participate in the course;
- 33 (3) present a written endorsement by either
34 (A) a certified School Director indicating the student is qualified to instruct Compliance
35 and Control Tactics ~~subject control arrest techniques~~ in the Commission-accredited
36 Basic Law Enforcement Training Courses; Course; or
37 (B) a Department Head, certified School Director, or In-Service Training Coordinator

- indicating the student may be utilized to instruct Compliance and Control Tactics
~~subject control arrest techniques~~ for the Law Enforcement Officers' Annual In-Service
Training program; and
- (4) Within 365 days prior to enrollment in the Compliance and Control Tactics ~~Subject Control~~
~~Arrest Techniques~~ Instructor Training course the prospective student shall complete the
following assessments administered by the North Carolina Justice Academy:
- (A) a qualification requiring the individual to demonstrate 100 percent proficiency on the
Basic Law Enforcement Training Compliance and Control Tactics; Subject Control
~~Arrest Techniques~~; and
- (B) achieve at least the 60th percentile on a physical fitness assessment.
- (d) Each Specialized Compliance and Control Tactics ~~Subject Control Arrest Techniques~~ Instructor Training
course shall include the following identified topic areas and minimum instructional hours for each area:
- | | | |
|-----|---|---------|
| (1) | Orientation | 1 Hour |
| (2) | Response to Injury | 4 Hours |
| (3) | Combat Conditioning | 4 Hours |
| (4) | Safety Guidelines/Rules | 2 Hours |
| (5) | Fundamentals of Professional Liability | 4 Hours |
| (6) | Practical Skills Enhancement | 4 Hours |
| (7) | Student Instructional Practicum | 6 Hours |
| (8) | BLET Lesson Plan Review | 4 Hours |
| (9) | <u>Completion of tasks associated with [Compliance and Control Tactics] Subject Control Arrest</u>
<u>Techniques Instructional Methods and Demonstrations. The number of hours required to</u>
<u>complete this portion of the curriculum shall be based on the number of enrolled students,</u>
<u>available facilities, and number of instructors.</u> | |
- (e) ~~The "Specialized Subject Control Arrest Techniques Instructor Training Manual" as published by the North~~
~~Carolina Justice Academy shall be the curriculum for the Specialized Subject Control Arrest Techniques~~
~~Instructor Training course. Copies of this publication may be inspected at the:~~
- ~~Criminal Justice Standards Division~~
~~North Carolina Department of Justice~~
~~1700 Tryon Park Drive~~
~~Post Office Drawer 149~~
~~Raleigh, North Carolina 27610~~
- ~~and may be obtained at the cost of printing and postage from the Academy at the following address:~~
- ~~North Carolina Justice Academy~~
~~Post Office Box 99~~
~~Salemburg, North Carolina 28385~~
- (b) ~~The Commission certified school that is certified to offer the "Specialized Subject Control Arrest Techniques~~

~~Instructor Training" course is the North Carolina Justice Academy.~~

History Note: Authority G.S. 17C-6;
Eff. February 1, 1987;
Amended Eff. February 1, 2016; January 1, 2015; February 1, 2013; December 1, 2009; August
1, 2006; August 1, 2000; November 1, 1998; August 1, 1995; March 1, 1990; July 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,
2019;
Amended Eff. January 1, 2025; April 1, 2022; January 1, 2021.

12 NCAC 09B .0404 is amended, with changes, as published in 38:24 NCR 1638-1639 as follows:

12 NCAC 09B .0404 TRAINEE ATTENDANCE

(a) Each trainee enrolled in a ~~certified~~ Commission-accredited Basic Law Enforcement Training Course shall attend all class sessions. The school director shall monitor the trainee's attendance at criminal justice training courses in which the trainee is enrolled.

(b) The school director may excuse a trainee from attendance at specific class ~~sessions~~ sessions for just cause. For purposes of this Rule, just cause means accident, illness, emergency, or other circumstances which precluded the trainee from attending a class session. However, in no case may excused or unexcused absences exceed five percent of the total class hours for the course offering. A trainee shall not be eligible for administration of the State comprehensive examination and shall be dismissed from the course if the cumulative total of class absences exceeds five percent regardless of the prior completion of make-up work.

(c) If the school director grants an excused absence from a class session, he or she shall schedule make-up work and ensure the completion of such work during the current course presentation. The school director shall schedule instructors and reimburse those instructors for the purpose of completion of the make-up work. ~~Absences that occur during the last 40 hours of the training course may be made up in a subsequent delivery; however, the school director shall notify the Standards Division prior to scheduling the make-up work. Make-up work shall consist of an in-person, one-hour instruction period for each hour of missed training, in the lesson plan where the missing training occurred, and shall be taught by an instructor certified to teach that block of instruction. Make-up work shall be documented on the F-26 BLET Student Absence/Make Up Training Report. The F-26 BLET Student Absence/Make Up Training Report shall contain the following:~~

- (1) School/Academy Name;
- (2) Class Name;
- (3) Student name and ACADIS ID number;
- (4) Course topic, date, and hours missed;
- (5) Reason for missed time;
- (6) Student and School Director signatures;
- (7) Course topic and hours made up; and
- (8) Instructor name and signature

(d) If the Governor declares a State of Emergency pursuant to G.S. 166A-19.3(19), the Director of the Criminal Justice Standards Division shall allow additional breaks in instruction for an individual trainee in a specific course delivery, not to exceed 90 hours, when the Director determines that doing so is necessary based on consideration of the following factors:

- (1) Whether instruction has begun in the course or whether course initiation may be postponed;
- (2) The risk of harm to students that may be caused by continuation of the course;
- (3) Whether those enrolled in the course have been or will likely be called to action to help address the State of Emergency;

1 (4) The specific need for the waiver; and

2 (5) The degree of benefit to the public in allowing a break in instruction.

3 Notice of waivers granted pursuant to this Section shall be posted on the CJETS website at [https://ncdoj.gov/law-](https://ncdoj.gov/law-enforcement-training/criminal-justice/)
4 [enforcement-training/criminal-justice/](https://ncdoj.gov/law-enforcement-training/criminal-justice/). The waivers granted pursuant to this Section shall only apply to courses
5 that began during the effective period of the State of Emergency.

6 (e) the School Director shall provide the following information to the Director of the Criminal Justice Standards
7 Division for consideration of a waiver under Paragraph (d) of this Rule:

8 (1) a memorandum justifying the absence waiver;

9 (2) specific documentation related to the trainee's request; and

10 (3) a training completion plan pursuant to Paragraph (c) of this Rule.

11 (f) A school director **may shall** terminate a trainee from course participation or **may shall** deny certification of
12 successful course completion where the trainee is tardy to or departs early from class meetings or field exercises.

13 (g) Where a trainee is enrolled in a program as required in 12 NCAC 09B .0212, .0213, .0214, .0215, .0218,
14 .0219, .0220, .0221, .0222, .0237, .0238, .0239, or .0240, and the scheduled course hours exceed the requirements
15 of the Commission, the trainee, upon the authorization of the school director, **may shall** be deemed to have
16 satisfactorily completed the required number of hours for attendance provided the trainee's attendance is not less
17 than 100 percent of the instructional hours as required by the Commission.

18 (h) A trainee enrolled in a presentation of the "Criminal Justice Instructor Training Course" under Rule .0209 of
19 this Subchapter shall not be absent from class attendance for more than 10 percent of the total scheduled delivery
20 period in order to receive successful course completion.

21 (i) A trainee, enrolled in a presentation of the "Specialized Firearms Instructor Training" course under Rule .0226
22 of this Subchapter, the "Specialized Driver Instructor Training" course under Rule .0227 of this Subchapter, the
23 "~~Specialized Subject Control Arrest Techniques Compliance and Control Tactics~~ Instructor Training" course
24 under Rule .0232 of this Subchapter, ~~or the "Specialized Physical Fitness Instructor Training" course under Rule~~
25 ~~.0233 of this Subchapter, the "Specialized Explosives and Hazardous Materials Emergencies Instructor Training"~~
26 ~~course under Rule .0417 of this Subchapter, or the "Juvenile Justice Specialized Instructor Training – Restraints,~~
27 ~~Controls and Defensive Techniques" course under Rule .0241 of this Subchapter~~ shall not be absent from class
28 attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course
29 completion. Make-up work must be completed during the current course presentation for all absenteeism. Make-
30 up work shall consist of an in-person, one-hour instruction period for each hour of missed training, in the lesson
31 plan where the missing training occurred, and shall be taught by an instructor certified to teach that block of
32 instruction.

33 (j) **Where a trainee is enrolled in a program as required in 12 NCAC 09B .0209, .0226, .0227, .0232, .0233, or**
34 **.0417, the** The Director of the Criminal Justice Standards Division **may shall** grant a waiver for completion of
35 course requirements in a course delivery scheduled within 12 months, for just cause based upon the circumstances
36 that created the need for the absence. For the purposes of this Rule, "just cause" includes an accident, illness,
37 emergency, or course cancellation that precluded the student from completing the entire course in one continuous

1 course delivery.

2 (k) A trainee, enrolled in a presentation of the "RADAR Instructor Training Course" under Rule .0210 of this
3 Subchapter, the "Time-Distance Instructor Training Course" under Rule .0211 of this Subchapter, or the "LIDAR
4 Instructor Training Course" under Rule .0237 of this Subchapter shall not be absent from class attendance for
5 more than 10 percent of the total scheduled delivery period in order to receive successful course completion.
6 Make-up work must be completed during the current course presentation for all absenteeism. Make-up work shall
7 consist of an in-person, one-hour instruction period for each hour of missed training, in the lesson plan where the
8 missing training occurred, and shall be taught by an instructor certified to teach that block of instruction.

9
10 *History Note: Authority G.S. 17C-6; 17C-10;*

11 *Eff. January 1, 1981;*

12 *Amended Eff. November 1, 1981;*

13 *Readopted Eff. July 1, 1982;*

14 *Amended Eff. February 1, 2006; May 1, 2004; August 1, 2000; April 1, 1999; November 1,*
15 *1993;*

16 *July 1, 1989; February 1, 1987; June 1, 1986;*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
18 *2019;*

19 *Amended Eff. January 1, 2025; April 1, 2022; August 1, 2021.*

Response to the Rules Review Commission November 26, 2024 objection to Rule 12 NCAC 09B .0232

Objections:

I. In Paragraph (d), Subparagraphs (3), (5), and (8), the Criminal Justice Educations and Training Standards Commission (the “Agency”) has not followed 26 NCAC 02C .0405 which sets forth how rules are to be formatted for publication in the North Carolina Code (the “Code”).¹ Rule .0405 specifies how changes are to be displayed from the version published in the North Carolina Register (the “Register”). If the adopted rule is not formatted pursuant to Rule .0405, the adopted language cannot be determined without assumption.² For instance, on page 2, line 15, the Agency has highlighted both “4” and “8” but only “8” is underlined. It is unclear whether the Agency intends the number to be “8” or “48.” Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(a)(2) for lack of clarity and ambiguity.

II. Paragraph (d) of the Rule sets forth requirements for “Specialized Compliance and Control Tactics Instructor Training” courses. While Subparagraphs (1)-(8) establish the specific hours of instruction required for each topic, Subparagraph (9) bases the number of hours required for “Compliance and Control Tactics Instructional Methods and Demonstrations” upon an undefined formula considering the number of students and instructors. It appears that the requirement is based upon instructor availability considering 12 NCAC 09B .0202 and/or some arbitrary instructor/student ratio. In addition to the ambiguity surrounding the establishment of the number of hours required, it is unclear who makes the determination. Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(a)(2) for lack of clarity and ambiguity.

III. Subparagraphs (1)-(8) of Paragraph (d) in the proposed Rule published in the Register do not offer any changes from the Rule currently in the Code. After publication the Agency not only changed the hour requirement for each subparagraph but also changed the courses required, specifically Subparagraphs (d)(5) and (7). Pursuant to G.S. 150B-21.2(g) an agency cannot adopt a rule which differs substantially from the text of the proposed rule. Here, the Agency made substantial changes post-publication which address a subject matter that was not addressed in the proposed text of the rule; to wit, the new courses in Subparagraphs (d)(5) and

(7), and produced an effect that could not reasonably have been expected; to wit, the changes in hours and the aforesaid new courses. Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(a)(4) for adoption contrary to Part 2, Article 2 of the Administrative Procedures Act.

Response:

Per NCGS 150B-21.12, the Criminal Justice Education and Training Standards Commission has changed the rule to satisfy the Rules Review Commission's objections and submitted the revised rule to the Commission.

**Response to the Rules Review Commission November 26, 2024 objection to Rule 12 NCAC 09B
.0404**

Objections:

I.

In Paragraph (f), the Criminal Justice Education and Training Standards Commission (the “Agency”) requires a school director to terminate or deny a trainee who is “habitually” tardy to or departs early from, class meetings or field exercises. 1

“Habitually” is an unclear and ambiguous standard which would presumably be left to each school director’s arbitrary interpretation.

Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(a)(2) for lack of clarity and ambiguity.

II.

Paragraph (g) is facially unclear as revised.

Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(a)(2) for lack of clarity and ambiguity.

Response:

Per NCGS 150B-21.12, the Criminal Justice Education and Training Standards Commission has changed the rule to satisfy the Rules Review Commission’s objections and submitted the revised rule to the Commission.

Burgos, Alexander N

Subject: FW: [External] Re: 12 NCAC 09B .0232 Staff opinion

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Monday, December 2, 2024 1:41 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: 12 NCAC 09B .0232 Staff opinion

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

I understand. Thank you.



MICHELLE SCHILLING

Deputy Director

Criminal Justice Standards Division

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1700 Tryon Park Drive

Raleigh, NC 27602-0149

ncdoj.gov

Please note messages to or from this address may be public records.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, December 2, 2024 1:31 PM
To: Schilling, Michelle <mschilling@ncdoj.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: 12 NCAC 09B .0232 Staff opinion

Good afternoon,

While you submitted a revised rule prior to objection by the RRC, a revision needs to be submitted post-objection. I did not want you to think that the revision sent November 21, 2024 was currently under review.

Also, please remember that your agency should not make additional changes to the rule other than those to satisfy the objections.

As always, if you have any questions please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

From: Peaslee, William W
Sent: Friday, November 22, 2024 2:54 PM
To: Schilling, Michelle
Cc: Burgos, Alexander N
Subject: 12 NCAC 09C .0104
Attachments: 2024.12 CJETS Request for Changes 12 NCAC 09C .0104.docx

Good afternoon,

Attached please find the request for changes for the above captioned rule set to be reviewed by the Rules Review Commission at its December meeting.

As always if you have any questions please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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