

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.
For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

TITLE 16 – DEPARTMENT OF PUBLIC INSTRUCTION

Notice is hereby given in accordance with G.S. 150B-21.1(a3) that the State Board of Education intends to adopt the rules cited as 16 NCAC 06C .0603-.0608, amend the rules cited as 16 NCAC 06C .0601, .0602, and repeal the rules cited as 16 NCAC 06C .0372-.0376.

Codifier of Rules received for publication the following notice and proposed temporary rule(s) on: January 5, 2024.

Public Hearing:

Date: February 2, 2024

Time: 9:00 a.m.

Location: <https://ncgov.webex.com/ncgov/j.php?MTID=m0ea2d983af8da1ff42a72786b8eb9191>

Reason for Proposed Temporary Action S.L. 2023-128, effective December 1, 2023, expands the applicability of the criminal statute related to indecent liberties with a student and increases penalties on school personnel who fail to report certain misconduct by educators. The legislation also gives the State Board of Education (“SBE”) authority to adopt temporary rules to implement the requirements of the legislation, to address disciplinary action against professional educator licenses, and to modify the Standards of Professional Conduct.

The Standards of Professional Conduct for North Carolina Educators, codified 16 NCAC 06C .0601 and 06C .0602, are also among the SBE Rules scheduled for re adoption no later than June 30, 2026, through the periodic review process required by the North Carolina Administrative Procedure Act (“APA”). See G.S. 150B-21.3A.

The SBE proposes to use the temporary authority in S.L. 2023-128 to amend 16 NCAC 06C .0601 and 06C .0602 in preparation for re adoption. The SBE is simultaneously proposing new rules, 16 NCAC 06C .0603 – 06C .0608, to govern the process for denying an application for a professional educator license or taking disciplinary action against an existing license. These would replace its existing rules on this topic, currently codified at 16 NCAC 06C .0372 – 06C .0376. The SBE understands that 16 NCAC 06C .0601 and 06C .0602 will need to be re adopted through permanent rulemaking procedures and intends to do so concurrently with putting the other rules through permanent rulemaking.

The SBE is treating these actions as a “package” and with a concurrent public comment period and public hearing. We request that OAH publish these proposed actions simultaneously with a single public notice to ensure the public understands the scope of the actions.

Comment Procedures: Comments from the public shall be directed to: Ryan Collins, 6301 Mail Service Center, Raleigh, NC 27601; email ryan.collins@dpi.nc.gov. The comment period begins January 12, 2024 and ends February 9, 2024.

CHAPTER 06 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 06C – PERSONNEL

SECTION .0300 - CERTIFICATION

16 NCAC 06C .0372	DENYING A LICENSE APPLICATION OR SUSPENSION OR REVOCATION OF A LICENSE ISSUED BY THE NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION
16 NCAC 06C .0373	REPORTING REQUIREMENTS FOR SUSPECTED CHILD ABUSE BY A LOCAL EDUCATION AGENCY ADMINISTRATOR TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION
16 NCAC 06C .0374	INVESTIGATION REQUIREMENTS TO DETERMINE REASONABLE CAUSE TO SUSPEND OR REVOKE AN EDUCATOR LICENSE
16 NCAC 06C .0375	VOLUNTARY SURRENDER OF AN EDUCATOR LICENSE
16 NCAC 06C .0376	REINSTATEMENT OR ISSUANCE OF A SUSPENDED, REVOKED, OR DENIED LICENSE

Authority G.S. 115C-12; 115C-268.1; 116C-268.5; 115C-270.5; 115C-270.20; 115C-270.35; 115C-325; 115C-325.9; 115C-400.

SECTION .0600 – ~~CODE OF PROFESSIONAL PRACTICE AND STANDARDS OF PROFESSIONAL CONDUCT FOR~~ NORTH CAROLINA EDUCATORS

16 NCAC 06C .0601 PURPOSE AND APPLICABILITY DEFINITIONS

(a) ~~The purpose of these~~ These Rules is to establish and uphold uniform standards of professional conduct ~~establish uniform Standards of Professional Conduct ("Standards") for licensed professional educators throughout the State, and apply to all persons employed in a North Carolina public school or who hold a professional educator license issued pursuant this Subchapter and Chapter 115C, Article 17E of the General Statutes. These Rules shall be binding on every person licensed by the SBE, hereinafter referred to as "educator" or "professional educator," and the possible consequences of any willful breach shall include license suspension or revocation. The prohibition of certain conduct in these Rules shall not be interpreted as approval of conduct not specifically cited.~~

(b) Violation of these Standards shall be grounds for disciplinary sanctions against a professional educator's license as provided in this Section.

(c) As used in this Section, the following definitions apply:

- (1) "Public school unit" or "PSU" is defined in G.S. 115C-5(7a).
- (2) "License" means a professional educator license issued by the Department of Public Instruction ("DPI") in accordance with this Subchapter and Chapter 115C, Article 17E of the General Statutes.
- (3) "Local superintendent" means the superintendent of a local school administrative unit, as provided in Chapter 115C, Article 18 of the General Statutes, or the staff member with the highest decision-making authority for a PSU, if there is no superintendent.
- (4) "Respondent" means a person who currently holds a license or who has applied for a license.
- (5) "Student" is defined in G.S. 14-202.4(d)(4).

Authority G.S. 115C-295.3; 115C-12(9); 115C-270.5; 115C-307.

16 NCAC 06C .0602 STANDARDS OF PROFESSIONAL CONDUCT

(a) The ~~standards~~ Standards of Professional Conduct ("Standards") listed in this Section shall be generally accepted for the education profession and shall be the basis for ~~State Board review of reviewing the performance of professional educators.~~ educators by the State Board of Education ("SBE"). ~~These standards shall establish mandatory prohibitions and requirements for educators.~~ Violation of these ~~standards~~ Standards shall subject an educator to investigation and disciplinary action by the SBE or ~~LEA.~~ any public school unit by which the educator is employed.

(b) Professional educators shall adhere to the ~~standards of professional conduct contained~~ Standards as set forth in this Rule. Any intentional act or omission that violates these ~~standards~~ Standards is prohibited.

- (1) ~~Generally recognized professional standards.~~ Recognized Professional Standards. The educator shall adhere to and practice the professional standards of all federal, state, and local governing bodies. ~~bodies with oversight of public education.~~
- (2) ~~Personal conduct.~~ Conduct. ~~The educator shall serve as a positive role model for students, parents, and the community. Because the educator is entrusted with the care and education of small children and adolescents, the educator shall demonstrate a high standard of personal character and conduct. The educator is entrusted with the care and education of children and adolescents. As a result, the educator shall demonstrate a high standard of personal character and conduct and shall serve as a positive role model for students, parents, and the community.~~
- (3) ~~Conduct with Students.~~ The educator shall treat all students with respect and maintain appropriate professional boundaries with all students, regardless of whether that student is directly under the care or supervision of the educator. ~~The educator shall not engage in any of the following conduct toward or in the presence of a student:~~
 - (A) ~~Use of profane, vulgar, or demeaning language.~~
 - (B) ~~Intentional solicitation, encouragement, or consummation of a romantic, physical, or sexual relationship with a student. As used in this context, "solicitation" or "encouragement" shall include engaging in a pattern of flirtatious behavior; efforts to gain access to, or time alone with, a student with no clear educational objective; provision of individualized or specialized treatment, including tangible or monetary gifts, to a student that does not comply with generally recognized professional standards for educators; or any other behavior that could be perceived by a rational observer as excessively personal or intimate in the context of the educator-student relationship.~~
 - (C) ~~Solicitation, encouragement, or consummation of sexual contact with a student.~~
 - (D) ~~Sexual harassment, as defined in 34 C.F.R. 106.30(a).~~
 - (E) ~~Child abuse, as defined in G.S. 14-318.2 or G.S. 14-318.4.~~
- (4) ~~Alcohol and Controlled Substances.~~ The educator shall not be under the influence of, possess, use, or consume an alcoholic beverage or a controlled substance, as defined in G.S. 90-95, on school premises, at a school-sponsored activity, or when otherwise discharging the educator's professional duties, unless the educator has a prescription from a licensed medical professional authorizing such use. ~~The educator shall not furnish alcoholic beverages or controlled substances to a student, except for the administration of medication prescribed by a license medical professional in accordance with the educator's professional duties.~~
- (~~3~~)5) ~~Honesty.~~ The educator shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation in the performance of the educator's professional duties, including the following:
 - (A) ~~statement~~ statements or representations of professional qualifications;
 - (B) ~~application or recommendation~~ applications or recommendations for professional employment, promotion, or licensure;
 - (C) ~~application or recommendation~~ applications or recommendations for college or university admission, scholarship, grant, academic award, or similar benefit;
 - (D) ~~representation~~ statements or representations of completion of college or staff development credit;
 - (E) ~~evaluation or grading of students or school personnel;~~
 - (F) ~~submission of financial or program compliance reports submitted to state, federal, or other governmental agencies;~~
 - (G) ~~submission of information in the course of an official inquiry by the employing LEA or the SBE related to facts of unprofessional misconduct, provided, however, SBE or the educator's employing PSU into allegations of professional misconduct, provided that an educator shall be given adequate notice of the allegations and may be represented by legal counsel; and~~

- (H) submission of information in the course of an investigation into school related criminal activity by a law enforcement agency, child protective services, or any other agency with the right authority to investigate, regarding school related criminal activity; provided, however, investigate, provided that an educator shall be entitled to decline to give evidence may refuse to provide information to law enforcement if such evidence may tend to could incriminate the educator as that term is defined by the Fifth Amendment to in violation of the educator's rights under the U.S. Constitution. United States Constitution or North Carolina Constitution.
- (6) Compliance with Criminal Laws. The educator shall not violate the criminal laws of this State, the United States, or any other state or territory under the jurisdiction of the United States.
- (4)(7) Proper remunerative conduct. Remunerative Conduct. The educator shall not solicit current students or parents of students to purchase equipment, supplies, or services from the educator in a private remunerative capacity. An educator shall not tutor for remuneration students currently assigned to the educator's classes, unless approved by the local superintendent. An educator shall not accept any compensation, benefit, or thing of value other than the educator's regular compensation for the performance of any service that the educator is required to render in the course and scope of the educator's employment. This Rule shall not restrict performance of any overtime or supplemental services at the request of the LEA; PSU, nor shall it apply to or restrict the acceptance of gifts or tokens of minimal value offered and accepted openly from students, parents, or other persons in recognition or appreciation of service. the educator's professional service, provided the gift is given and received freely, openly, and without expectation of favor or advantage to the donor in return.
- (5) Conduct with students. The educator shall treat all students with respect. The educator shall not commit any abusive act or sexual exploitation with, to, or in the presence of a student, whether or not that student is or has been under the care or supervision of that educator, as defined below:
- (A) any use of language that is considered profane, vulgar, or demeaning;
- (B) any sexual act;
- (C) any solicitation of a sexual act, whether written, verbal, or physical;
- (D) any act of child abuse, as defined by law;
- (E) any act of sexual harassment, as defined by law; and
- (F) any intentional solicitation, encouragement, or consummation of a romantic or physical relationship with a student, or any sexual contact with a student. The term "romantic relationship" shall include dating any student.
- (6)(8) Confidential information. Information. The educator shall keep in confidence confidential all personally identifiable information regarding students or their family members that the educator has been obtained in the course of professional service, unless disclosure is required or permitted by law or professional standards, or is necessary for the personal safety of the student or others.
- (7)(9) Rights of others. The educator shall not willfully or maliciously violate the constitutional or civil rights of a student, parent/legal guardian, or colleague.
- (8)(10) Required reports. Reports. The educator shall make all reports required by G.S. 115C. Chapter 115C of the General Statutes.
- (9) Alcohol or controlled substance abuse. The educator shall not:
- (A) be under the influence of, possess, use, or consume on school premises or at a school sponsored activity a controlled substance as defined by G.S. 90-95, the Controlled Substances Act, without a prescription authorizing such use;
- (B) be under the influence of, possess, use, or consume an alcoholic beverage or a controlled substance on school premises or at a school sponsored activity involving students; or
- (C) furnish alcohol or a controlled substance to any student except as indicated in the professional duties of administering legally prescribed medications.
- (10) Compliance with criminal laws. The educator shall not commit any act referred to in G.S. 115C-332 and any felony under the laws of the United States or of any state.
- (11) Public funds and property. Funds and Property. The educator shall not misuse public funds or property, funds of a school related organization, or colleague's funds. property or any funds belonging to an organization affiliated with the school or PSU. The educator shall account for funds collected from students, colleagues, or parents/legal guardians. parents, or legal guardians of students. The educator shall not submit fraudulent requests for reimbursement, expenses, or pay.
- (12) Scope of professional practice. Professional Practice. The educator shall not perform any act as an employee in a position professional duty or function for which licensure is required by the rules of the SBE or by G.S. 115C or the North Carolina General Statutes this Chapter or by Chapter 115C of the General Statutes during any period in which the educator's license has been is suspended or revoked.
- (13) Conduct related to ethical violations. Abuse of Authority. The educator shall not directly or indirectly use or threaten to use any official authority or influence in any manner that tends to discourage, restrain, interfere with, coerce, or discriminate discourages, restrains, coerces, interferes with, or discriminates against any subordinate or any licensee who in good faith reports, discloses, divulges, reports or otherwise brings to the attention of an LEA, a PSU, the SBE, or any other public agency authorized to take remedial action, any facts or information relative to the actual or suspected violation of any law or rule regulating the duties of persons serving in the public school system, including but not limited to these Rules. those established by this Section.

16 NCAC 06C .0603 INVESTIGATION OF ALLEGED MISCONDUCT BY A LICENSED PROFESSIONAL EDUCATOR OR LICENSE APPLICANT

(a) Upon receipt of allegations and substantiating information regarding a respondent that may provide cause for imposing disciplinary sanctions on a license or denying an application for a license under Rule .0604 of this Section, the Superintendent of Public Instruction ("Superintendent") shall investigate the allegations to determine if such action is warranted. The Superintendent shall investigate allegations or information from any source in a position to provide such information, including a PSU, State agency, court or other tribunal, or other credible person or institution. The Superintendent shall also consider information disclosed by a license applicant in the application.

(b) The Superintendent is authorized to utilize the power conferred upon the State Board of Education ("SBE") under G.S. 115C-270.35(e), including the power to subpoena documents, secure witness testimony, or hire investigators, for the purpose of conducting investigations under this Rule.

(c) If the Superintendent finds cause to impose disciplinary sanctions on a license or deny a license application for any of the reasons described in Rule .0604 of this Section, the Superintendent shall prepare, on behalf of the SBE, a proposed order containing findings of fact, conclusions of law, and the proposed sanction(s) or denial.

(d) The Superintendent shall provide the respondent with a copy of the proposed order and notify the respondent that the proposed sanctions or denial described in the order shall become final unless the respondent commences an administrative proceeding under Chapter 150B, Article 3 of the General Statutes within 60 days of the notice. The Superintendent shall send the notice via electronic mail and certified mail to the latest addresses provided to the SBE, and the 60-day time limitation shall commence on the date of electronic delivery or placement of the notice in an official depository of the United States Postal Service, whichever is earlier, in accordance with G.S. 150B-23(f).

(e) If the respondent commences administrative proceedings, the SBE shall stay the proposed order until receipt of a final decision or order under G.S. 150B-34. If the respondent does not commence proceedings within the 60-day time limitation, the proposed order shall become final, and the Superintendent shall take all necessary actions to enforce the order.

Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 150B-22; 150B-23.

16 NCAC 06C .0604 DENYING OR SANCTIONING A LICENSE

(a) The State Board of Education ("SBE"), or its authorized designee, may, following an investigation in accordance with Rule .0603 of this Section, impose disciplinary sanctions on a license issued by the Department of Public Instruction or deny an application for any such license if the SBE finds, by a preponderance of the evidence, that the respondent has done any of the following:

- (1) Engaged in fraud, material misrepresentation, or concealment in an application for the license.
- (2) Become ineligible for the license due to changes or corrections in the license documentation.
- (3) Been convicted of a crime in any state, federal, or territorial court of the United States, including military tribunals.
- (4) Been dismissed by a local board of education, pursuant to G.S. 115C-325(e)(1), or by the governing body of any other PSU.
- (5) Resigned from employment with a PSU without thirty calendar days' notice, except with the prior consent of the superintendent.
- (6) Had a professional educator license or other occupational license issued by another state revoked or suspended due to a finding of misconduct by the relevant occupational licensing board or agency.
- (7) Failed to report suspected child abuse in accordance with G.S. 115C-400 or other suspicion of professional misconduct by a licensed employee in accordance with Rule .0607 of this Section.
- (8) Violated the Testing Code of Ethics, codified at 16 NCAC 06D .0311.
- (9) Engaged in any other illegal, unethical, or lascivious conduct, or otherwise violated the Standards of Professional Conduct as described in Rule .0602 of this Section.

(b) When deciding whether to impose disciplinary sanctions or deny an application for a license, the SBE shall consider the following factors:

- (1) The existence of a reasonable and adverse relationship between the underlying misconduct and the ability of the respondent to perform the respondent's professional duties as an educator.
- (2) The severity of the misconduct.
- (3) The impact of the misconduct on students, other educators, and the school community.
- (4) The respondent's degree of culpability in the misconduct.
- (5) The degree of remorse exhibited by the respondent for the misconduct.
- (6) Any evidence of reformed behavior on the part of the respondent.
- (7) Subsequent incidents of misconduct by the respondent or the probability of future misconduct.

(c) If the SBE determines that sanctions against a current licensee are warranted, it shall impose sanctions in accordance with Rule .0605 of this Section.

Authority G.S. 115C-12(9); 115C-174.11; 115C-174.12; 115C-270.5; 115C-270.30; 115C-270.35; 150B-22; 150B-23.

16 NCAC 06C .0605 DISCIPLINARY SANCTIONS

(a) Upon finding of a basis for imposing disciplinary sanctions against a respondent's license under Rule .0604 following an investigation under Rule .0603 of this Section, the State Board of Education ("SBE") may impose any of the following sanctions:

- (1) Written Warning
- (2) Written Reprimand

(3) Suspension for a Defined Term

(4) Revocation

(b) In addition to one of the sanctions listed in Paragraph (a), the SBE may impose additional conditions upon a respondent—including requirements for the respondent to complete additional CEUs, community service hours, or other activities—if the purpose of the condition is remedial, relevant to the misconduct giving rise to the sanction, and designed to reduce the possibility of recidivism.

(c) Notwithstanding Rule .0603 of this Section or Paragraph (a) of this Rule, the SBE shall summarily suspend the license of a respondent if the SBE finds that the public health, safety, or welfare requires emergency action and incorporates those findings in the order prepared in accordance with Rule .0603 of this Section. A finding that a respondent has been charged in the General Court of Justice with any crime the conviction for which would result in automatic revocation of the respondent's license under G.S. 115C-270.35(b) shall be considered prima facie evidence in satisfaction of this Paragraph. Following the summary suspension, the SBE shall promptly commence a disciplinary investigation and proceedings in accordance with Rules .0603 and .0604 of this Section.

(d) The SBE shall, upon expiration of the 60-day time limitation described in Rule .0603(e) of this Section, publish the sanction and a brief description of the basis for the sanction on the Department of Public Instruction ("DPI") website and report it to the National Association of State Directors of Teacher Education and Certification, except that this requirement shall not apply to a Written Warning. The SBE shall not disclose any information related to the sanction that is considered confidential under Chapter 115C, Article 21A of the General Statutes or is otherwise protected from disclosure under State or federal law.

Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 150B-3; 150B-22; 150B-23.

16 NCAC 06C .0606 VOLUNTARY SURRENDER OF A LICENSE

(a) An individual licensed under Chapter 115C, Article 17E of the General Statutes may notify the State Board of Education ("SBE") in writing of the individual's intention to voluntarily surrender the individual's license to the SBE.

(b) The SBE may accept the voluntary surrender of a license in lieu of pursuing revocation of the license if, following an investigation in accordance with Rule .0603 of this Section, the SBE determines that the surrender of the license will not compromise public safety. The Superintendent of Public Instruction shall prepare, on behalf of the SBE, a proposed order containing findings of fact and conclusions of law demonstrating that circumstances exist that would justify pursuing revocation of the respondent's license. The Superintendent shall provide the respondent with a copy of the proposed order and notify the respondent that the respondent's license will be revoked unless the respondent challenges any of the factual findings contained in the order within 10 days of the notice. The Superintendent shall send the notice via electronic mail and certified mail to the latest addresses provided to the SBE.

(c) The SBE shall, upon expiration of the 10-day time limitation described in Paragraph (b), publish the revocation and a brief description of the basis for the revocation on the Department of Public Instruction ("DPI") website and report it to the National Association of State Directors of Teacher Education and Certification. The SBE shall not disclose any information related to the revocation that is considered confidential under Chapter 115C, Article 21A of the General Statutes or is otherwise protected from disclosure under State or federal law.

Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 150B-22; 150B-23.

16 NCAC 06C .0607 REINSTATEMENT OF OR RECONSIDERATION FOR A LICENSE

(a) A respondent whose license has been revoked or whose application for a license has been denied under this Section may seek reinstatement of the revoked license or reconsideration of the license application no sooner than 12 months after the effective date of the revocation or denial.

(b) The respondent shall submit a request to the State Board of Education ("SBE") in writing that includes a statement describing why the circumstances that led to the revocation or denial do not or no longer justify prohibiting the respondent from holding a license.

(b) The SBE may deny the request, grant the request, or grant the request on a probationary basis. If the SBE grants the request on a probationary basis, the respondent's license status shall be subject to review by the SBE one year from the date that the license is granted, and the respondent shall comply with any conditions the SBE may impose.

Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 150B-22; 150B-23.

16 NCAC 06C .0608 REPORTING REQUIREMENTS FOR PSU ADMINISTRATORS

(a) In addition to any duty to report suspected child abuse under G.S. 115C-400, any PSU administrator who knows, has reason to believe, or has actual notice of a complaint that an employee licensed under Chapter 115C, Article 17E of the General Statutes has engaged in conduct that would justify the automatic revocation of the license under G.S. 115C-270.35(b), or which involves the physical abuse of a child as defined in G.S. 14-318.2 or G.S. 14-318.4, and that results in the dismissal of, disciplinary action against, or resignation of the employee shall report the conduct in writing to the State Board of Education ("SBE") within five days of dismissal, determination of disciplinary action, or acceptance of resignation.

(c) Any PSU administrator who knows, has reason to believe, or has actual notice of a complaint that an employee licensed under Chapter 115C, Article 17E of the General Statutes has engaged in conduct that would otherwise justify disciplinary sanctions against the employee's license under Rule .0604 of this Subchapter shall report the conduct in writing to the SBE within 30 days of dismissal, determination of disciplinary action, or acceptance of resignation.

(c) If an employee resigns within 30 days of a complaint for misconduct or during an ongoing investigation of a complaint, the misconduct is presumed to have resulted in the resignation.

(d) For purposes of this Rule, "PSU administrator" shall include any superintendent, associate superintendent, assistant superintendent, personnel administrator, principal, or head of school employed by a PSU.

