

NORTH CAROLINA REGISTER

VOLUME 30 • ISSUE 14 • Pages 1483 - 1618

January 15, 2016

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

Office of Administrative Hearings

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(919) 431-3080

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Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Sarah Collins

scollins@nclm.org

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney

Karen.cochrane-brown@ncleg.net

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Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
 Publication Schedule for January 2016 – December 2016

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
30:13	01/04/16	12/08/15	01/19/16	03/04/16	03/21/16	05/01/16	01/2017	09/30/16
30:14	01/15/16	12/21/15	01/30/16	03/15/16	03/21/16	05/01/16	01/2017	10/11/16
30:15	02/01/16	01/08/16	02/16/16	04/01/16	04/20/16	06/01/16	01/2017	10/28/16
30:16	02/15/16	01/25/16	03/01/16	04/15/16	04/20/16	06/01/16	01/2017	11/11/16
30:17	03/01/16	02/09/16	03/16/16	05/02/16	05/20/16	07/01/16	01/2017	11/26/16
30:18	03/15/16	02/23/16	03/30/16	05/16/16	05/20/16	07/01/16	01/2017	12/10/16
30:19	04/01/16	03/10/16	04/16/16	05/31/16	06/20/16	08/01/16	01/2017	12/27/16
30:20	04/15/16	03/24/16	04/30/16	06/14/16	06/20/16	08/01/16	01/2017	01/10/17
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30:22	05/16/16	04/25/16	05/31/16	07/15/16	07/20/16	09/01/16	01/2017	02/10/17
30:23	06/01/16	05/10/16	06/16/16	08/01/16	08/22/16	10/01/16	01/2017	02/26/17
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31:03	08/01/16	07/11/16	08/16/16	09/30/16	10/20/16	12/01/16	01/2017	04/28/17
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31:05	09/01/16	08/11/16	09/16/16	10/31/16	11/21/16	01/01/17	01/2017	05/29/17
31:06	09/15/16	08/24/16	09/30/16	11/14/16	11/21/16	01/01/17	01/2017	06/12/17
31:07	10/03/16	09/12/16	10/18/16	12/02/16	12/20/16	02/01/17	05/2018	06/30/17
31:08	10/17/16	09/26/16	11/01/16	12/16/16	12/20/16	02/01/17	05/2018	07/14/17
31:09	11/01/16	10/11/16	11/16/16	01/03/17	01/20/17	03/01/17	05/2018	07/29/17
31:10	11/15/16	10/24/16	11/30/16	01/17/17	01/20/17	03/01/17	05/2018	08/12/17
31:11	12/01/16	11/07/16	12/16/16	01/30/17	02/20/17	04/01/17	05/2018	08/28/17
31:12	12/15/16	11/22/16	12/30/16	02/13/17	02/20/17	04/01/17	05/2018	09/11/17

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rul



State of North Carolina

PAT McCRORY
GOVERNOR

December 18, 2015

EXECUTIVE ORDER NO. 83

EMPLOYEE AND EMPLOYER FAIRNESS INITIATIVE

WHEREAS, certain businesses engage in "employee misclassification" by improperly classifying their employees as independent contractors which enables these businesses to avoid the liabilities and obligations imposed by state and federal law;

WHEREAS, the practice of employee misclassification: (1) deprives North Carolina employees of their lawful rights and protections; (2) affords unethical business owners with a competitive advantage at the expense of lawful businesses; and (3) divests the state and the general public of significant tax revenues;

WHEREAS, increased cooperation and streamlined information sharing between state agencies is an effective tool for preventing and combating the abuses inherent in employee misclassification;

WHEREAS, the consolidation of resources among relevant agencies is anticipated to effectively bolster enforcement initiatives without unnecessarily increasing the size of government or unduly burdening North Carolina businesses;

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS HEREBY ORDERED:**

Section 1.

The Employee Classification Section (hereinafter "Section") is established within the Industrial Commission. The Chairman of the Industrial Commission (hereinafter "Chairman") shall appoint a Director of the Employee Classification Section (hereinafter "Director") to direct and oversee the Section in carrying out its duties as provided herein. The Chairman may employ clerical staff, investigators, and other staff as is necessary for the Section to perform its duties. The Chairman shall provide the Section with adequate offices in which the Section's records shall be kept and its official business transacted during regular business hours.

Section 2.

The Secretary of Revenue, the Chairman of the Industrial Commission, and the Assistant Secretary of Commerce for the Division of Employment Security shall each designate an employee of their respective agencies to serve as liaisons to the Section. The Commissioner of Labor and Commissioner of Insurance are each invited to designate an employee of their respective agencies to serve as liaisons to the Section.

The Section and agency liaisons shall have the following duties:

- (1) The Section shall be available during business hours to receive complaints of employee misclassification by telephonic, written, or electronic communication. Complaints of employee misclassification may be made directly to the Director or may originate from agency liaisons.
- (2) For each complaint made to the Director, the Director shall create a file and refer the complaint to each of the agency liaisons. Each liaison shall conduct his or her own independent investigation to determine whether violations of their respective operating statutes have occurred as a result of employee misclassification. Each liaison who finds that a violation has occurred shall ensure that necessary enforcement actions are initiated under their respective agencies' operating statutes. Liaisons shall provide quarterly reports to the Director as to the final outcome of all investigations and/or enforcement actions. Each report shall include, at a minimum, the number of complaints of employee misclassification received, the number and amount of back taxes, wages, benefits, penalties, or other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies collected, and the number of complaints referred from the liaison to the Director.
- (3) For each complaint made directly to an agency liaison, the liaison shall refer the complaint to the Director. The Director and liaisons shall then follow the procedure set forth in paragraph (2) above.
- (4) The Director shall coordinate with appropriate state agencies, Office of the Governor, and legislative staff to create and sustain comprehensive measures to combat employee misclassification practices.
- (5) The Director, agency liaisons, and the Department of Information Technology shall develop methods and best practices for information sharing between State agencies in order to proactively identify possible instances of employee misclassification.
- (6) The Director shall develop methods and strategies to educate employers, employees, and the public about proper classification of employees and the prevention of employee misclassification.

Section 3.

By January 1 of each year, the Section shall publish to the Office of the Governor a report of the Section's activities, together with any recommendations or proposed legislative changes as the Section deems advisable. This report shall include, at a minimum, the number of reports of employee misclassification received, the number and amount of back taxes, wages, benefits, penalties, or other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies collected, and the number of cases referred to each State agency.

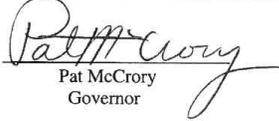
Section 4.

All cabinet agencies, departments, and boards and commissions are directed to provide the Section with all reasonable assistance and information that may be requested in furtherance of its duties as set forth in Section 2. All Council of State heads are invited to share all relevant information and collaborate with the Section in its efforts to prevent and identify offenses arising from employee misclassification.

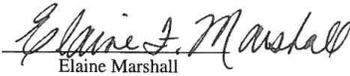
Section 5.

This Executive Order shall be effective immediately and shall remain in effect until rescinded. Executive Order No. 125 issued on August 22, 2012 is hereby terminated.

IN WITNESS WHEREOF, I have hereunto signed my named and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this the eighteenth day of December in the year of our Lord two thousand and fifteen, and of the Independence of the United States of America the two hundredth and thirty-nine.


Pat McCrory
Governor

ATTEST:


Elaine Marshall
Secretary of State





State of North Carolina

PAT McCRORY
GOVERNOR

December 18, 2015

EXECUTIVE ORDER NO. 84

STATE EMPLOYEE FAIRNESS INITIATIVE

WHEREAS, the Director of the Office of State Human Resources is charged with ensuring that employees receive accurate information about human resources programs and services.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

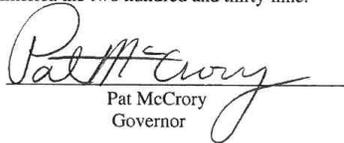
Section 1. Meeting

The representatives of any North Carolina domiciled employee association that has at least 2,000 members who are employees of the State of North Carolina, shall have the opportunity to meet annually with the Governor and bi-annually with the Director of the Office of State Human Resources regarding issues of concern.

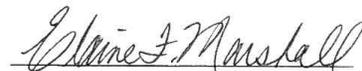
Section 2. Effect and Duration

This Executive Order is effective immediately and shall remain in effect until rescinded. All other Executive Orders or portions of Executive Orders inconsistent with this Order are hereby rescinded. This Order specifically rescinds Executive Order No. 45 signed January 21, 2010.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this eighteenth day of December in the year of our Lord two thousand and fifteen, and of the Independence of the United States of America the two hundred and thirty-nine.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





NORTH CAROLINA
State Board of Elections

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611-7255

Phone: (919) 733-7173
Fax: (919) 715-0135

KIM WESTBROOK STRACH
Executive Director

December 18, 2015

Mr. Steve Long
301 Fayetteville Street
Suite 1400
Raleigh, North Carolina 27601

Re: Request for further consideration of Written Advisory Opinion dated
December 4, 2015

Dear Steve:

I understand your concern regarding the above-referenced advisory opinion issued to Michael Wiesel and appreciate your desire to seek clarification on behalf of your client, the Connect NC Committee. I also recognize that your client's desire to coordinate with candidates of different political parties is part of a bipartisan messaging effort in support of the referendum committee's primary purpose: to promote passage of the bond proposal. You have stressed that your client is not driven by a desire to support or oppose particular candidates, and that any incidental benefit a candidate may derive from coordinated airtime should have no bearing on the status of the expenditure as a *contribution*. For reasons described herein, I do not believe current law allows my office to adopt a similar view when determining whether a candidate has received a contribution from the referendum committee.

According to your letter, the Connect NC Committee hopes to feature candidates supporting the passage of the bond referendum in your client's public communications campaign. As we have discussed, North Carolina law allows referendum committees to raise unlimited contributions from both corporations and individuals. The same is not true for candidate committees. So it is not surprising that our statutes expressly prohibit referendum committees from contributing to any candidate, if that referendum committee has raised funds from entities off limits to that candidate.¹

¹ See G.S. 163-278.13(e1) ("No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee").

6400 Mail Service Center ▪ Raleigh, NC 27699-6400
441 N. Harrington Street ▪ Raleigh, NC 27611-7255

Steve Long request for reconsideration of Advisory Opinion
Page 2

It is your contention that a communication coordinated between a candidate and a referendum committee cannot result in a *contribution* unless the communication supports their candidacy.² Specifically, you contend that, even if the candidate coordinated with the referendum committee on an expenditure, the result of that coordination could only be a contribution to the candidate if the communication expressly advocated *for the candidate*. Your client hopes to avoid this scenario by advocating exclusively *for the bond*. General Statute § 163-278.14A identifies core factors to consider in evaluating whether a communication aims “to support or oppose the nomination or election of one or more clearly identified candidates,” making clear that expressions like “*vote pro-(policy position)* . . . accompanied by a list of candidates clearly labeled *pro-(policy position)*” would be deemed to support the identified candidate. Therefore, if a communication advocated for the passage of the bond referendum and identified a candidate or candidates as supporting the passage of the bond referendum, we are directed to consider that communication as *express advocacy* in support of the candidate or candidates. The result would be an *independent expenditure* in support of the candidate if the communication was not coordinated, or a *contribution* if the candidate and the referendum committee coordinated.³

Upon further reflection, I believe the opinion I provided Mr. Wiesel should be clarified as to a narrow exception: If the referendum committee coordinates with a candidate to make communications that do not expressly advocate passage of the bond referendum or support or oppose any candidate, the resulting communication would constitute a coordinated expenditure but would not likely be a contribution to the candidate. If the coordinated communication expressly advocates passage of the bond and clearly identifies candidates, the communication would then trigger the contribution concerns identified above. This narrow clarification is provided after reading your analysis and agreeing that current law does not clearly link a *coordinated expenditure* by a referendum committee with a *contribution* unless the coordinated expenditure supports the candidate in the manner set out in G.S. § 163-278.14A. The General Assembly may deem it advisable to correct what appears to be an incongruity in the law’s treatment of otherwise identical communications from different groups. But present law does not do so clearly.

I would also note that a referendum committee is free to clearly identify candidates, appropriate their statements, and incorporate video of the candidate in its communications without fear of making a *contribution*, so long as those efforts are not coordinated with the candidate committee. Since your request for clarification refers only to communications made by a referendum committee, which by definition cannot make *electioneering communications* as defined within

² See G.S. § 163-278.6(6) (The terms “contribute” or “contribution” mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, made to, or **in coordination with, a candidate to support or oppose the nomination or election of one or more clearly identified candidate** . . .)(emphasis added).

³ A *contribution* would be prohibited if the referendum committee has accepted funds from a corporate contributor. See n. 1, *supra*.

Steve Long request for reconsideration of Advisory Opinion
Page 3

G.S. § 163-278.6(8j), I am not addressing your comments referring to electioneering communications. If you have future questions about entities that make electioneering communications, please understand that the clarification in this letter only applies to communications that are not deemed *electioneering communications* in our law.

The questions you pose related to the permissibility of activities by candidates that may involve the referendum committee will be addressed in a separate advisory opinion. The content of this clarification and the separate advisory opinion are issued under my authority found in G.S. § 163-278.23.

If you have questions, please feel free to let me know.

Sincerely,



Kim Westbrook Strach
Executive Director, State Board of Elections

cc: Mollie Masich, Codifier of Rules
Amy Strange, Deputy Director-Campaign Finance and Operations

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 09 – OFFICE OF STATE BUDGET AND MANAGEMENT

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Office of the State Budget intends to readopt with substantive changes the rules cited as 09 NCAC 03A .0103; 03M .0101, .0102, .0201-.0203, .0205, .0401, .0501 .0601, .0701, .0703, .0704,.0801, .0802 and readopt without substantive changes the rule cited as 09 NCAC 03M .0702.

Pursuant to G.S. 150B-21.2(c)(1), the text of rules to be readopted without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.osbm.nc.gov/management/grants-OSBMrules>

Proposed Effective Date: June 1, 2016

Public Hearing:

Date: February 4, 2016

Time: 10:00 a.m.

Location: Commission Room #5034 on the Fifth Floor of the Department of Administration Building, 116 West Jones Street, Raleigh, NC 27699

Reason for Proposed Action: *The Office of State Budget and Management is proposing to readopt and repeal the rules pursuant to the existing rules review process as outlined in G.S. 150B-21.3A. The rules proposed for readoption with substantive changes address shortcomings in the current rules. The existing rules do not accomplish their intended statutory purpose to improve monitoring and oversight of state awards to non-state entities. Current reporting requirements result in duplicative reporting by recipients without a commensurate benefit. Furthermore, current reports do not add any identifiable value to the process or result in performance improvements or fraud reduction. The proposed rules improve reporting requirements and adequately emphasize monitoring and oversight. The proposed rules also clarify the oversight responsibilities of both agencies and OSBM.*

Comments may be submitted to: Erin Matteson, 20320 Mail Service Center, Raleigh, NC 27699-0320, email ncgrants@osbm.nc.gov

Comment period ends: March 15, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected** 09 NCAC 03M .0101-.0102, .0201-.0203, .0205, .0401, .0501, .0601, .0701-.0704, .0801-.0802
- Environmental permitting of DOT affected**
- Analysis submitted to Board of Transportation**
- Local funds affected**
- Substantial economic impact (≥\$1,000,000)**
- Approved by OSBM**
- No fiscal note required by G.S. 150B-21.4** 09 NCAC 03A .0103
- No fiscal note required by G.S. 150B-21.3A(d)(2)**

CHAPTER 03 – STATE BUDGET AND MANAGEMENT

SUBCHAPTER 03A – OFFICE OF STATE BUDGET AND MANAGEMENT

SECTION .0100 – ORGANIZATION AND FUNCTION

09 NCAC 03A .0103 BUDGET MANUAL

~~The budget manual sets forth policies and procedures to be followed by state agencies in preparing, monitoring and executing the state's budget. Copies of the budget manual shall be provided to the various departments of state government and are available for public inspection at the Office of State Budget and Management which is located in the Administration Building, 116 West Jones Street, Raleigh, North Carolina.~~

Authority G.S. 143-2.

SUBCHAPTER 03M – UNIFORM ADMINISTRATION OF STATE AWARDS OF FINANCIAL ASSISTANCE

SECTION .0100 - ORGANIZATION AND FUNCTION

09 NCAC 03M .0101 PURPOSE

Pursuant to G.S. 143C-6-23, the rules in this Subchapter establish reporting requirements for non-State entities that receive, hold, use, or expend State funds and ensure the uniform administration of State grants financial assistance by all grantor State agencies, grantee, recipients, and subgrantees. subrecipients.

Authority G.S. 143C-6-22; 143C-6-23.

09 NCAC 03M .0102 DEFINITIONS

As used in this Subchapter:

- (1) "Agency" shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.
- (2) "Audit" means an examination of records or financial accounts to verify their accuracy.
- ~~(3)~~ "Certification of Compliance" means a report provided by the grantor agency to the Office of the State Auditor that states that the grantee has met the reporting requirements established by this Subchapter and included a statement of certification by the grantor agency and copies of the submitted grantee reporting package.
- ~~(4)~~(3) "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Division within the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.
- ~~(5)~~(4) "Contract" means a legal instrument that is used to reflect a relationship between the agency, grantee, and subgrantee and a recipient, or between a recipient and subrecipient.
- (5) "Contractor" means an entity subject to the contractor requirements, as well as any entity that would be subject to the contractor requirements but for a specific statute or rule exempting that entity from the contractor requirements.
- ~~(6)~~ "Contractor requirements" means Article 3, 3C, 3D, 3E, 3G, or 8 of Chapter 143 of the General Statutes and related Administrative Code Rules.
- ~~(6)~~(7) "Fiscal Year" means the annual operating year of the non-State entity.
- ~~(7)~~ "Financial Assistance" means assistance that non State entities receive or administer in the form of grants, loans, loan guarantees, property

~~(including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance. Financial assistance does not include amounts received as reimbursement for services rendered to individuals for Medicare and Medicaid patient services.~~

- (8) "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.
- ~~(9)~~ "Grant" means financial assistance provided by an agency, grantee, or subgrantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or subgrantee during the performance of the grant.
- ~~(10)~~ "Grantee" has the meaning in G.S. 143C-6-23(a)(2).
- ~~(11)~~ "Grantor" means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective.
- ~~(12)~~(9) "Non-State Entity" has the meaning in G.S. 143C-1-1(d)(18).
- (10) "Recipient" means a non-State entity that receives State financial assistance directly from a State agency to carry out part of a State program. For purposes of this subchapter, "recipient" also includes a non-State entity that would be considered a "subrecipient" under the Code of Federal Regulations, 2 CFR, Part 200, for Federal funds subawarded by a recipient State agency.
- ~~(13)~~ "Public Authority" has the meaning in G.S. 159-7(10).
- ~~(14)~~(11) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.
- ~~(15)~~ "Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose
- (12) "State financial assistance" means State funds disbursed as a grant, cooperative agreement, non-cash contribution, food commodities, or direct appropriation to a recipient or subrecipient as defined in subdivision (10) and (14).
- ~~(16)~~(13) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are subgranted disbursed as financial assistance to other organizations.

(17)(14) "~~Subgrantee~~" has the meaning in G.S. 143C-6-23(a)(3). "Subrecipient" means a non-State entity that receives State financial assistance from a recipient to carry out part of a State program; but does not include an individual that is a beneficiary of such program.

(18) "Unit of Local Government" has the meaning in G.S. 159-7(15).

Authority G.S. 143C-6-22; 143C-6-23.

SECTION .0200 - RESPONSIBILITIES OF RECIPIENTS AND SUBRECIPIENTS

09 NCAC 03M .0201 ALLOWABLE USES OF STATE FUNDS

Expenditures of State funds by any ~~grantee-recipient~~ or subrecipient shall be in accordance with the Cost Principles outlined in the ~~Office of Management and Budget (OMB) Circular A-87, Code of Federal Regulations, 2 CFR, Part 200.~~ If the grant funding includes federal sources, the ~~grantee-recipient~~ or subrecipient shall ensure adherence to the cost principles established by the ~~Federal Office of Management and Budget, Code of Federal Regulations, 2 CFR, Part 200.~~

Authority G.S. 143C-6-22; 143C-6-23.

09 NCAC 03M .0202 RECIPIENT/SUBRECIPIENT RESPONSIBILITIES

A ~~grantee or subgrantee-recipient~~ or subrecipient that receives State funds financial assistance shall ensure that those funds are utilized for ~~the their intended purpose of the grant~~ and shall expend those funds in compliance with ~~reporting requirements~~ established by this ~~Subchapter.~~ Subchapter and their contract. Grantees-Recipients and subgrantees-subrecipients shall:

- (1) Provide the information required by the ~~grantor~~ disbursing agency in order to comply with the procedures for disbursement of ~~grant funds.~~
- (2) Maintain reports and accounting records that support the allowable expenditure of State funds. ~~All Recipients and subrecipients shall make available all reports and records shall be made available for inspection by both the awarding agency-agency, the Office of State Budget and Management, and the Office of the State Auditor for oversight, monitoring, and evaluation purposes.~~
- (3) Ensure that ~~subgrantees-subrecipients~~ comply with all reporting requirements ~~of the grantee~~ established by this ~~Subchapter and their contract~~ and report to the appropriate disbursing entity.

Authority G.S. 143C-6-22; 143C-6-23.

09 NCAC 03M .0203 SUBGRANTEE RESPONSIBILITIES

~~A subgrantee that receives State funds must ensure that those funds are spent for the purpose of the grant and shall expend those funds in compliance with reporting requirements established by this Subchapter. Subgrantees shall:~~

- (1) ~~Provide the information required by the grantor agency in order to comply with the procedures for disbursement of grant funds.~~
- (2) ~~Maintain reports and accounting records that support the allowable expenditure of State funds. All reports and records shall be available for inspection by both the awarding agency and the Office of the State Auditor for oversight, monitoring, and evaluation purposes.~~
- (3) ~~Ensure that any subgrantees comply with all reporting requirement of the grantee.~~

Authority G.S. 143C-6-22; 143C-6-23.

09 NCAC 03M .0205 MINIMUM REPORTING REQUIREMENTS FOR RECIPIENTS AND SUBRECIPIENTS

(a) For the purposes of this Subchapter, there are three reporting thresholds established for ~~grantees-recipients~~ and ~~subgrantees-subrecipients~~ receiving State funds. financial assistance. Reporting levels are based on the level of State financial assistance funds from all funding sources. The reporting ~~thresholds-levels~~ are:

- (1) ~~Less than \$25,000~~ Level I - A grantee recipient/subrecipient that receives, holds, uses, or expends State financial assistance funds in an amount less than twenty-five thousand dollars (\$25,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including: year.
 - (A) ~~A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted; and~~
 - (B) ~~An accounting of the State funds received, used, or expended.~~

~~All reporting requirements shall be filed with the funding agency within six months after the end of the grantee's fiscal year in which the State funds were received.~~
- (2) ~~\$25,000 up to \$500,000~~ Level II - A grantee recipient/subrecipient that receives, holds, uses, or expends State financial assistance funds in an amount of at least twenty-five thousand (\$25,000) and up to or greater, but less than five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including: year.

- ~~(A) — A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted;~~
- ~~(B) — An accounting of the State funds received, used, or expended; and~~
- ~~(C) — A description of activities and accomplishments undertaken by the grantee with the State funds.~~

~~All reporting requirements shall be filed with the funding agency within six months after the end of the grantee's fiscal year in which the State funds were received.~~

- (3) ~~Greater than \$500,000~~Level III – A grantee recipient/subrecipients that receives, holds, uses, or expends State financial assistance funds ~~and in the an~~ amount equal to or greater than five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by this Subchapter including: year.

- ~~(A) — A certification completed by the grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted;~~
- ~~(B) — An audit prepared and completed by a licensed Certified Public Accountant for the grantee consistent with the reporting requirement of this Subchapter; and~~
- ~~(C) — A description of activities and accomplishments undertaken by the grantee with the State funds.~~

~~All reporting requirements shall be filed with both the funding agency and the Office of the State Auditor within nine months after the end of the grantee's fiscal year in which the State funds were received.~~

(b) Agencies shall establish reporting requirements for recipients that meet the following minimum reporting standards on an annual basis:

- (1) All recipients and subrecipients shall provide a certification that State funds received or held, were used for the purposes for which they were awarded.
- (2) All recipients and subrecipients shall provide an accounting of all State funds received, held, used, or expended.
- (3) Level II and III recipients and subrecipients shall report on activities and accomplishments undertaken by the recipient, including reporting on any performance measures established in the contract.
- (4) Level III recipients and subrecipients shall have a single or program-specific audit prepared and completed in accordance with Generally

Accepted Government Auditing Standards, also known as the Yellow Book.

(c) All reporting shall be filed with the disbursing agency in the format and method specified by the agency no later than three months after the end of the recipient's fiscal year. Audits must be provided to the funding agency no later than nine months after the end of the recipient's fiscal year. Agencies may exceed these minimum requirements through more frequent or more detailed reporting as deemed appropriate by the agency or as required by other statute or regulation. Agencies do not need to require separate, annual reporting if the same information is already required through more frequent reporting.

(d) Agency established reporting requirements to meet these minimum standards shall be specified in each recipient's contract.

~~(b)(e)~~ Unless prohibited by law, the costs of audits made in accordance with the provisions of this rule are allowable charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in the Office of Budget and Management (OMB) Circular A-87, Code of Federal Regulations, 2 CFR Part 200. The cost of any audit not conducted in accordance with this Subchapter is unallowable and shall not be charged to State grants-financial assistance.

~~(e) The audit requirements in this Subchapter do not replace a request for submission of audit reports by grantor agencies in connection with requests for direct appropriation of state aid by the General Assembly.~~

~~(d)(f)~~ Notwithstanding the provisions of this Subchapter, a grantee-recipient may satisfy the reporting requirements of Part ~~(a)(3)(B)-(b)(4)~~ of this Rule by submitting a copy of the report required under the federal law with respect to the same funds.

~~(e) All grantees and subgrantees shall use the forms of the Office of State Budget and Management and of the Office of the State Auditor in making reports to the awarding agencies and the Office of the State Auditor.~~

(g) The reporting and audit requirements of this subchapter do not apply to:

- (1) Financial assistance to non-State entities subject to the audit and other reporting requirements of the Local Government Commission;
- (2) Tuition assistance to students;
- (3) Public assistance payments from Federal entitlement programs to or on behalf of enrolled individuals, or
- (4) State funds disbursed to a contractor as defined in this Subchapter.

Authority G.S. 143C-6-22; 143C-6-23.

SECTION .0400 - RESPONSIBILITIES OF AGENCIES

09 NCAC 03M .0401 AGENCY RESPONSIBILITIES

(a) An agency that receives State funds and disburses those funds to a grantee-recipient shall:

- (1) Notify each grantee-recipient, at the time the grant-award of State financial assistance is made, of the purpose of the grant-award and the

- reporting requirements established in this Subchapter.
- (2) Prior to disbursing any ~~grant~~ State financial assistance funds:
- (A) ~~register~~ Register each State assistance program with the Office of State Budget and Management's Community Resources Information System (CRIS); and Management in the format and method specified by the Office of State Budget and Management;
- (B) Execute a contract with the recipient that complies with the requirements of this Subchapter;
- (C) Report each individual award to the Office of State Budget and Management in the format and method specified by the Office of State Budget and Management; and
- ~~(B)(D)~~ Follow the procedures for disbursement of grant ~~State financial assistance funds.~~
- (3) Develop compliance supplement reports that describe standards of compliance and audit procedures to give direction to independent auditors. This report shall be provided to the State and Local Government Finance Division with the North Carolina Department of State Treasurer for inclusion in the North Carolina State Compliance Supplement.
- ~~(4)~~ Provide the Office of the State Auditor with a listing of each grantee to which the agency disbursed State funds during the prior fiscal year by October 31st of each year including detailed information regarding the purpose and amount of the grant awarded.
- ~~(5)~~ Provide the Office of State Budget and Management with a listing of every grantee to which the agency disbursed State funds during the prior fiscal year by January 31st of each year. This report shall be consistent with the disbursement report previously provided to the Office of the State Auditor including whether the grantee has complied with the reporting requirements established in this Subchapter.
- ~~(4)~~ Develop a monitoring plan for each State assistance program the agency oversees and submit the plan to the Office of State Budget and Management for approval.
- ~~(5)~~ Perform monitoring and oversight functions as specified in agency monitoring plans to ensure that State financial assistance is used for authorized purposes in compliance with laws, regulations, and the provisions of contracts, and that performance goals are achieved.
- ~~(6)~~ Hold grantees accountable for the expenditure of State funds by performing monitoring and oversight functions as required in this Subchapter.
- ~~(7)(6)~~ Ensure that funds are spent consistent with the purposes for which they were granted ~~awarded.~~
- ~~(8)~~ Not disburse funds to grantees that are not in compliance with the reporting requirements for funds received during the prior fiscal year. Agencies shall consult with the Office of State Budget and Management in making this determination.
- ~~(9)(7)~~ Determine that the applicable reporting requirement requirements have been met by the grantee recipient and that all reports have been completed and submitted. For grantees receiving less than five hundred thousand dollars (\$500,000), the grantor agency shall complete a Certification of Compliance to the Office of the State Auditor, submitted in accordance with the recipient's contract.
- ~~(10)~~ Conduct periodic monitoring reviews to ensure that State awards are used for authorized purposes in compliance with laws, regulations, and the provisions of grant agreements and that performance goals are achieved.
- ~~(11)(8)~~ Monitor compliance by grantees recipients with all terms of a contract. Upon determination of noncompliance the agency shall give the grantee 60 days written notice to come into compliance. After the 60 day period, the grantor agency shall: the agency shall take appropriate action as specified in Section .0800 of this Subchapter.
- ~~(A)~~ terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures;
- ~~(B)~~ suspend payments pending negotiation of a plan of corrective action; or
- ~~(C)~~ offset future payments with the amount improperly spent.
- ~~(9)~~ Require agency internal auditors to conduct periodic audits of agency compliance with requirements of this Subchapter.
- ~~(9)~~ Require agency internal auditors to conduct periodic audits of agency compliance with requirements of this Subchapter.
- ~~(10)~~ Provide all requested documentation when subject to an audit of compliance with the requirements of this Subchapter. Audits may be conducted by the Office of State Budget and Management, the Office of the State Auditor, or the agency's internal auditor.
- (b) Each ~~non State entity recipient~~ subgrantee subrecipients shall ensure that ~~subgrantees subrecipients~~ have complied with the applicable provisions of this Subchapter. Failure to comply with such provisions shall be the basis for an audit exception.

Authority G.S. 143C-6-22; 143C-6-23.

SECTION .0500 - RESPONSIBILITIES OF THE OFFICE OF THE STATE AUDITOR

09 NCAC 03M .0501 OFFICE OF THE STATE AUDITOR RESPONSIBILITIES

Pursuant to the provisions of this Subchapter, the Office of the State Auditor shall:

- (1) ~~Review submitted audit reports for those grantees receiving more than five hundred thousand dollars (\$500,000) in State funds to determine compliance with applicable reporting standards.~~
- (2) ~~Maintain grantor agency submitted compliance data for grantees that receive State funds at levels below five hundred thousand dollars (\$500,000) demonstrating that the grantees have met the reporting requirements established by this Subchapter.~~
- (3) ~~Notify disbursing agencies, by January 31st of each year, of all grantees for which no compliance data has been received.~~
- (4) ~~Notify disbursing agencies of any material findings in the audits of grantees throughout the State fiscal year as reports are received.~~
- (5) ~~Submit a list to the Office of State Budget and Management by January 31st of each year, of each grantee that received State funds in the prior fiscal year including the status of grantee compliance with the reporting requirements.~~

Authority G.S. 143C-6-22; 143C-6-23.

SECTION .0600 - RESPONSIBILITIES OF THE OFFICE OF STATE BUDGET AND MANAGEMENT

09 NCAC 03M .0601 OFFICE OF STATE BUDGET AND MANAGEMENT RESPONSIBILITIES

The Office of State Budget and Management shall:

- (1) ~~Provide consultation to agencies as to whether grantees have complied with the required reporting requirements, guidelines to agencies for developing monitoring plans and establishing reporting processes that meet minimum requirements established in this Subchapter.~~
- (2) ~~Consult with agencies to ensure that all grantees found in noncompliance have their funding ceased immediately upon that determination and ensure that no further funding will be provided until the grantee is in compliance.~~
- (3)(2) ~~Maintain a Suspension of Funding list readily accessible to any interested party that identifies any grantee-recipient found in noncompliance, noncompliance with the requirements of this Subchapter or the terms of their contract. This list shall serve as notice to other agencies that no further State grant-financial assistance~~

- ~~funding may shall be provided to that grantee-recipient until they are removed from the list.~~
- (4) ~~Maintain a Community Resources Information System database to record grant documentation required by this Subchapter.~~
- (3) ~~Periodically audit State agencies to ensure compliance with requirements outlined in Rule .0401 of this Subchapter.~~
- (5)(4) ~~In conjunction with the grantor agency, ensure reporting requirements have been met. Upon notification from a disbursing agency that a recipient is no longer noncompliant, validate that all issues of noncompliance have been addressed prior to the removal of any grantee that recipient from the Suspension of Funding listing. A grantee found in noncompliance recipient may appeal to the Office of State Budget and Management for corrective action and reinstatement from the Suspension of Funding list if they believe they have been suspended in error. Once removed from the Suspension of Funding list, the grantee recipient is eligible for current and future grants of State funds.State financial assistance.~~
- (6)(5) ~~Take appropriate administrative action, action when the Director of the Budget finds that the grantee-recipient has spent or encumbered State funds for an unauthorized purpose, which includes reporting-ensuring criminal violations are reported to the Attorney General and the State Bureau of Investigation. Investigation by the disbursing agency.~~
- (7)(6) ~~If the grant-funds are a pass-through of funds granted-awarded by an agency of the United States, consult with the granting-awarding agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking actions authorized by this Subchapter.~~

Authority G.S. 143C-6-22; 143C-6-23.

SECTION .0700 - CONTRACTING, MONITORING, AND OVERSIGHT

09 NCAC 03M .0701 GRANT DOCUMENTATION

In consideration of receiving State funds, the grantee shall sign a contract with the agency that shall contain the obligations of both parties. Prior to disbursing any State funds, each agency shall sign a contract with the grantee requiring compliance with the rules in this Subchapter. The requirements of this Rule shall also be applicable to all subgrantee relationships.

Authority G.S. 143C-6-22; 143C-6-23.

09 NCAC 03M .0702 SUBORDINATION OF OTHER CONTRACTS AGREEMENTS (READOPTION WITHOUT SUBSTANTIAL CHANGES)

09 NCAC 03M .0703 REQUIRED CONTRACT PROVISIONS

Prior to receiving State financial assistance, the recipient shall sign a contract with the agency that shall contain the obligations of both parties. Prior to disbursing any State funds, each agency shall sign a contract with the recipient requiring compliance with the rules in this Subchapter. The requirements of this Rule shall also be applicable to all subrecipient relationships. Each contract agreement shall contain:

- (1) A specification of the purpose of the ~~grant~~, award, services to be provided, objectives to be achieved, and expected results;
- (2) The Source of funds (federal, state, etc.) must be identified (CFDA number if applicable) and percentages included where applicable;
- (3) Account coding information sufficient to provide for tracking of the disbursement through the ~~grantor—disbursing agency's~~ accounting system;
- (4) Agreement to maintain all ~~grant—pertinent~~ records for a period of five years or until all audit exceptions have been resolved, whichever is longer;
- (5) Names of all parties to the terms of the contract; for the grantee recipient or subgrantee subrecipient, including the employer/tax identification number, address, contact information, and the grantee/subgrantee recipient/subrecipient fiscal year end date;
- (6) Signatures ~~indicating authorization by binding~~ all parties to the terms of the contract;
- (7) Duration of the contract, including the effective and termination dates;
- (8) Amount of the contract and schedule of payment(s);
- (9) Particular duties of the ~~grantee; recipient~~;
- (10) Required reports and reporting deadlines;
- (11) Provisions for termination by mutual consent with 60 days written notice to the other party, or as otherwise provided by law;
- (12) A provision that the awarding of ~~the grants~~ funds is subject to allocation and appropriation of funds to the agency for the purposes set forth in the contract;
- (13) Provision that requires reversion of unexpended funds to the agency upon termination of the contract;
- (14) A provision that requires compliance with the ~~rules and reporting~~ requirements outlined in this Subchapter including audit oversight by the Office of the State Auditor, the provision of access to the accounting records by both the funding entity and the Office of the State Auditor, and availability of audit work papers in the possession of any auditor of any recipient of State funding;

- (15) A clause addressing assignability and subcontracting including the following:
 - (a) ~~the grantee—~~The recipient or ~~subgrantee subrecipient~~ is not relieved of any of the duties and responsibilities of the original contract; and
 - (b) ~~the subgrantee—~~The subrecipient agrees to abide by the standards contained in this Subchapter, and to provide all information to allow the grantee recipient to comply with these standards.

Authority G.S. 143C-6-22; 143C-6-23.

09 NCAC 03M .0704 GRANT MONITORING AND EVALUATION

~~(a) Agencies shall ensure that oversight and monitoring of grantee and subgrantees occurs to prevent the misuse of State funds. Grantees and subgrantees shall manage the day to day operations of grant supported activities. Grantors shall monitor grant supported activities to assure compliance with applicable compliance requirements and that performance goals are being achieved. Grantee monitoring shall cover each program, function or activity. An evaluation must be performed with a comparison of actual accomplishments to the measurable objectives or outcomes established for the grant.~~

~~(b) Agencies shall:~~

- ~~(1) Grant Identification—At the time the grant is made, the agency must provide information to the grantee including the required contract provisions as well as the applicable compliance requirements.~~
- ~~(2) During the grant period, the agency shall monitor the grantee's use of State awards through reporting, site visits, regular contact, or other means to provide assurance that the grantee administers State funds in compliance with laws, rules, and the provisions of grant agreements and that performance goals are achieved.~~
- ~~(3) Ensure that subgrantees expending five hundred thousand dollars (\$500,000) or more in State awards during the subgrantee's fiscal year have met the audit requirements of this Subchapter and that the required audits are completed within nine months of the end of the subgrantee's audit period; issue a management decision on audit findings within six months after receipt of the subgrantee's audit report; and ensure that the subgrantee takes timely corrective action on all audit findings.~~
- ~~(4) Take action using sanctions when a subgrantee has demonstrated a continued inability or unwillingness to provide required audits.~~

- (5) Evaluate the impact of subgrantee activities on the agency's ability to comply with applicable State rules.
- (6) Evaluate the results and outcomes of the activities and accomplishments of the grantee or subgrantee to determine if results were achieved, the success of the activity, and whether the project activities should continue.

- (3) Report possible violations of criminal statutes involving misuse of State property to the State Bureau of Investigation in accordance with G.S. 143B-920.

(d) Upon determination of noncompliance with requirements of the contract that are not indicative of management deficiencies or criminal activity, the agency shall give the recipient or subrecipient 60 days written notice to take corrective action. If the recipient or subrecipient has not taken the appropriate corrective action after the 60-day period, the disbursing agency shall notify the Office of State Budget and Management and take the appropriate action as follows:

- (1) Suspend payments pending negotiation of a plan of corrective action;
- (2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures; or
- (3) Offset future payments with any amounts improperly spent.

(e) Each grantor-disbursing agency shall ensure that grantees recipients and subgrantees-subrecipients have complied with the applicable provisions of this Subchapter.

(f) Agencies are subject to audit for compliance with the requirements of this Subchapter by the Office of State Budget and Management, the Office of the State Auditor, and agency internal auditors. Any finding of noncompliance by an agency shall be reported to the Office of State Budget and Management to take appropriate administrative action.

(g) The Office of State Budget and Management will notify the agency of the finding and provide 60 days to take corrective action. After the 60-day period, the Office of State Budget and Management will conduct a follow-up audit to determine if appropriate corrective action has been taken. If an awarding agency fails to take appropriate corrective action or is repeatedly found to be out of compliance with the requirements of this Subchapter, the Office of State Budget and Management shall notify the head of the agency and the State Auditor of the finding.

Authority G.S. 143C-6-22; 143C-6-23.

09 NCAC 03M .0802 RECOVERY OF STATE FUNDS

(a) The Office of State Budget and Management shall be assisted by the Attorney General in the grant recovery and return of disbursing agency shall take appropriate administrative action to recover State funds in the event a grantee-recipient or subgrantee-subrecipient:

- (1) is-Is unable to fulfill the obligations of the contractual agreement;
- (2) is-Is unable to accomplish the purposes of the grant-award;
- (3) is-Is noncompliant with the reporting requirements; or
- (4) has-Has inappropriately used the State funds.

(b) The disbursing agency shall be assisted by the Attorney General in the recovery and return of State funds if legal action is required.

(c) Any apparent violations of a criminal law or malfeasance, misfeasance, or nonfeasance in connection with the use of State

Authority G.S. 143C-6-22; 143C-23.

SECTION .0800 - SANCTIONS

09 NCAC 03M .0801 NONCOMPLIANCE WITH RULES

(a) An agency shall not disburse any State financial assistance to an entity that is on the Suspension of Funding list.

(b) When a non-State entity does not comply with the requirements of this Subchapter, the agency shall take measures to ensure that the requirements are met including:

- (1) communicating Communicating the requirements to the non-State entity;
- (2) requiring Requiring a response from the non-State entity upon a determination of noncompliance; and
- (3) suspend-Suspending payments to the non-State entity until the non-State entity is in compliance.

(b) Prior to disbursing any State funds, the grantor agency shall verify that the grantee has complied with the reporting requirements for the most recent applicable reporting period. The agency shall consult with the Office of State Budget and Management during this verification process. A grantor agency shall not disburse funds to any grantee that has been determined by the grantor agency to be noncompliant with the reporting requirements established by this Subchapter.

(c) If the grantor agency finds that a non State entity has used State funds for an unauthorized purpose, the grantor agency shall report such findings to the Attorney General, the Office of the State Budget and Management, the Office of the State Auditor, and the Office of the State Controller.

(d) If a grantee has not met the reporting requirements established by this Subchapter and fails to submit revised reports in accordance with a grantor agency determination letter, the grantor agency shall suspend further payments to the grantee and report the grantee to the Office of the State Auditor and the Office of the State Controller.

(c) When an agency discovers evidence of management deficiencies or criminal activity leading to the misuse of funds, the agency shall notify the Office of State Budget and Management immediately and take the appropriate action as follows:

- (1) Suspend payments until the matter has been fully investigated and corrective action has been taken;
- (2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures; and/or

funds shall be reported by the agency to the Office of State Budget and Management, ~~to the Attorney General~~, and State Bureau of Investigation.

Authority G.S. 143C-6-22; 143C-6-23.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to adopt the rule cited as 12 NCAC 09B .0701, and amend the rules cited as 12 NCAC 09B .0205, .0235, .0236, .0305; 09E .0104, .0105.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>

Proposed Effective Date: July 1, 2016

Public Hearing:

Date: May 10, 2016

Time: 10:30 a.m.

Location: Wake Technical Community College, Public Safety Training Center, 321 Chapanoke Road, Raleigh, NC 27603

Reason for Proposed Action: 12 NCAC 09B .0205 is being revised to clarify the title of the instructional topic [Alcohol Beverage Control (ABC) Laws and Procedures]. 12 NCAC 09B .0235 and .0236 are being revised to update the topic titles and hours within the Basic Training curricula for Juvenile Justice, Juvenile Court Counselors and Chief Court Counselors. 12 NCAC 09B .0305 is being revised to remove SMI Instructors from the rule, as these instructors are not considered 'Specialized Instructors', and the terms and conditions of this certification are covered in 12 NCAC 09B .0310. 12 NCAC 09E .0104 and .0105 are being revised to make consistent the language regarding the topics which require testing and lesson plan and instructor testing requirements.

12 NCAC 09B .0701 was filed as a proposed temporary rule in July, 2015. The Commission did not vote on this rule in August as planned, therefore the rule is being submitted via the permanent rulemaking process.

Comments may be submitted to: Trevor Allen, P.O. Drawer 149, Raleigh, NC 27602, phone (919) 779-8205, fax (919) 779-8210, email tjallen@ncdoj.gov

Comment period ends: May 10, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after

the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0200 - ENFORCEMENT OF RULES

12 NCAC 09B .0205 BASIC LAW ENFORCEMENT TRAINING

(a) The basic training course for law enforcement officers consists of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.

(b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 616 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

- | | | |
|-----|--------------------|---|
| (1) | LEGAL UNIT | |
| | (A) | Motor Vehicle Laws 20 Hours |
| | (B) | Preparing for Court and Testifying in Court 12 Hours |
| | (C) | Elements of Criminal Law 24 Hours |
| | (D) | Juvenile Laws and Procedure 8 Hours |
| | (E) | Arrest, Search and Seizure/Constitutional Law 28 Hours |
| | (F) | ABC—Alcohol Beverage Control (ABC) Laws and Procedures 4 Hours |
| | | UNIT TOTAL 96 Hours |
| (2) | PATROL DUTIES UNIT | |
| | (A) | Techniques of Traffic Law Enforcement 24 Hours |
| | (B) | Explosives and Hazardous Materials Emergencies 12 Hours |
| | (C) | Traffic Crash Investigation 20 Hours |
| | (D) | In-Custody Transportation 8 Hours |

PROPOSED RULES

	(E)	Crowd Management	12 Hours
	(F)	Patrol Techniques	28 Hours
	(G)	Law Enforcement Communication and Information Systems	8 Hours
	(H)	Anti-Terrorism	4 Hours
	(I)	Rapid Deployment	8 Hours
		UNIT TOTAL	124 Hours
(3)		LAW ENFORCEMENT COMMUNICATION UNIT	
	(A)	Responding to Victims and the Public	10 Hours
	(B)	Domestic Violence Response	12 Hours
	(C)	Ethics for Professional Law Enforcement	4 Hours
	(D)	Individuals with Mental Illness and Developmental Disabilities	8 Hours
	(E)	Crime Prevention Techniques	6 Hours
	(F)	Communication Skills for Law Enforcement Officers	8 Hours
		UNIT TOTAL	48 Hours
(4)		INVESTIGATION UNIT	
	(A)	Fingerprinting and Photographing Arrestee	6 Hours
	(B)	Field Note-taking and Report Writing	12 Hours
	(C)	Criminal Investigation	34 Hours
	(D)	Interviews: Field and In-Custody	16 Hours
	(E)	Controlled Substances	12 Hours
	(F)	Human Trafficking	2 Hours
		UNIT TOTAL	82 Hours
(5)		PRACTICAL APPLICATION UNIT	
	(A)	First Responder	32 Hours
	(B)	Firearms	48 Hours
	(C)	Law Enforcement Driver Training	40 Hours
	(D)	Physical Fitness (classroom instruction)	8 Hours
	(E)	Fitness Assessment and Testing	12 Hours
	(F)	Physical Exercise 1 hour daily, 3 days a week	34 Hours
	(G)	Subject Control Arrest Techniques	40 Hours
		UNIT TOTAL	214 Hours
(6)		SHERIFF-SPECIFIC UNIT	
	(A)	Civil Process	24 Hours
	(B)	Sheriffs' Responsibilities: Detention Duties	4 Hours
	(C)	Sheriffs' Responsibilities: Court Duties	6 Hours
		UNIT TOTAL	34 Hours
(7)		COURSE ORIENTATION	2 Hours
(8)		TESTING	16 Hours
		TOTAL COURSE HOURS	616 Hours

curriculum for this training course. Copies of this publication may be inspected at the office of the agency:
 Criminal Justice Standards Division
 North Carolina Department of Justice
 1700 Tryon Park Drive
 Post Office Drawer 149
 Raleigh, North Carolina 27602

and may be obtained at the cost of printing and postage from the North Carolina Justice Academy at the following address:
 North Carolina Justice Academy
 Post Office Drawer 99
 Salemburg, North Carolina 28385

(d) The "Basic Law Enforcement Training Course Management Guide" published by the North Carolina Justice Academy shall be used by school directors in planning, implementing, and delivering basic training courses. Copies of this guide may be obtained at the cost of printing and postage from the Justice Academy.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09B .0235 BASIC TRAINING – JUVENILE COURT COUNSELORS AND CHIEF COURT COUNSELORS

(a) The basic training course for Juvenile Court Counselors and Chief Court Counselors shall consist of a minimum of 154 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a Juvenile Court Counselor and a Chief Court Counselor.

(b) Each basic training course for Juvenile Court Counselors shall include training in the following topic areas:

(1)	Juvenile Justice Common Core:	
(A)	Juvenile Justice Overview	2 hours
(B)	Basic Individual Counseling Skills	468 hours
(C)	Interpersonal Communication Skills	8 hours
(D)	Working with Families	3 hours
(E)	Characteristics of Delinquents	34 hours
(F)	Unlawful Workplace Harassment	2 hours
(G)	Career Survival: Integrity and Ethics in the North Carolina Department of Public Safety Workplace	2 hours
(H)	Staff and Juvenile Relationships	4 hours
(I)	Gang Awareness	4 hours
(J)	Situational Awareness and Risk Assessment	4 hours
(K)	Restraints, Controls and Defensive Techniques	28 hours
(L)	Mechanical Restraints	4 hours
(M)	Secure Transportation	4 hours
(N)	Mental Health	8 hours
(O)	CPR	4 hours
(P)	First Aid	4 hours

(c) The "Basic Law Enforcement Training Manual" published by the North Carolina Justice Academy shall be used as the

PROPOSED RULES

- (Q) Employee Fitness and Wellness 4 hours
- (R) Multi-Generational Workforce 3 hours
- (S) Understanding Workplace Differences 4 hours
- Total Hours 104 hours

- (2) Juvenile Court Counselor Specific:
 - (A) Roles and Responsibilities 8 hours
 - (B) Juvenile Law 8 hours
 - (C) Intake 8 hours
 - (D) Risk and Needs Assessment 4 hours
 - (E) Report Writing and Documentation 12 hours
 - (F) Interviewing 6 hours
 - (G) Driver Safety 4 hours
 - Total Hours 0 hours
 - Total Course Hours 154 hours

(c) The "Juvenile Court Counselor Basic Training Manual" as published by the North Carolina Department of Public Safety shall be applied as the curriculum for delivery of Juvenile Court Counselor basic training courses. Copies of this publication may be inspected at or purchased at the cost of printing and postage from the office of the agency:

The Office of Staff Development and Training
 North Carolina Department of Public Safety
 2211 Schieffelin Road
 Apex, North Carolina 27502

(d) Upon completion of a Commission-certified training course for Juvenile Court Counselors and Chief Court Counselors, the Director of the school conducting the course shall notify the Commission of training completion by submitting a Report of Training Course Completion for each trainee. The Report of Training Completion Form is located on the agency's website: http://www.ncdoj.gov/getattachment/fbf3480c-05a1-4e0c-a81a-04070dea6199/F-11-Form_10-2-14.pdf.aspx.

(e) Employees of the Division of Adult Correction and Juvenile Justice who have completed the minimum 152 hour training program accredited by the Commission pursuant to Rule .0236 of this Section after January 1, 2013 who transfer from a Juvenile Justice Officer position to a Juvenile Court Counselor position shall be required to complete only the portions of the course identified as specific to the duties and responsibilities of a Juvenile Court Counselor under Subparagraph (b)(2) of this Rule.

Authority G.S. 17C-2; 17C-6; 17C-10.

12 NCAC 09B .0236 BASIC TRAINING - JUVENILE JUSTICE OFFICERS

(a) The basic training course for Juvenile Justice Officers shall consist of a minimum of 152 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a juvenile justice officer.

(b) Each basic training course for Juvenile Justice Officers shall include training in the following identified topic areas:

- (1) Juvenile Justice Common Core:
 - (A) Juvenile Justice Overview 2 hours

- (B) Basic Individual Counseling Skills ~~4~~ 68 hours
- (C) Interpersonal Communication Skills 8 hours
- (D) Working with Families 3 hours
- (E) Characteristics of Delinquents ~~3~~ 34 hours

- (F) Unlawful Workplace Harassment 2 hours
- (G) Career Survival: Integrity and Ethics in the North Carolina Department of Public Safety Workplace 2 hours
- (H) Staff and Juvenile Relationships 4 hours
- (I) Gang Awareness 4 hours
- (J) Situational Awareness and Risk Assessment 4 hours
- (K) Restraints, Controls and Defensive Techniques 28 hours
- (L) Mechanical Restraints 4 hours
- (M) Secure Transportation 4 hours
- (N) Mental Health 8 hours
- (O) CPR 4 hours
- (P) First Aid 4 hours
- (Q) Employee Fitness and Wellness 4 hours

- (R) Multi-Generational Workforce 3 hours
- (S) Understanding Workplace Differences 4 hours
- Total Hours 104 hours

- (2) Juvenile Justice Officer Specific:
 - (A) Treatment Program Operations 4 hours
 - (B) Maintaining Documentation of Activities and Behaviors 6 hours
 - (C) Basic Group Leadership Skills 8 hours
 - (D) Crisis Intervention Techniques 8 hours
 - (E) Effective Behavior Management 12 hours
 - (F) Health Services Overview 2 hours
 - (G) Trauma and Delinquents 6 hours
 - (H) Contraband and Search Techniques 2 hours
 - Total Hours 48 hours
 - Total Course Hours 152 hours

(c) The "Juvenile Justice Officer Basic Training Manual" as published by the North Carolina Department of Public Safety shall be applied as the curriculum for delivery of Juvenile Justice Officer basic training courses. Copies of this publication may be inspected at or purchased at the cost of printing and postage from the office of the agency:

The Office of Staff Development and Training
 North Carolina Department of Public Safety
 2211 Schieffelin Road
 Apex, North Carolina 27502

(d) Upon completion of a Commission-certified training course for Juvenile Justice Officers the Director of the school conducting the course shall notify the Commission of the training completion by submitting a Report of Training Course Completion for each trainee. The Report of Training Completion Form is located on the agency's website: http://www.ncdoj.gov/getattachment/fbf3480c-05a1-4e0c-a81a-04070dea6199/F-11-Form_10-2-14.pdf.aspx.

(e) Employees of the Division of Adult Correction and Juvenile Justice who have completed the minimum 154 hour training program accredited by the Commission under Rule .0235 of this Section after January 1, 2013 who transfer from a Juvenile Court Counselor position to a Juvenile Justice Officer position shall be required to complete only the portions of the course identified as specific to the duties and responsibilities of a Juvenile Justice Officer pursuant to Subparagraph (b)(2) of this Rule.

Authority G.S. 17C-2; 17C-6; 17C-10.

**SECTION .0300 - MINIMUM STANDARDS FOR
CRIMINAL JUSTICE INSTRUCTORS**

**12 NCAC 09B .0305 TERMS AND CONDITIONS OF
SPECIALIZED INSTRUCTOR CERTIFICATION**

(a) An applicant meeting the requirements for Specialized Instructor Certification as set forth in Rule .0304 of this Section shall be issued a certification to run concurrently with the existing General Instructor Certification, except as set out in Paragraph (d) of this Rule. The applicant shall apply for certification as a Specialized Instructor within 60 days from the date the applicant achieved a passing score on the state comprehensive exam for the respective Specialized Instructor training course.

(b) The requirements for certification as a specialized instructor are determined by the expiration date of the existing General Instructor Certification. The following requirements apply during the initial period of certification:

- (1) where certification for both General Probationary Instructor as set forth in Rule .0303 of this Section and Specialized Instructor Certification are issued on the same date, the instructor is required to satisfy the teaching requirement for only the general probationary instructor certification. The instructor may satisfy the teaching requirement for the General Probationary Instructor certification by teaching any specialized topic for which certification has been issued;
- (2) when Specialized Instructor Certification is issued during an existing period of General Instructor Certification, either probationary status or general status, the specialized instructor may satisfy the teaching requirement for the General Certification by teaching the specialized subject for which certification has been issued;
- (3) where Specialized Instructor Certification becomes concurrent with an existing active period of General Instructor Certification, and

there are 12 months or more until the certifications' expiration date, the instructor shall teach 12 hours for each specialized topic for which certification has been issued; and where Specialized Instructor Certification becomes concurrent with an existing active period of General Instructor Certification, and there are fewer than 12 months until the certification expiration date, the instructor shall not be required to teach any hours for the specialized subject.

(4)

(c) The term of certification as a specialized instructor shall not exceed the 36 month period of General Instructor Certification. The application for renewal shall contain, in addition to the requirements listed in Rule .0304 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous three-year period. Such documentary evidence shall include the following:

- (1) proof that the applicant has, within the three-year period preceding application for renewal, instructed at least 12 hours in each of the topics for which Specialized Instructor Certification was granted and that instruction was provided in a Commission-accredited basic ~~training, Speed Measuring Instrument Operator, SMI Instructor, Instructor Training training~~ or Specialized Instructor Training course or in-service training course, pursuant to 12 NCAC 09E .0105. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators and written certification from a School Director or In-Service Training Coordinator;
- (2) proof that the applicant has, within the three-year period preceding application for renewal, attended and completed any instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, or copies of certificates of completion issued by the institution which provided the instructor updates; and
 - (A) a favorable written recommendation from a School Director or In-Service Training Coordinator completed on a Commission Renewal of Instructor and Professional Lecturer Certification Form that the instructor taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. Such teaching must have occurred in a Commission-accredited basic ~~training, Speed Measuring Instrument Operator, SMI Instructor, Instructor Training training~~ or Specialized

Instructor Training course, pursuant to Rule 12 NCAC 09C .0401, or an in-service training course, pursuant to 12 NCAC 09E .0105, during the three-year period of Specialized Instructor Certification; or

- (B) a favorable evaluation by a Commission or staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-certified training course or a Commission-recognized in-service training course, during the three-year period of Specialized Instructor Certification. Such evaluation shall be certified on a Commission Instructor Evaluation Form, located on the agency's website: <http://www.ncdoj.gov/getdoc/c2eba6a-a-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>.
- (3) proof that the individual applying for renewal as a Specialized Firearms Instructor has achieved a minimum score of 92 on the day and night Basic Law Enforcement Training firearms qualification courses, administered by a certified Specialized Firearms Instructor, within the three-year period preceding the application for renewal.
- (4) proof that the individual applying for renewal as a Specialized Physical Fitness Instructor has passed the Basic Law Enforcement Training Police Officer Physical Abilities Test, administered by a certified Specialized Physical Fitness Instructor, within the three-year period preceding the application for renewal.

Upon the applicant's submission of the required documentation for renewal, the Commission staff shall renew the certification as a Specialized Instructor. Such renewal shall occur at the time of renewal of the General Instructor certification.

(d) Certification as a Specialized Instructor in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topic areas as outlined in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) of this Section, specifically those certifications not based upon General Instructor Certification, shall remain in effect for 36 months from the date of issuance. During the 36 month term all non-Commission certificates required in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) for Specialized Instructor certification in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas shall be maintained.

(e) All instructors shall remain active during their period of certification. Any Specialized Instructor training courses previously accepted by the Commission for purposes of certification shall no longer be recognized if the instructor does not teach at least 12 hours in each of the specialized topics during the three-year period for which certification was granted. Upon

application for re-certification, such applicants shall meet the requirements of Rule .0304 of this Section.

(f) The use of guest participants in a delivery of the "Basic Law Enforcement Training Course" shall be permissible. However, such guest participants are subject to the on-site supervision of a Commission-certified instructor and shall be authorized by the School Director. A guest participant shall be used only to complement the primary certified instructor of the block of instruction and shall in no way replace the primary instructor.

Authority G.S. 17C-6.

SECTION .0700 – MILITARY TRAINED APPLICANT

12 NCAC 09B .0701 MILITARY TRANSFEREES

(a) Pursuant to G.S. 17C-10.1 a current or honorably-discharged former military police officer seeking certification as a law enforcement officer shall submit to the Standards Division a completed Form F-21, Request for Military Evaluation for BLET, and copies of the individual's military law enforcement training and personnel records and Certificate of Release or Discharge documentation from Military Service. Form F-21 is located on the agency's website: http://www.ncdoj.gov/getdoc/f7c44036-d56a-4c12-90a3-d73a8806493f/F-21_Military-EvalCJ_6-8-15.aspx.

(b) Upon receipt of the documentation prescribed in Paragraph (a) of this Rule, the Standards Division shall evaluate the applicant's combined training and experience pursuant to G.S. 93B-15.1 to determine if the applicant's combined training and experience is substantially equivalent to or exceeds the minimum requirements for employment as a law enforcement officer as prescribed in Rules .0101, .0111, and .0403 of this Subchapter.

(c) The Division shall issue probationary certification, pursuant to 12 NCAC 09C .0303, of this Chapter, to an applicant who meets the following requirements:

- (1) has completed a formal military basic training program and been awarded a military police occupational specialty rating;
- (2) has performed military police officer duties in any of the branches of military service, active or reserve, or the National Guard for not less than two of the five years preceding the date of application for certification as a law enforcement officer; and
- (3) whose combined training and experience is determined to be substantially equivalent to or exceeds the minimum expectations for employment as a law enforcement officer as prescribed in Rules .0101, .0111, and .0403(2) of this Subchapter.

(d) An applicant certified pursuant to Paragraph (c) of this Rule shall complete, within one year of being issued certification, the following with passing scores:

- (1) the following topics of a Commission-accredited Basic law Enforcement Training course as specified in Rule .0205 of this Subchapter:

(A)	Arrest, Search and Seizure/Constitutional Law	28 Hours
(B)	Elements of Criminal law	24 Hours
(C)	Juvenile Laws and Procedures	8 Hours
(D)	ABC Laws and Procedures	4 Hours
(E)	Motor Vehicle Laws	20 Hours
(F)	Preparing for Court and Testifying in Court	12 Hours
(G)	Civil Process	24 Hours
	Total Hours	120 Hours;

- (2) the Basic Law Enforcement Training comprehensive written exam; and
- (3) the hiring agency's in-service firearms training and qualification program.

(e) The Division shall issue certification to a current or honorably discharged military police officer whose combined training and experience is not substantially equivalent to or does not exceed the minimum requirements for employment as a law enforcement officer, as specified in Rule .0403 of this Subchapter, if the applicant meets the following requirements:

- (1) completed a formal military basic training program and been awarded a military police occupational specialty rating;
- (2) performed military police officer duties in any of the branches of military service, active or reserve, or the National Guard for not less than two of the five years preceding the date of application for certification as a law enforcement officer;
- (3) meets the minimum standards for law enforcement officers as prescribed in Rule .0101 and .0111 of this Subchapter;
- (4) completes with passing scores the following Basic Law Enforcement Training topics included in Rule .0205 of this Subchapter:

(A)	Orientation	2 Hours
(B)	Arrest, Search and Seizure/Constitutional Law	28 Hours
(C)	Elements of Criminal law	24 Hours
(D)	Subject Control and Arrest Techniques	40 Hours
(E)	Juvenile Laws and Procedures	8 Hours
(F)	Firearms	48 Hours
(G)	ABC Laws and Procedures	4 Hours
(H)	Motor Vehicle Laws	20 Hours
(I)	Law Enforcement Driver Training	40 Hours
(J)	Domestic Violence Response	12 Hours
(K)	Individuals with Mental Illness and Developmental Disabilities	8 Hours
(L)	Preparing for Court and Testifying in Court	12 Hours
(M)	Patrol Techniques	28 Hours
(N)	Civil Process	24 Hours
(O)	Human Trafficking	2 Hours
	Total Hour	300 Hours; and

(5) achieves a passing score on the Basic Law Enforcement Training comprehensive written examination.

(f) The Division shall waive any training topic in Subparagraph (e)(4) of this Rule if the applicant provides documentation indicating he or she has completed substantially equivalent combined military training and experience in that topic.

(g) Members of the Air/Army National Guard and Military Reserve Components who have performed as a military police officer for not less than 1,040 hours during the five years preceding the date of application for certification shall be deemed to satisfy the requirements of Subparagraph (c)(2) and Subparagraph (e)(2) of this Rule.

(h) An applicant who, after completing the required training in Subparagraph (d)(1) or (e)(4) this Rule, fails to achieve a passing score on the Basic Law Enforcement Training comprehensive written exam may be retested in the units the applicant failed. An applicant who fails three or more units must enroll in and complete with passing scores a subsequent delivery of the Basic Law Enforcement Training course in its entirety in order to be eligible for certification.

(i) An active duty military police officer who obtains certification while on active duty under this Rule may retain the certification for the duration of active duty provided the officer continues to perform military police officer duties and complies with the in-service training requirements, as specified in 12 NCAC 09E .0105. An active duty military police officer who is unable to complete annual in-service requirements due to deployment or overseas assignment shall have 12 months from the time the officer returns to the United States in which to complete the in-service training requirements, as specified in 12 NCAC 09E .0105 for each year he or she was unable to complete due to overseas assignment. The officer shall retain the certification for a period of one year following separation from active duty.

(j) When completing the required training topics specified in Subparagraph (d)(1) or Subparagraph (e)(4) of this Rule, the individual shall meet all requirements specified in Rule .0203 and Rule .0405 of this Subchapter.

Authority G.S. 17C-2; 17C-6; 17C-10; 93B-15.1.

SUBCHAPTER 09E - IN-SERVICE TRAINING PROGRAMS

SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM

12 NCAC 09E .0104 INSTRUCTORS: ANNUAL IN-SERVICE TRAINING

The following requirements and responsibilities are hereby established for instructors who conduct the law enforcement officers' annual in-service training program:

- (1) The instructor shall hold Instructor Certification issued by the Commission as outlined in 12 NCAC 09B .0302, 09B .0304, and 09B .0306, except for instructors:
 - (A) delivering CPR certifications that include cognitive and skills testing;

- (B) delivering use of equipment training conducted by a manufacturer, manufacturer's representative or a service provider and documented through a certificate of completion; or
- (C) delivering Incident Command System training for NIMS (National Incident Management System) compliance who are certified through FEMA (Federal Emergency Management Agency) as Incident Command Instructors.

In addition, each instructor certified by the Commission to teach in a ~~Commission-certified~~ Commission-accredited basic training, Speed Measuring Instrument Operator or Instructor training, Instructor or Specialized Instructor training, or Commission-recognized in-service training course shall remain competent in his or her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by ~~attending and successfully~~ completing all instructor updates issued by the Commission.

- (2) Instructors who teach a required in-service training ~~topic~~ topic, other than a topic taught pursuant to Paragraph (1) of this Rule, or a Firearms Training and Qualification course pursuant to Rule .0105(a)(1) of this Section, must achieve a passing grade on a topic specific test developed by the North Carolina Justice Academy or by the agency delivering the training. Instructors who teach a required in-service training topic online must also complete the in-service training for the topic he or she will be teaching. Instructors who teach an in-service training topic in a traditional classroom format will receive credit toward their own in-service training requirements, provided that they pass all required tests and have their instruction documented by the Department Head or In-Service Training Coordinator once completed.
- (3) The instructor shall deliver the training consistent with the specifications established in Rules 09E .0105 and .0106.
- (4) The instructor shall report the successful or unsuccessful completion of training for each officer to the Department Head. Such reporting shall be on a Commission form.
- (5) When the officer fails to qualify with a weapon, the instructor shall inform the officer that the officer did not qualify and the instructor shall deliver a Commission form to the officer which shall be signed by the officer. This form shall instruct the officer not to use the weapon and shall require the officer to notify the Department Head or designated representative within 24 hours of the failure to qualify. The

instructor shall personally deliver this form or send the form by certified mail to the Department head or designated representative within 72 hours of the failure to qualify.

All Commission forms are available for download on the Criminal Justice Standards Division website: <http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>.

Authority G.S. 17C-6; 17C-10.

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

(a) The following topical areas and specifications are established as topics, specifications, and hours to be included in each law enforcement officer's annual in-service training courses. For the purposes of this Subchapter, a credit shall be equal to one hour of traditional classroom instruction. These specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

- (1) 2016 Firearms Training and Qualification (6 credits);
- (2) 2016 Legal Update (4 credits);
- (3) 2016 Juvenile Minority Sensitivity Training: The Color of Justice (2 credits);
- (4) Human Trafficking Awareness (2 credits);
- (5) North Carolina Firearms Laws: Citizens and Guns (minimum of 2 credits); and
- (6) 2016 Department Topics of Choice (10 credits). The Department Head may choose any topic, provided the lesson plan is written in Instructional Systems Design format and is taught by an instructor who is certified by the Commission. Topics delivered pursuant to Rule .0104(1) of this Section to satisfy this requirement are not required to be written in Instructional Systems Design format or delivered by an instructor certified by the Commission.

(b) The "Specialized Firearms Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
 North Carolina Department of Justice
 1700 Tryon Park Drive
 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 Drawer 99
 Salemburg, North Carolina 28385

(c) The "In-Service Lesson Plans" published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive

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 Drawer 99
Salemberg, North Carolina 28385

(d) Lesson plans are designed to be delivered in hourly increments. A student who completes an online in-service training topic shall receive the number of credits that correspond to the number of hours of traditional classroom training, regardless of the amount of time the student spends completing the course.

(e) Completion of training shall be demonstrated by passing a written test for each in-service training topic, as follows:

- (1) A written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length are required to have a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course and topics delivered pursuant to Rule .0104(1) of this Section ~~is~~ are exempt from this written test requirement;
- (2) A student shall pass each test by achieving 70 percent correct answers; and
- (3) A student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

Authority G.S. 17C-6; 17C-10.

**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL
QUALITY**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07H .0304.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.nccoastalmanagement.net/web/cm/proposed-rules>

Proposed Effective Date: July 1, 2016

Public Hearing:

Date: February 10, 2016

Time: 1:30 p.m.

Location: Carteret County, DoubleTree by Hilton, 2717 W. Fort Macon Road, Atlantic Beach, NC 28512

Public Hearing:

Date: February 18, 2016

Time: 3:00 p.m.

Location: Pender County, Surf City Town Hall, 214 N. New River Drive, Surf City, NC 28445

Public Hearing:

Date: February 18, 2016

Time: 5:00 p.m.

Location: Onslow County, Onslow County Public Library, 1330 Hwy 210, Sneads Ferry, NC 28460

Public Hearing:

Date: March 3, 2016

Time: 1:00 p.m.

Location: Brunswick County, Oak Island Town Hall, 4601 E. Oak Island Drive, Oak Island, NC 28465 (Council Room)

Public Hearing:

Date: March 3, 2016

Time: 5:00 p.m.

Location: New Hanover County, New Hanover County Government Center, 230 Government Center Drive, Wilmington, NC 28403 (Finance Conference Room #500)

Public Hearing:

Date: April 6, 2016

Time: 1:00 p.m.

Location: Hyde County, Ocracoke Volunteer Fire Department, 822 Irvin Garrish Hwy, Ocracoke, NC 27960

Public Hearing:

Date: May 9, 2016

Time: 5:00 p.m.

Location: Currituck County, Outer Banks Center for Wildlife Education, 1160 Village Lane, Corolla, NC 27927

Public Hearing:

Date: May 10, 2016

Time: 1:30 p.m.

Location: Dare County, Dare County Administration Building, 954 Marshall C. Collins Drive, Manteo, NC 27954

Reason for Proposed Action: 15A NCAC 07H .0304 outlines the subcategories of Areas of Environmental Concern (AEC) within the broader Ocean Hazard AEC. The proposed rule change amends the formula for calculating the width of the Ocean Erodible AEC. The Coastal Resources Commission (CRC) is proposing to alter the formula used to calculate the width of the Ocean Erodible Area (OEA) for consistency with the setback factors found in 15A NCAC 07H .0306 and to delete utilization of an outdated dune recession that is no longer necessary due to FEMA incorporation of dune recession into the National Flood Insurance Program V-Zones.

Comments may be submitted to: Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557, phone (252) 808-2808

Comment period ends: May 10, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 07 – COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 – OCEAN HAZARD AREAS

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
 - (a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times ~~60~~ 90; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of

stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory, or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>; and

~~(b) a distance landward from the recession line established in Sub Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.~~

- (2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet shall migrate, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet, and external influences such as jetties and channelization. The areas on the maps identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas except for:
 - (a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and
 - (b) the former location of Mad Inlet, which closed in 1997.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard

area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of ~~Environment and Natural Resources~~, Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Sub-item (1)(a) of this Rule. Photocopies are available at no charge.

- (3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an Unvegetated Beach Area on either a permanent or temporary basis as follows:
 - (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Sub-Item (1)(a) of this Rule.
 - (b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified, or re-establishment of the vegetation, the area shall return to its pre-storm designation.

.0106, 06O .0102-.0106, .0108-.0117, 06P .0103, 06Q .0101, and readopt without substantive changes the rules cited as 21 NCAC 06A .0102, 06B .0101, .0103, .0105, .0202, .0204, .0301-.0302, .0305-.0309, 06C .0101, .0201-.0205, .0501-.0504, .0601, .0701, .0801, .0807-.0808, .0903-.0907, .0909, 06D .0101, 06F .0103-.0104, .0110-.0111, .0113, .0116, .0118-.0120, .0122, 06G .0103, 06H .0101-.0102, 06I .0101, 06J .0102-.0103, .0106, .0108-.0110, 06K .0101, .0103, .0110-.0111, 06L .0102-.0103, .0105-.0109, .0111, .0113-.0114, .0117, .0119-.0120, 06M .0102, 06N .0101-.0103, .0105, .0107-.0112, 06O .0101, .0107, 06P .0101-.0102, 06Q .0102-.0104, 06R .0101, 06S .0101.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): NCBarbers.com

Proposed Effective Date: May 1, 2016

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): The Rules were reviewed previously in 2013. The Board has reviewed the revisions at public Board meetings on August 18, 2014, June 23, 2015 and October 20, 2015. Notice of each review was notice 15 days in advance of the meetings. If an individual wishes to have a public hearing concerning this rulemaking, please send written request to: W. Bain Jones, Jr. North Carolina Board of Barber Examiners, 5809-102 Departure Drive, Raleigh, NC 27616*

Reason for Proposed Action: *Barber Schools wish to provide instruction concerning additional education for barber students, apprentices, and individuals desiring to be instructors. 21 NCAC 06F .0126 addresses course work that can be offered beyond the 1528 hours required to complete Barber School. This rule defines the course work and outlines the procedure for the school to follow to obtain the Board approval of the course work. 21 NCAC 06O .0118-.0122 establishes penalties for violations of noted statutes in each rule. There was previously no penalty for these violations.*

Comments may be submitted to: W. Bain Jones, Jr., 5809-102 Departure Drive, Raleigh, NC 27616, phone (919) 981-5210, fax (919) 981-5068, email wjones@ncbarbers.com

Comment period ends: March 15, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1).

Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 - BOARD OF BARBER EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g, that the North Carolina Board of Barber Examiners intends to adopt the rules cited as 21 NCAC 06F .0126, 06G .0106, 06O .0118-.0122, readopt with substantive changes the rules cited as 21 NCAC 06B .0501-.0503, .0505, 06F .0101-.0102, .0109, .0114, .0121, .0123-.0125, 06I .0105, 06J .0101, 06K .0104, 06L .0104, .0112, .0115-.0116, .0118, 06N .0104,

The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

SUBCHAPTER 06A - DEPARTMENTAL RULES

SECTION .0100 - ORGANIZATIONAL RULES

21 NCAC 06A .0102 PHYSICAL AND MAILING ADDRESS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 06B - RULE-MAKING PROCEDURES

SECTION .0100 - PETITIONS FOR RULE-MAKING

21 NCAC 06B .0101 PETITION FOR ADOPTION OF NEW RULE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06B .0103 PETITION FOR AMENDMENT OR REPEAL OF RULE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06B .0105 GRANTING OR DENYING PETITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0200 – NOTICE

21 NCAC 06B .0202 MAILING LIST (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06B .0204 INFORMATION REQUESTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0300 – HEARINGS

21 NCAC 06B .0301 LOCATION OF HEARINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06B .0302 ORAL PRESENTATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06B .0305 WRITTEN STATEMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06B .0306 ACKNOWLEDGMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06B .0307 CONTROL OF HEARINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06B .0308 REQUEST FOR STATEMENT ON FINAL DECISION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06B .0309 REQUEST FOR STATEMENT ON FINAL DECISION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0500 - DECLARATORY RULINGS

21 NCAC 06B .0501 REQUEST FOR DECLARATORY RULING

All requests for declaratory rulings shall be in writing and mailed to the Chairman at the office address.

Authority G.S. 86A-4; 150B-4.

21 NCAC 06B .0502 CONTENTS OF REQUEST

All requests for a declaratory ruling must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which the petition relates;
- (3) concise statement of the manner in which the petitioner is affected, or thinks that he may be affected, by the rule or statute and its application to him; and
- (4) statement of whether an oral hearing is desired and if so the reasons for such an oral hearing.

Authority G.S. 150B-17.

21 NCAC 06B .0503 REFUSAL TO ISSUE DECLARATORY RULING

Whenever the Board believes for good reason that the issuance of a declaratory ruling is undesirable it may refuse to do so. When good reason is deemed to exist the Board will notify the petitioner of its decision in writing, stating reasons for the denial of a declaratory ruling.

Authority G.S. 150B-17.

21 NCAC 06B .0505 PROCEDURE

A declaratory ruling procedure may consist of written statements, oral hearings or such other procedures as may be appropriate in a particular case.

Authority G.S. 150B-17.

SUBCHAPTER 06C - CONTESTED CASES

SECTION .0100 - GENERAL RULES

21 NCAC 06C .0101 ADMINISTRATIVE HEARINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0200 - REQUEST FOR A HEARING

21 NCAC 06C .0201 REQUEST (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0202 INFORMAL RESOLUTION ENCOURAGED (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0203 REQUEST AFTER INFORMAL EFFORTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0204 CONTENTS OF REQUEST (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0205 ACKNOWLEDGEMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0500 - NOTICE

21 NCAC 06C .0501 REASONABLE NOTICE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0502 NOTICE AND HEARING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0503 ADDITIONAL INFORMATION ON NOTICES AND HEARINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0504 WRITTEN ANSWERS TO NOTICE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0600 - WHO SHALL HEAR CONTESTED CASES

21 NCAC 06C .0601 WHO HEARS CONTESTED CASES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0700 - PLACE OF HEARING

21 NCAC 06C .0701 LOCATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0800 - INTERVENTION

21 NCAC 06C .0801 REQUIREMENTS FOR INTERVENTION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0807 ALLOWANCE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0808 DENIAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0900 - HEARING OFFICERS

21 NCAC 06C .0903 BIAS OF BOARD MEMBER (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0904 BIAS CLAIMED BY PARTY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0905 AFFIDAVIT OF DISQUALIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0906 FILING AFFIDAVIT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0907 DISQUALIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06C .0909 DISQUALIFICATION OF MAJORITY OF BOARD (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 06D - CONDUCT OF THE CONTESTED CASE

SECTION .0100 - FAILURE TO APPEAR

21 NCAC 06D .0101 CONTESTED CASE HEARINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 06F - BARBER SCHOOLS

21 NCAC 06F .0101 PHYSICAL STRUCTURE

(a) The physical structure of barber schools in North Carolina shall conform to the following criteria:

- (1) be a minimum of 14 linear feet wide;
- (2) be equipped with a minimum of ten barber chairs in sanitary and safe condition sufficient for the number of students enrolled;
- (3) have a minimum of 896 square feet in the practical area for the first ten chairs;
- (4) have an additional 70 square feet in the practical area for each additional barber chair over the required ten;
- (5) have at least five linear feet of space between each chair, center to center;
- (6) have no more than two students enrolled per barber chair;
- (7) be equipped with toilet facilities with hand-washing sink or basin sufficient to serve the number of people at the school;

- (8) have concrete or wood floors covered with smooth, nonporous materials;
- (9) have instructional materials, for example, blackboard space, slide programs, sufficient to teach barbering;
- (10) have a workstand, with a mounted mirror with minimum dimensions of 36 inches tall and 20 inches wide, for each barber chair in the practical work area, constructed of material that renders it easily cleaned;
- (11) have a tool cabinet for each barber chair, with a door as nearly air tight as possible;
- (12) have a towel cabinet, or other method of storage, such that clean towels are stored separate from used towels;
- (13) have at least one fully functional sink or lavatory, with hot and cold water, for each two barber chairs, located within seven unobstructed linear feet of each barbering area;
- (14) have the school separate from any other place or type of business by a wall of ceiling height;
- (15) have a classroom area, separate from the practical area;
- (16) have desk chairs sufficient to serve the number of students enrolled, and a desk and chair for the instructors;
- (17) have a time clock for electronic recordation of student hours;
- (18) have an informational sign displayed in each practical area of the school indicating that all barbering services are performed by students; and
- (19) have a bulletin board hanging in each classroom area with a posting of the sanitation rules and minimum school curricula as prescribed under 21 NCAC 06F .0210, or any other memorandum, letter or rule issued by the Board which states it is to be posted for the information of students.

This Paragraph applies to barber schools permitted on or after December 1, 1994 or which undergo structural renovations after that date.

(b) Barber schools permitted on or after July 1, 2008, shall have a minimum of 20 square feet per student in the classroom as stated in the Occupancy Building Code Table.

(c) The sink distance requirement set forth in Subparagraph (a)(13) of this Rule does not apply to barber schools permitted on or before September 1, 2009.

(d) All shops must comply with the minimum mirror dimensions set forth in Subchapter (a)(10) of this Rule by June 1, 2014.

(e) All barber schools permitted after June 1, 2013, must receive a satisfactory building inspection by the jurisdiction having authority prior to obtaining a shop inspection pursuant to 21 NCAC 06L .0105.

(f) The facilities of the barber school may be used for other purposes when not being used as a barber school. A barber school may not operate simultaneously with any other school or

educational purpose. It must be clear that the barber school is the only activity offered in either academic or practical teaching areas and no other purpose.

Authority G.S. 86A-15; 86A-22.

21 NCAC 06F .0102 MANAGER

(a) Each barber school shall have ~~at least~~ one manager who is responsible for the overall operation of the school and who holds a current instructor's certificate.

(b) A barber school manager shall not also be a manager of a barber ~~shop,~~ shop or another school.

(c) A barber school manager shall devote full time to the barber school by being present on the premises the majority of the time instruction to students is being provided. The barber school manager is accountable for activities at the school whether present on the premises or not.

Authority G.S. 86A-22.

21 NCAC 06F .0103 FILING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06F .0104 INSTRUCTORS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06F .0109 RE-ENTERING SCHOOL

A new application for a student permit must be filed with the Board for each student who drops out and later re-enrolls in a barber ~~school,~~ school and for any barber re-enrolling in barber school for additional instruction.

21 NCAC 06F .0110 ROSTER AND STUDENT RECORDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06F .0111 COPIES OF BARBER SCHOOL RECORDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06F .0113 STUDENT PERMIT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06F .0114 SIGNATURES ON REPORTS

All reports, records, or other documents required by applicable statutes or rules shall be submitted to the Board ~~over~~ with the ~~signature~~ signatures of two instructors of the school, and co-signed by the student.

Authority G.S. 86A-22.

21 NCAC 06F .0116 STUDENTS WITH CRIMINAL RECORDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06F .0118 FEES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

**21 NCAC 06F .0119 INTRASTATE TRANSFERS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 06F .0120 BARBER SCHOOL CURRICULA
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

21 NCAC 06F .0121 PENAL INSTITUTIONS

(a) The Board may enter into memoranda of understanding or other agreements with the North Carolina Department of ~~Correction~~Public Safety, Division of ~~Prisons~~Corrections for the approval of schools of barbering at penal institutions within North Carolina.

(b) With the exception of the requirement regarding toilet facilities set forth in 21 NCAC 06F .0101(7) and a tool cabinet set forth in 21 NCAC 06F .0101(11), the Division of ~~Prisons~~Corrections shall otherwise comply with the same requirements as other barber schools.

Authority G.S. 86A-22.

21 NCAC 06F .0122 UNIFORMS AND IDENTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06F .0123 TIME CLOCK AND RECORDATION OF STUDENT HOURS

Each student shall use an electronic ~~time card~~ means for the recordation of instructional hours pursuant to 21 NCAC 06F .0124. The school shall maintain originals of each student time ~~card~~ data for at least one year following graduation of the individual student. Individual student time ~~cards~~ data shall be available for review by the Board.

Authority G.S. 86A-22.

21 NCAC 06F .0124 STUDENT HOURS

(a) No student shall be given credit for more than eight total hours during any instruction day.

(b) Students shall ~~punch clock-in~~ their individual time cards upon entering the school for practical or theory hours and shall clock-out for any period of break from instruction, even if remaining on school premises.

(c) In meeting the minimum course work and designated barber school curricula, no student shall be given credit for more than 40 total hours or 8 total hours per month that were obtained by instruction or demonstration off school premises or from a field trip.

Authority G.S. 86A-22.

21 NCAC 06F .0125 SCHOOL HANDBOOKS AND ENROLLMENT AGREEMENTS

(a) Every school shall provide a school handbook to its students upon enrollment containing the enrollment agreement, tuition fee schedule, all monetary penalties and fees, reimbursement policies, school rules and regulations, tardiness and absenteeism policies, a syllabus or list of the school curricula containing the minimum

hours for each subject matter to be taught in accordance with 21 NCAC 06F .0120 and the grading system for said curricula.

(b) A copy of the school handbook shall be submitted to the Board. An updated copy of the handbook shall be re-submitted to the Board should the handbook be amended or revised.

Authority G.S. 86A-22.

21 NCAC 06F .0126 EXTENDED EDUCATION

"Extended education" is additional course work beyond the 1,528 hours required to complete barber school, or to initially obtain a license from the North Carolina Board of Barber Examiners.

(1) When a barber school wishes to provide instruction beyond the 1,528 hours required to complete a barber education or to obtain barber licensing, the school shall:

(a) Submit a proposed curriculum or syllabus that describes the purpose of the instruction and indicates how many students are expected to participate in the instruction, where the instruction would be provided, and how many hours of instruction are required or will be provided in the course of instruction.

(b) Identify the instructors providing the instruction.

(c) Submit samples of the advertising or promotion for the program.

(2) Upon receipt of the information, the Board will review the information and determine whether the instruction is appropriate.

(3) After the instruction has been approved, the barber school will notify the Board if there are any changes to the instruction, including suspension or discontinuation the class.

(4) Upon approval, the course offering shall be subject to review of the barber school by the board inspector. The inspector will evaluate:

(a) Like other barber school classes, whether the school maintains accurate records as to the individuals in the class and the number of hours in the class.

(b) The presentation of the class.

(c) Whether the class is offered in appropriate classrooms for practical and academic instruction.

(d) Whether the class complies with the requirements of other barber-school instruction.

Authority G.S. 86A-1; 86A-22.

SUBCHAPTER 06G - BARBER SCHOOL INSTRUCTORS

21 NCAC 06G .0103 GRADES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06G .0106 INSTRUCTOR APPLICATION

To become a registered barber instructor an applicant must:

- (1) meet the qualifications in G.S. 86A-3;
- (2) furnish the Board with Form BAR-6 and pay the fee according to 21 NCAC 06N .0101;
- (3) make a score of at least 70 percent or better on the clinical portion of the registered barber examination;
- (4) have been a registered barber in good standing for five years; and
- (5) submit a FBI Criminal Record Check with the application.

Authority G.S. 86A-22(2); 86A-23(a); 86A-25.

SUBCHAPTER 06H - BARBER SCHOOL OWNERS AND MANAGERS

21 NCAC 06H .0101 DUTIES AND RESPONSIBILITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06H .0102 STUDENT-INSTRUCTOR RATIO (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 06I - OUT-OF-STATE TRANSFERS

21 NCAC 06I .0101 CREDIT FOR OUT-OF-STATE TRAINING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06I .0105 APPRENTICE BARBER

A student who has trained in another state may take the examination to become a registered apprentice barber provided:

- (1) he or she proves satisfactorily to the Board that his or her hours of training in the out-of-state barber school are the substantive equivalent to those in North Carolina;
- (2) he or she provides proof of completion of barber school training;
- (3) he or she completes and furnishes to the Board Form BAR-7;
- (4) he or she pays the required fee according to 21 NCAC 06N .0101; ~~and~~
- (5) he or she furnishes a certified copy of his or her Federal Bureau of Investigation criminal record ~~report; report; and~~
- (6) he or she has completed high school or has a GED certificate.

Authority G.S. 86A-5; 86A-18; 86A-24; 86A-25.

SUBCHAPTER 06J - APPRENTICE BARBERS

21 NCAC 06J .0101 REGISTERED APPRENTICE

A registered apprentice must:

- (1) attend an approved barber school for a period of at least 1528 hours or the equivalent as determined by the Board. (For curriculum requirements see 21 NCAC 06F .0120);
- (2) furnish the Board with Form BAR-4 and pay the fee according to 21 NCAC 06N .0101;
- (3) make a score of at least 70 percent on both a written and practical apprentice examination; ~~and~~
- (4) submit a certified copy of his or her Federal Bureau of Investigation criminal record ~~report; report; and~~
- (5) submit a copy of his high school diploma or GED certificate.

Authority G.S. 86A-3; 86A-10; 86A-24; 86A-25.

21 NCAC 06J .0102 FORFEITURE OF FEE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06J-.0103 RENEWAL AS REGISTERED APPRENTICE; WAIVER (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06J .0106 STUDENT PERMISSION TO BARBER (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06J .0108 EXAMINATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06J .0109 IDENTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06J .0110 NOTIFICATION OF ADDRESS CHANGE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 06K - REGISTERED BARBER

21 NCAC 06K .0101 REGISTERED BARBER (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06K .0103 FORFEITURE OF FEE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06K .0104 OUT-OF-STATE APPLICANTS

An applicant who is licensed as a barber in another state and who wants to apply to become registered as a barber in this state must establish his out-of-state license and experience and must provide:

- (1) a certified copy of the applicant's out-of-state license;
- (2) ~~three sworn affidavits verifying the experience of the applicant;~~
- (3)(2) form BAR-8 and the required fee;
- (4)(3) a certified copy of his Federal Bureau of Investigation criminal record report;

- (5)(4) a certified statement from the applicant's out-of-state Board stating the following:
 - (a) the applicant's length of licensure in that state;
 - (b) whether such licensure has been continuous or has been interrupted by periods when the applicant was not licensed in the state;
 - (c) the reasons for any such interruptions in licensure; and
 - (d) whether or not there have been any disciplinary actions against the applicant's license; ~~and~~
- (6)(5) a certified transcript describing the number of instructional hours and course content from the school where the applicant received his barber ~~training; training; and~~
- (6) a copy of his or her high school diploma or GED certificate.

Authority G.S. 86A-12; 86A-15; 86A-25.

21 NCAC 06K .0110 IDENTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06K .0111 NOTIFICATION OF CHANGE OF ADDRESS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 06L - BARBER SHOPS

21 NCAC 06L .0102 MEASUREMENTS OF BARBER SHOP (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06L .0103 EQUIPMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06L .0104 SHOP PERMITS

- (a) All applications for shop permits must be on file in the office of the Board 15 days prior to the date when a shop will be complete and ready for inspection. Applications may be obtained from the Board or from the inspector for the area in which the shop is located.
- (b) If the shop is not ready for inspection on a scheduled date, the Board should be notified to avoid the cost of sending an inspector to the shop.
- (c) Failure to notify the Board as to a change of address will result in forfeiture of the inspection fee.

Authority G.S. 86A-1; 86A-13.

21 NCAC 06L .0105 FEES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06L .0106 SEPARATION FROM OTHER BUSINESSES; RESIDENTIAL SHOPS; MOBILE HOMES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06L .0107 LAVATORY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06L .0108 MOVED SHOP (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06L .0109 COMMERCIAL CHEMICALS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06L .0111 WHERE BARBER SERVICES MAY BE PERFORMED (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06L .0112 RENTED BOOTH SPACE

- (a) Where a barber shop rents or leases space to another licensee, the Board shall hold the barbershop manager and licensee responsible for the barbering services performed in the rented or leased space and for the sanitary conditions of the rented or leased space.
- (b) The Board's inspectors shall examine the entire premises of each shop irrespective of booth space allotments.

Authority G.S. 86A-15.

21 NCAC 06L .0113 DISEASES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06L .0114 POLICY PROHIBITING PETS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06L .0115 INSPECTIONS OF SHOPS

- (a) The Board's Executive Director and its inspectors may enter and make reasonable inspections of any shop during its regular business hours for the purpose of determining whether or not the Board's law and administrative rules are being observed. Persons authorized to make an inspection of shops shall prepare a report of such inspections on forms provided by the Board. The report shall be signed by the inspector and by the owner of the shop or by a person authorized to sign for the owner. The carbon copy of such inspection report shall be left with the owner or manager, and retained within the barbering area until the next inspection and made available for review by the public upon request. The carbon copy of any violation notice shall be left with the owner or manager, and retained within the barbering area until the violation is resolved with the Board.
- (b) The Board's Executive Director and its inspectors may inspect all aspects of the shop including the backstand and its drawers and cabinets, and any other drawers, closets or other enclosures within the permitted shop.
- (c) The Board's Executive Director and its inspectors may determine and assign numerical and letter sanitary grades to a shop following inspections as set forth in 21 NCAC 06L .0118 and 21 NCAC 06L .0119. The grade shall be displayed ~~on the sanitary rules~~ as required to be posted by ~~G.S. 86A-15(b)~~. G.S. 86A-15(b) in a conspicuous place at the front of the shop.
- (d) The shop manager shall keep the entire shop open for inspection, including space rented or leased to another licensee.

(e) The shop manager is responsible for the general sanitary condition of the entire shop.

Authority G.S. 86A-5(a)(1); 86A-15.

21 NCAC 06L .0116 ADDITIONAL DUTIES OF BARBER SHOP OWNERS AND MANAGERS AND LIMITATIONS ON SHOP MANAGERS

(a) All barber shop ~~owners and~~ managers shall positively identify any licensee to determine that the licensee is, in fact, the person whose name appears on the license or ~~Registered Barber~~ permit prior to allowing the licensee to perform barbering services in the shop, and maintain a record of the identifying information about the licensee.

(b) A barber shop manager shall not also be manager of a barber ~~school, school or another barber shop.~~

(c) The barber shop manager is accountable for activities at the shop whether present on the premises or not.

Authority G.S. 86A-1; 86A-10; 86A-11; 86A-15; 86A-22.

21 NCAC 06L .0117 GENERAL SANITATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06L .0118 SANITARY RATINGS AND POSTING OF RATINGS

(a) The sanitary rating of a barber shop shall be based on a system of grading outlined in this Subchapter. Based on the grading, all establishments shall be rated in the following manner:

- (1) all establishments receiving a rating of at least 90 percent or more, shall be awarded a grade A;
- (2) all establishments receiving a rating of at least 80 percent, and less than 90 percent, shall be awarded a grade B.
- (3) a sanitation rating of less than 80 percent shall be awarded a failing grade.

(b) Every barber shop shall be given a sanitary rating. ~~A barber school shall be graded one to three times a year, and a barber shop shall be graded one to three times a year.~~

(c) The sanitary rating of A, B, or Failing given to a barber shop establishment shall be posted in a conspicuous place, a place easily seen by the public at the front of the shop, at all times.

(d) No newly established barber shop shall be permitted to operate without first having obtained a sanitary rating card with a grade of not less than 80 percent.

(e) Barber inspectors shall give each barber shop a new sanitary rating ~~card each year.~~ card.

(f) Violation of Chapter 86A or any administrative rule adopted by the Board or the operation of a barber shop which fails to receive a sanitary rating of at least 80 percent (grade B) shall be sufficient cause for revoking or suspending the letter of approval or permit.

(g) A re-inspection for the purpose of raising a failing sanitary rating of a barber shop shall not be given within 30 days.

Authority G.S. 86A-5(a) (1); 86A-15.

21 NCAC 06L .0119 SYSTEMS OF GRADING BARBER SHOPS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06L .0120 NOTIFICATION OF CHANGE OF ADDRESS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 06M - BARBERSHOP INSPECTORS

21 NCAC 06M .0102 DUTIES AND RESPONSIBILITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 06N – FORMS

21 NCAC 06N .0101 FEES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06N .0102 FORM BAR-1 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06N .0103 FORM BAR-2 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06N .0104 FORM BAR-3

(a) Form BAR-3 must be filed for permission to enroll in barber school. It requires the following:

- (1) name, address, and birth date of applicant;
- (2) applicant's prior barber school attendance, if any;
- (3) name of school enrolled;
- (4) date of enrollment;
- (5) a certified copy of his Federal Bureau of Investigation criminal record report; ~~and~~
- (6) signature of school ~~manager, manager;~~ and
- (7) a copy of his or her high school diploma or GED certificate.

(b) A fee as required in Rule .0101 of this Subchapter must accompany this form.

Authority G.S. 86A-1; 86A-5; 86A-18; 86A-22; 86A-25.

21 NCAC 06N .0105 FORM BAR-4 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06N .0106 FORM BAR-5

(a) Form BAR-5 must be filed by one desiring to take the examination to receive a registered barber certificate. It requires the following:

- (1) name, address, and birthdate of applicant;
- (2) place of proposed employment;
- (3) barber school training;
- (4) a certified copy of his/her Federal Bureau of Investigation criminal record report; ~~and~~
- (5) barbering ~~experience.~~ experience; and
- (6) a copy of his or her high school diploma or GED certificate.

- (b) Form BAR-5 must be notarized in two places.
- (c) A fee as required in Rule .0101 of this Subchapter must accompany this form.

Authority G.S. 86A-1; 86A-3; 86A-10; 86A-25.

21 NCAC 06N .0107 FORM BAR-6 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06N .0108 FORM BAR-7 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06N .0109 FORM BAR-8 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06N .0110 FORM BAR-9 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06N .0111 FORM BAR-10 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06N .0112 ACCESS TO FORMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 06O - CIVIL PENALTY

21 NCAC 06O .0101 SCHEDULE OF PENALTIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06O .0102 LICENSING OF BARBER SHOPS

(a) The presumptive civil penalty for operating a barber shop without first filing an application for a barber shop license, obtaining an inspection, or obtaining a shop permit:

- (1) 1st offense ~~\$150.00~~200.00
- (2) 2nd offense ~~\$250.00~~300.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for operating a barber shop with an expired permit:

- (1) 1st offense ~~\$400.00~~150.00
- (2) 2nd offense ~~\$250.00~~300.00
- (3) 3rd offense \$500.00

Authority G.S. 86A-1; 86A-5(a)(6); 86A-15; 86A-27.

21 NCAC 06O .0103 LICENSING OF BARBER SCHOOLS

(a) The presumptive civil penalty for operating a barber school without first filing an application for a barber school license, obtaining an inspection, or obtaining a school permit:

- (1) 1st offense ~~\$150.00~~200.00
- (2) 2nd offense ~~\$250.00~~300.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for operating a barber school with an expired permit:

- (1) 1st offense ~~\$400.00~~150.00
- (2) 2nd offense ~~\$250.00~~300.00
- (3) 3rd offense \$500.00

Authority G.S. 86A-1; 86A-5(a)(6); 86A-15; 86A-27.

21 NCAC 06O .0104 UNSUPERVISED APPRENTICE

(a) The presumptive civil penalty for a barber shop allowing an apprentice or holder of permission to work to engage in barbering without supervision as required by G.S. 86A-24(b):

- (1) 1st offense ~~\$250.00~~300.00
- (2) 2nd offense ~~\$350.00~~400.00

(b) The presumptive civil penalty for an apprentice or holder of permission to work engaging in barbering without supervision as required by G.S. 86A-24(b):

- (1) 1st offense ~~\$150.00~~200.00
- (2) 2nd offense ~~\$250.00~~300.00
- (3) 3rd offense \$500.00

Authority G.S. 86A-5(a)(6); 86A-24; 86A-27.

21 NCAC 06O .0105 UNLICENSED BARBER

(a) The presumptive civil penalty for a shop allowing a barber to practice without a license:

- (1) 1st offense ~~\$250.00~~300.00
- (2) 2nd offense \$500.00

(b) The presumptive civil penalty for an individual engaging in barbering without a license:

- (1) 1st offense ~~\$200.00~~250.00
- (2) 2nd offense ~~\$400.00~~450.00
- (3) 3rd offense \$500.00

Authority G.S. 86A-1; 86A-5(a)(6); 86A-27.

21 NCAC 06O .0106 DISPLAY OF CURRENT LICENSE

(a) The presumptive civil penalty for the failure of a shop or school to display a current shop or school license:

- (1) 1st offense ~~\$50.00~~100.00
- (2) 2nd offense ~~\$100.00~~150.00
- (3) 3rd offense ~~\$200.00~~250.00

(b) The presumptive civil penalty for a shop or school to allow an individual to perform barbering without displaying a current license or permit:

- (1) 1st offense ~~\$50.00~~100.00
- (2) 2nd offense ~~\$100.00~~150.00
- (3) 3rd offense ~~\$200.00~~250.00

(c) The presumptive civil penalty for an individual to practice barbering without displaying a current license or permit:

- (1) 1st offense ~~\$50.00~~100.00
- (2) 2nd offense ~~\$100.00~~150.00
- (3) 3rd offense ~~\$200.00~~250.00

Authority G.S. 86A-1; 86A-5(a)(6); 86A-16; 86A-20(5); 86A-27.

21 NCAC 06O .0107 FRAUDULENT MISREPRESENTATIONS OR SUBMISSION OF FRAUDULENT DOCUMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES) (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 060 .0108 INSPECTIONS OF SHOPS AND SCHOOLS

The presumptive civil penalty for refusing to permit or interfering with the inspection of a shop or school:

- (1) 1st offense ~~\$100.00~~150.00
- (2) 2nd offense ~~\$250.00~~300.00
- (3) 3rd offense \$500.00

Authority G.S. 86A-1; 86A-5(a)(6); 86A-15(b); 86A-27.

21 NCAC 060 .0109 EXPIRED LICENSE

(a) The presumptive civil penalty for engaging in the practice of barbering with a license or permit that has expired or lapsed for more than a six month duration:

- (1) 1st offense ~~\$50.00~~100.00
- (2) 2nd offense ~~\$100.00~~150.00
- (3) 3rd offense ~~\$150.00~~200.00

(b) The presumptive civil penalty for a shop allowing an individual to engage in the practice of barbering with a license or permit that has expired or lapsed for more than a six month duration:

- (1) 1st offense ~~\$50.00~~100.00
- (2) 2nd offense ~~\$100.00~~150.00
- (3) 3rd offense ~~\$150.00~~200.00

Authority G.S. 86A-1; 86A-5(a)(6); 86A-17(b); 86A-27.

21 NCAC 060 .0110 ADEQUATE PREMISES

(a) The presumptive civil penalty for a school to fail to maintain facilities as required by G.S. 86A-15 and 21 NCAC 06F .0101, after two written warnings:

- (1) 1st offense ~~\$200.00~~250.00
- (2) 2nd offense ~~\$350.00~~400.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for a shop to fail to maintain facilities as required by G.S. 86A-15 and 21 NCAC 06L .0102 thru .0109, after two written warnings:

- (1) 1st offense ~~\$200.00~~250.00
- (2) 2nd offense ~~\$400.00~~450.00
- (3) 3rd offense \$500.00

Authority G.S. 86A-5(a)(6); 86A-15; 86A-18(6); 86A-18(7); 86A-22(6); 86A-27.

21 NCAC 060 .0111 SCHOOL INSTRUCTORS

The presumptive civil penalty for a school failing to provide sufficient instructors to meet required student-teacher ratios:

- (1) 1st offense ~~\$100.00~~150.00
- (2) 2nd offense ~~\$250.00~~300.00
- (3) 3rd offense \$500.00

Authority G.S. 86A-5(a)(6); 86A-22(2); 86A-27.

21 NCAC 060 .0112 IDENTIFICATION

(a) The presumptive civil penalty for a barber shop owner or manager failing to positively identify a Registered Barber, apprentice or holder of permission to work:

- (1) 1st offense ~~\$50.00~~100.00

- (2) 2nd offense ~~\$100.00~~150.00
- (3) 3rd offense ~~\$200.00~~250.00

(b) The presumptive civil penalty for a Registered Barber, apprentice or holder of permission to work failing to maintain and produce a license or permit, including identification, as defined in 21 NCAC 06P .0103(7):

- (1) 1st offense ~~\$50.00~~100.00
- (2) 2nd offense ~~\$100.00~~150.00
- (3) 3rd offense ~~\$200.00~~250.00

(c) The presumptive civil penalty for a student failing to wear identification as defined in 21 NCAC 06F .0122:

- (1) 1st offense ~~\$50.00~~100.00
- (2) 2nd offense ~~\$100.00~~150.00
- (3) 3rd offense ~~\$200.00~~250.00

(d) The presumptive civil penalty for a barber school instructor or barber school manager failing to positively identify a student:

- (1) 1st offense ~~\$50.00~~100.00
- (2) 2nd offense ~~\$100.00~~150.00
- (3) 3rd offense ~~\$200.00~~250.00

Authority G.S. 86A-1; 86A-10; 86A-11; 86A-27.

21 NCAC 060 .0113 BARBER SHOPS IN RESIDENCES AND MOBILE HOMES

(a) The presumptive civil penalty for operating a barber shop in a residence in violation of 21 NCAC 06L .0106(c):

- (1) 1st offense ~~\$100.00~~150.00
- (2) 2nd offense ~~\$200.00~~250.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for operating a barber shop in a mobile home in violation of 21 NCAC 06L .0106(d):

- (1) 1st offense ~~\$150.00~~200.00
- (2) 2nd offense ~~\$250.00~~300.00
- (3) 3rd offense \$500.00

Authority G.S. 86A-15; 86A-27.

21 NCAC 060 .0114 ANIMALS IN BARBER SHOPS

(a) The presumptive civil penalty for allowing an animal in a barber shop in violation of ~~21 NCAC 06L .0114~~ without first obtaining an exemption from the Board: 21 NCAC 06L .0114:

- (1) 1st offense ~~\$50.00~~100.00
- (2) 2nd offense ~~\$100.00~~150.00
- (3) 3rd offense ~~\$200.00~~250.00

~~(b) The presumptive civil penalty for allowing an animal in a barber shop in violation of 21 NCAC 06L .0114 with an expired exemption:~~

- ~~(1) 1st offense \$100.00~~
- ~~(2) 2nd offense \$250.00~~
- ~~(3) 3rd offense \$500.00~~

Authority G.S. 86A-15; 85A-27.

21 NCAC 060 .0115 SCHOOL FAILING TO MAINTAIN, FALSIFYING, OR FAILING TO SUBMIT RECORDS

(a) The presumptive civil penalty for failing to maintain records by a barber school:

PROPOSED RULES

(1)	1 st offense	\$150.00 200.00	(2)	2 nd offense	\$300.00
(2)	2 nd offense	\$200.00 250.00	(3)	3 rd offense	\$500.00
(3)	3 rd offense	\$500.00			

(b) The presumptive civil penalty for falsifying records by a barber school:

(1)	1 st offense	\$200.00 250.00
(2)	2 nd offense	\$350.00 400.00
(3)	3 rd offense	\$500.00

(c) The presumptive civil penalty for failing to submit required records by a barber school:

(1)	1 st offense	\$150.00 200.00
(2)	2 nd offense	\$300.00 350.00
(3)	3 rd offense	\$500.00

Authority G.S. 86A-22; 86A-27.

21 NCAC 060 .0116 UNLICENSED SCHOOL INSTRUCTORS

(a) The presumptive civil penalty for a barber school allowing an individual to instruct without a license:

(1)	1 st offense	\$150.00 200.00
(2)	2 nd offense	\$250.00 300.00
(3)	3 rd offense	\$500.00

(b) The presumptive civil penalty for ~~a~~ an individual licensed barber or apprentice barber engaging in instructing without a license:

(1)	1 st offense	\$100.00 150.00
(2)	2 nd offense	\$400.00 450.00
(3)	3 rd offense	\$500.00

Authority G.S. 86A-22; 86A-23; 86A-27.

21 NCAC 060 .0117 BARBER FAILING TO MAINTAIN OR PRODUCE EXEMPTION LOG

(a) The presumptive civil penalty for a barber failing to maintain the exemption log as required by 21 NCAC 06L .0111:

(1)	1 st offense	\$50.00 100.00
(2)	2 nd offense	\$100.00 150.00
(3)	3 rd offense	\$200.00 250.00

(b) The presumptive civil penalty for a barber failing to produce the exemption log required by 21 NCAC 06L .0111:

(1)	1 st offense	\$50.00 100.00
(2)	2 nd offense	\$100.00 150.00
(3)	3 rd offense	\$200.00 250.00

Authority G.S. 86A-15(c); 86A-27.

21 NCAC 060 .0118 UNLICENSED BARBER STUDENT

(a) The presumptive civil penalty for a barber school allowing an individual to receive barber instruction without a Barber student permit:

(1)	1 st offense	\$200.00
(2)	2 nd offense	\$300.00
(3)	3 rd offense	\$500.00

(b) The presumptive civil penalty for an individual engaging as a barber student without a barber student permit:

(1)	1 st offense	\$200.00
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Authority G.S. 86A-1; 86A-22; 86A-25; 86A-27.

21 NCAC 060 .0119 FAILURE TO NOTIFY BOARD OF CHANGE OF ADDRESS

(a) The presumptive civil penalty for the failure of a shop or school to fail to notify the Board as to a change of address:

(1)	1 st offense	\$50.00
(2)	2 nd offense	\$100.00
(3)	3 rd offense	\$200.00

(b) The presumptive civil penalty for an individual manager for the failure to notify the Board of a change of address for a barber shop or school:

(1)	1 st offense	\$50.00
(2)	2 nd offense	\$100.00
(3)	3 rd offense	\$200.00

Authority G.S. 86A-1; 86A-5(a)(6); 86A-13; 86A-27.

21 NCAC 060 .0120 FAILURE TO NOTIFY BOARD OF CHANGE OF SUPERVISING BARBER OF AN APPRENTICE BARBER

(a) The presumptive civil penalty for the failure of a registered barber for failure to notify the Board as to a change of supervision of an apprentice barber:

(1)	1 st offense	\$50.00
(2)	2 nd offense	\$100.00
(3)	3 rd offense	\$200.00

(b) The presumptive civil penalty for an apprentice barber for failure to notify the Board as to a change in supervising registered barber:

(1)	1 st offense	\$50.00
(2)	2 nd offense	\$100.00
(3)	3 rd offense	\$200.00

Authority G.S. 86A-1; 86A-5(a)(6); 86A-24; 86A-27.

21 NCAC 060 .0121 FAILURE TO DISPLAY SANITATION GRADE AND SHOP PERMIT IN A CONSPICUOUS PLACE AT THE FRONT OF THE SHOP

The presumptive civil penalty for the failure of a shop to display its sanitation grade and shop permit in a conspicuous place at the front of the shop:

(1)	1 st offense	\$50.00
(2)	2 nd offense	\$100.00
(3)	3 rd offense	\$200.00

Authority G.S. 86A-1; 86A-5(a)(6); 86A-13; 86A-15; 86A-27.

21 NCAC 060 .0122 FAILURE TO NOTIFY BOARD OF CHANGE OF BARBER SHOP OR SCHOOL MANAGER

(a) The presumptive civil penalty for the failure of a shop or school to fail to notify the Board as to a change of barber shop manager:

(1)	1 st offense	\$50.00
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- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(b) The presumptive civil penalty for an individual manager for the failure to notify the Board of a change of manager of a shop or school:

- (1) 1st offense \$50.00
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

Authority G.S. 86A-1; 86A-5(a)(6); 86A-13; 86A-22; 86A-27.

SUBCHAPTER 06P - DEFINITIONS

21 NCAC 06P .0101 BARBERING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06P .0102 BARBERING EXEMPTIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06P .0103 GENERAL DEFINITIONS

For purposes of the rules in this Chapter, the following definitions shall apply:

- (1) "Barber" means any person who engages in or attempts to engage in the practice of barbering or provide barbering services.
- (2) "Barber school" means any establishment that engages in or attempts to engage in the teaching of the practice of barbering.
- (3) "Barber instructor" means any person who engages in or attempts to engage in the teaching of the practice of barbering.
- (4) "Barber pole" means—a an actual or representation of a cylinder or pole with alternating stripes of any combination including red and white, and red, white, and blue, which run diagonally along the length of the cylinder or pole.
- (5) "Board" means the State Board of Barber Examiners.
- (6) "Braiding" means intertwining the hair in a systematic motion to create patterns in a three-dimensional form, inverting the hair against the scalp along part of a straight or curved row of intertwined hair, or twisting the hair in a systematic motion, and includes extending the hair with natural or synthetic hair fibers, and which work does not include cutting the hair or the application of dyes, reactive chemicals, or other preparations to alter the color or to straighten, curl, or alter the structure of the hair, or the application of heat to alter, straighten or curl the hair.
- (7) "License" or "permit" or "registration" means the actual license or permit issued by the Board and valid government issued photo identification depicting the licensee's or permittee's photograph and legal name.

- (8) "Pickup Order" means an order issued by the Board and signed by the Executive Director authorizing an inspector to physically retrieve a permit or license.
- (9) "The practice of barbering" and "barber services" means all activities set forth in G.S. 86A-2, and the sanitary requirements of Chapter 86A and the sanitary rules adopted by the Board.
- (10) "The practice of natural hair styling" means work done for a fee or other form of compensation, by any person, utilizing techniques performed by hand that result in tension on the hair strands or roots such as twisting, wrapping, weaving, extending, locking, or braiding of the hair by hand or mechanical device, and which work does not include cutting the hair or the application of dyes, reactive chemical(s), or other preparations to alter the color or to straighten, curl, or alter the structure of the hair, or the application of heat to alter, straighten or curl the hair.
- (11) "Sanitary" means free of infectious agents, diseases, or infestation by insects or vermin and free of soil, dust, or foreign material.
- (12) "Barber Student" means any person who is enrolled in barber school or taking classes beyond the 1528 required hours.

Authority G.S. 86A-1; 86A-2; 86A-5; 86A-13; 86A-15; 86A-22; 86A-23.

SUBCHAPTER 06Q - PROHIBITED PRACTICES

21 NCAC 06Q .0101 ADDITIONAL GROUNDS FOR DENIAL OR DISCIPLINE

Except as provided in Chapter 86A of the General Statutes, the Board:

- (1) will find fraudulent misrepresentation in the following examples:
 - (a) An individual or entity operates or attempts to operate a barber shop or barber school without a permit;
 - (b) An individual or entity advertises barbering services unless the establishment and personnel employed therein are licensed or permitted;
 - (c) An individual or entity uses or displays a barber pole for the purpose of offering barber services to the consuming public without a barber shop or barber school permit;
 - (d) An individual fails to positively identify a Registered Barber, apprentice barber, or student barber with a right to work permit prior to

- allowing the person to perform barbering services;
- (e) An individual or entity fails to maintain and produce a license or permit as defined by 21 NCAC 06P .0103(7) upon the request of the Executive Director or an inspector during an inspection;
- (2) will determine if grounds for denial or discipline exist when:
 - (a) An individual violates a settlement agreement entered into with the Board;
 - (b) An individual or entity violates the Board's law or any adopted by the Board or a local department of health for barbers, barber shops or barber schools; or
 - (c) An individual fails to disclose a felony criminal conviction in dealing with the Board.

Authority G.S. 86A-1; 86A-2; 86A-5(a); 86A-10; 86A-11; 86A-13; 86A-15; 86A-16; 86A-17; 86A-18; 86A-20; 86A-22; 86A-23; 86A-24.

21 NCAC 06Q .0102 EFFECT OF CHILD SUPPORT DEFAULT ON LICENSE OR CERTIFICATE (READOPTIION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06Q .0103 REGISTERED SEX OFFENDER (READOPTIION WITHOUT SUBSTANTIVE CHANGES)

21 NCAC 06Q .0104 EFFECT OF NOTICE OF VIOLATION ON LICENSE OR CERTIFICATE (READOPTIION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 06R – ADVERTISING

21 NCAC 06R .0101 DISPLAY OF SIGN OR BARBER POLE (READOPTIION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 06S – EXAMINATIONS

21 NCAC 06S .0101 GENERAL EXAMINATION INSTRUCTIONS (READOPTIION WITHOUT SUBSTANTIVE CHANGES)

CHAPTER 57 – APPRAISAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Appraisal Board intends to adopt the rules cited as 21 NCAC 57A .0601-.0605; 57D .0402, .0403 and amend the rules cited as 21 NCAC 57A .0211, .0501; 57B .0303, .0304, .0605, .0614; 57D .0309, .0311.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncappraisalboard.org

Proposed Effective Date: July 1, 2016

Public Hearing:

Date: February 9, 2016

Time: 9:00 a.m.

Location: 5830 Six Forks Road, Raleigh, NC 27609

Reason for Proposed Action: *The change to 21 NCAC 57D .0311 is proposed pursuant to a rule-making petition. The changes in 21 NCAC 57A clarify existing procedure. 21 NCAC 57B .0303 adds requirements for course examination proctors. Although classroom instructors usually proctor their own course examination, there needs to be a way for students taking online classes to find a suitable proctor. This rule will provide guidance as to who may proctor, and what their duties as proctor will be. The change to 21 NCAC 57B .0304 eliminates the unnecessary restriction that limits education credit to seven class hours a day even if the class meets for eight hours. Likewise, the change to 21 NCAC 57B .0605 removes the restriction of a maximum of 30 hours of credit for a course to 30 hours, regardless of its length. The change to 21 NCAC 57D .0309 adds a requirement that when an appraisal management company files a complaint, it must include information about the person in the company that has actual knowledge of the facts of the complaint. That way, staff will have an appropriate contact person for the investigation. New section .0600 promulgates rules for gaining appraisal experience. This has been policy for several years, and the rules implement the policy. 21 NCAC 57D .0402 outlines which prohibited acts in G.S. 93E-2-7 are presumed to be a violation of the statute and which are considered to be per se violations. 21 NCAC 57D .0403 promulgates rules to implement SL 2015-200.*

Comments may be submitted to: Roberta Ouelette, 5830 Six Forks Road, Raleigh, NC 27609, phone (919) 870-4854, fax (919) 870-4859, email roberta@ncab.org

Comment period ends: March 15, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the

Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (>=\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 57A - REGISTRATION, LICENSING, CERTIFICATION AND PRACTICE

SECTION .0200 - TRAINEE REGISTRATION AND APPRAISER LICENSING AND CERTIFICATION

21 NCAC 57A .0211 APPLICANTS CERTIFIED IN ANOTHER STATE

- (a) Applicants for certification who are not residents of North Carolina must shall file an application as stated in Rule .0101 of this Subchapter. In addition, nonresident applicants must shall also consent to service of process in this state-State and file an affidavit of residency with the application. If the applicant is licensed by the appraiser licensing board of the applicant's resident state, the applicant must shall also file with the application a letter of good standing from the appraiser licensing board of the resident state, which-resident state that was issued under seal-by that licensing board no later than 30 days prior to the date application is made in this state-State.
(b) Applicants for certification who are residents of North Carolina and who are certified in another state may file an application as stated in Rule .0101 of this Subchapter. The applicant must shall file a letter of good standing from the other state, which-state that that was issued under seal-by that licensing board no later than 30 days prior to the date application is made in this state-State.
(c) Applicants for registration or certification shall obtain a criminal records check from Carolina Investigative Research, Inc., an agency designated by the Appraisal Board to provide eriminal record reports-that complies with the requirements of Rule .0202(e) of this Section. This records check must shall have been performed within 60 days of the date the completed application for registration or certification is received by the Board. Applicants shall pay the designated-reporting service for the cost of these reports.
(d) An appraiser whose certification is suspended in North Carolina may shall not apply for certification in this state-State under this Rule while the certification is suspended. An appraiser whose certification was revoked in North Carolina may shall not apply for certification in this state-State under this Rule for five years after the date of revocation.

Authority G.S. 93E-1-9(a) and (b); 93E-1-10; 12 U.S.C. 3351(a).

SECTION .0500 - STANDARDS OF APPRAISAL PRACTICE

21 NCAC 57A .0501 APPRAISAL STANDARDS

(a) Every registered trainee, and licensed and certified real estate appraiser shall, in performing the acts and services of a registered trainee, or licensed or certified real estate appraiser, comply with the following provisions of the "Uniform Standards of Professional Appraisal Practice" promulgated by the Appraisal Standards Board of the Appraisal Foundation: Definitions, Preamble, Ethics Rule, Record Keeping Rule, Competency Rule, Scope of Work Rule, Jurisdictional Exception Rule, Statements on Appraisal Standards, and Standards Rules 1, 2 and 3, all of which are hereby incorporated by reference. This incorporation by reference includes subsequent amendments and editions of those provisions. Foundation, all of which are incorporated by reference:

- (1) Definitions;
(2) Preamble;
(3) Ethics Rule;
(4) Record Keeping Rule;
(5) Competency Rule;
(6) Scope of Work Rule;
(7) Jurisdictional Exception Rule; and
(8) Standards Rules 1, 2 and 3.

(b) This incorporation by reference includes subsequent amendments and editions of those provisions.

(c) A copy of the Uniform Standards may be obtained from the Appraisal Foundation at https://www.appraisalfoundation.org. The cost for a copy of the Standards ranges from sixty-five dollars (\$65.00) to ninety-nine dollars (\$99.00), depending upon whether a hard copy or a digital version is purchased.

Authority G.S. 93E-1-10.

SECTION .0600 - EXPERIENCE CREDIT

21 NCAC 57A .0601 EXPERIENCE CREDIT TO UPGRADE

As required by Rule .0201 of this Subchapter, applicants for licensure or residential certification shall possess 2,500 hours of appraisal experience and applicants for general certification shall possess 3,000 hours of appraisal experience as outlined in this Section. All experience shall have been obtained by performing or reviewing appraisals using appraisal methods and processes that are employed by real estate appraisers. In order to receive experience credit for an appraisal, the appraisal shall comply with the edition of the Uniform Standard of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.

Authority G.S. 93E-1-10.

21 NCAC 57A .0602 ACCEPTABLE EXPERIENCE - RESIDENTIAL CATEGORY

Appraising the following types of properties qualifies as residential appraisal experience:

- (1) residential single-family;
(2) residential multi-family of 2 - 4 units;

- (3) residential vacant lot (1 – 4 family property); and
- (4) farm properties consisting of less than 100 acres and a homestead.

Authority G.S. 93E-1-10.

21 NCAC 57A .0603 ACCEPTABLE EXPERIENCE – GENERAL CATEGORY

Appraising the following types of properties qualifies as general appraisal experience:

- (1) land such as farms of 100 acres or more in size, undeveloped tracts, residential multi-family sites, commercial sites, industrial sites, or land in transition;
- (2) residential multi-family properties (5 or more units) such as apartments, condominiums, town-houses, or mobile home parks;
- (3) commercial single-tenant properties such as an office building, retail store, restaurant, service station, bank, or day care center;
- (4) commercial multi-tenant properties such as an office building, hotel, or shopping center;
- (5) industrial properties such as a warehouse or manufacturing plant; and
- (6) institutional properties such as an assisted living facility, nursing home, hospital, school, church, or government building.

Authority G.S. 93E-1-10.

21 NCAC 57A .0604 TYPES OF APPRAISAL EXPERIENCE

(a) An applicant may receive experience credit for standard appraisals, supervising appraiser's reviews, review appraisals, and condemnation appraisals.

(b) If the applicant performed at least 75 percent of the work associated with an appraisal (including a field inspection and preparation of the appraisal report), full credit shall be given for that appraisal. Except as provided in Paragraphs (d) and (e) of this Rule, no credit shall be awarded if the applicant performed less than 75 percent of the work on an appraisal.

(c) A "standard appraisal" means the process of developing an appraisal in accordance with Standard Rule 1 of USPAP and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value.

(d) A "supervising appraiser's review" means the process of reviewing an appraisal report prepared by an affiliated appraiser and signing the appraisal report (including signing as "review appraiser" on a Uniform Residential Appraisal Report form), thereby assuming full responsibility for the appraisal report. It shall not include signing a report that a real estate appraiser trainee has prepared.

(e) A "review appraisal" means the process of critically reviewing an appraisal report prepared by another appraiser and preparing a separate written appraisal report or file memorandum setting forth the results of the review process. No more than 50 percent of an

applicant's appraisal experience credit shall be from review appraisals.

(f) A "condemnation appraisal" means an appraisal of real property for eminent domain proceedings where a partial taking is involved and the appraiser must develop both a "before taking" and an "after taking" value.

(g) A "demonstration appraisal" means an appraisal performed without a client. No more than 25 percent of the applicant's experience shall be from demonstration appraisals. If a trainee performs a demonstration appraisal, the trainee's supervisor shall sign the appraisal in order for the trainee to receive credit for it.

Authority G.S. 93E-1-10.

21 NCAC 57A .0605 REPORTING APPRAISAL EXPERIENCE

(a) Applicants shall use the Appraisal Board's Appraisal Experience Log to report appraisal experience. The log is available on the Board's website at <http://www.ncappraisalboard.org/forms-html/forms.htm>.

(b) The Log shall contain all of the following:

- (1) the applicant's name and signature;
- (2) the supervisor's name and signature;
- (3) the supervisor's certificate number;
- (4) the date the supervisor signed the log;
- (5) the subject property address;
- (6) the date the appraisal report was signed;
- (7) the report type, such as an appraisal report, a restricted appraisal report, or the type of reporting form used;
- (8) the client's name;
- (9) the applicant's file number for the appraisal assignment, if any;
- (10) the number of hours requested for experience;
- (11) whether the supervisory appraiser accompanied the applicant on the inspection of the subject property; and
- (12) a description of the work performed by the applicant and his or her supervisor on each assignment.

(c) Applicants shall have copies of all appraisals and their associated work files to support all appraisal experience reported on the log.

Authority G.S. 93E-1-6.1; 93E-1-10.

SUBCHAPTER 57B - REAL ESTATE APPRAISAL EDUCATION

SECTION .0300 – COURSE STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION

21 NCAC 57B .0303 COURSE COMPLETION STANDARDS

(a) Academic standards for course completion shall assure that students receiving a passing grade possess knowledge and understanding of the subject areas prescribed for the course. A

student's grade shall be based ~~solely~~ on his or her performance on ~~examinations, examinations, and on graded homework, homework,~~ and class work assignments.

(b) Course completion requirements shall include a comprehensive final course examination ~~which covers all prescribed subject areas which that~~ accounts for at least 50 percent of a student's grade for the course. Take-home or open-book final course examinations ~~are~~ shall be prohibited. Schools and course sponsors may, within 90 days of the course ending date, allow a student one opportunity to make up any missed course examination or to retake any failed course examination without repeating the course; however, any make up examination shall be comparable to the initial examination with regard to the number of questions and overall difficulty, and at least 75 percent of the questions in the makeup examination shall be different from those used in the initial examination.

(c) The final examination shall be proctored. The proctor shall:

- (1) require photographic identification from the applicant, such as a driver's license or a passport;
- (2) not allow a student to bring a personal items such as a backpack, purse, or briefcase, or a device that would enable the student to access the internet during the examination into the testing area; and
- (3) be the school or course sponsor director, an employee of the school or course sponsor, or the instructor for the course. If a director, employee or instructor is not available to proctor the examination, the school or course sponsor shall employ an official to serve as a proctor. Officials that may serve as proctors include a public librarian, notary public, attorney, police officer, or teacher. Proctors shall not be a family member or friend of the student unless that person is the director, an employee, or an instructor of the school or course sponsor.

~~(e)~~(d) The ~~minimum~~ attendance required for satisfactory course completion ~~is~~ shall be 90 percent of all scheduled classroom hours for the course.

~~(d)~~(e) The instructor may offer additional hours of instruction so that students ~~can~~ may make up lost hours of instruction.

~~(e)~~(f) Students who are taking a qualifying course, other than the 15 hour National USPAP course, for continuing education credit may sit for the final course examination, but they ~~are not~~ shall not be required to pass the examination in order to receive continuing education credit. Students who take and pass the ~~examination examination~~, and who comply with the provisions of this Rule shall be given a course completion certificate. Students who do not take and pass the examination but who otherwise comply with the provisions of this Rule shall be given a certificate of attendance. Students who are taking the course as a result of a conditional dismissal, consent order, or order of the Board after a hearing ~~must~~ shall take and pass the examination.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0304 COURSE SCHEDULING

(a) All courses ~~must~~ shall have fixed beginning and ending dates, and schools and course sponsors shall not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course. Late enrollment ~~is~~ shall be permitted only if the enrolling student ~~can satisfy~~ satisfies the ~~minimum~~ attendance ~~requirement requirements~~ set forth in Paragraphs (c) and (d) of Rule .0303 of this Section.

(b) Courses ~~may~~ shall be scheduled in a manner that provides for class meetings of up to eight classroom hours in any given ~~day;~~ however credit for courses shall be limited to 30 classroom hours ~~per seven day period, day.~~

(c) A classroom hour consists of 50 minutes of classroom instruction and ten minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of 10 minutes per hour ~~must~~ shall be scheduled and taken at reasonable times.

(d) Instruction ~~must~~ shall be given for the minimum hours specified in ~~57B~~ Rules 0101, .0102, and ~~0103~~.0103 of this Subchapter. Instructors shall not accumulate unused break time to end the class early.

(e) All courses, except those taught on-line via the Internet, ~~must~~ shall have a minimum number of five students enrolled in order for the course to be held.

Authority G.S. 93E-1-8(a); 93E-1-10.

SECTION .0600 - CONTINUING EDUCATION COURSES

21 NCAC 57B .0614 INSTRUCTORS FOR THE TRAINEE/SUPERVISOR COURSE REQUIRED BY G.S. 93E-1-6.1

(a) Instructors for the ~~trainee/supervisor~~ trainee supervision course ~~required by 21 NCAC 57A .0407(c)~~ set forth in G.S. 93E-1-6.1 shall be real estate appraisers who have been certified residential or certified general for at least three years.

(b) Instructors shall not have received any disciplinary action regarding their appraisal certificate from the State of North Carolina or any other state within the previous three years. In addition, instructors shall not have been convicted of or pleaded guilty to any criminal act. "Criminal act" ~~does~~ shall not include speeding tickets or traffic infractions.

(c) All applicants for instructor of the ~~trainee/supervisor~~ trainee supervision course shall obtain a criminal records check that is satisfactory to the Board. This records check must have been performed within 60 days of the date the completed application for approval as an instructor is received by the Board. Applicants shall pay the vendor directly for the cost of these reports. In order to be satisfactory to the Board, the records check ~~must~~ shall comply with the provisions of 21 NCAC 57A .0202(e).

(d) Persons who wish to instruct the ~~trainee/supervisor~~ trainee supervision course shall be approved by the Board before they may teach this course. Approval of a ~~trainee/supervisor~~ trainee supervision course instructor authorizes the instructor to teach the course for any approved course sponsor.

(e) Applicants who wish to become instructors for the ~~trainee/supervisor~~ trainee supervision course shall attend an

educational workshop sponsored by the Board before they may be approved. Applicants may check the Board's website for information regarding the date and location of the class. The website may be accessed at www.ncappraisalboard.org.

(f) Approval of ~~trainee/supervisor~~-trainee supervision course instructors shall run from July 1 to June 30 of the next year. Applicants whose approval is granted after July 1 will expire on June 30 of the next year.

Authority G.S. 93E-1-6.1; 93E-1-8(c); 93E-1-10.

SUBCHAPTER 57D – APPRAISAL MANAGEMENT COMPANIES

SECTION .0300 – APPRAISAL MANAGEMENT COMPANY PROCEDURES

21 NCAC 57D .0309 COMPLAINTS AGAINST APPRAISERS

(a) If an appraisal management company has a good faith belief that a real estate appraiser licensed in this State has violated applicable law or the Uniform Standards of Professional Appraisal Practice, or engaged in unethical conduct, it shall file a complaint with the Board. The complaint shall be filed within 90 days of the date the appraisal is submitted to the appraisal management company. The complaint form shall be found on the Board's website at www.ncappraisalboard.org.

(b) The complaint shall state the name and contact information for the person at the appraisal management company who should be contacted during the investigation into the complaint. This person shall have knowledge of the basis for the complaint and shall be able to produce any records required by the investigation.

Authority G.S. 93E-2-3; 93E-2-4(c).

21 NCAC 57D. 0311 REMOVAL OF AN APPRAISER FROM AN APPRAISAL PANEL

(a) If an appraisal management company decides to remove an independent appraiser from its list of qualified appraisers, the appraisal management company shall notify the appraiser in writing of the reason for removal.

(b) Such notice shall be sent to the appraiser by any established method that provides proof of delivery, including but not limited to registered mail, return receipt requested.

~~If applicable, the~~ (c) The notice shall include a description of the appraiser's illegal conduct, substandard performance, or otherwise improper or unprofessional behavior, or of any violation of the Uniform Standards of Professional Appraisal Practice or state licensing standards.

(d) The appraisal management company shall also notify the appraiser of any dispute resolution process that it may have in place through which the appraiser may dispute the removal.

Authority G.S. 93E-2-3; 93E-2-7(a).

SECTION .0400 – APPRAISAL MANAGEMENT COMPANY GENERAL PRACTICES

21 NCAC 57D .0402 PROHIBITED ACTS

(a) If any of the following acts are taken by an employee, director, officer, or agent of a registered appraisal management company, or any other third party acting as joint venture partner or independent contractor before, during, or after the performance of a specific appraisal assignment, it is presumed that they were taken in an attempt to influence the opinion, conclusion, or valuation to be reached on that appraisal report, in violation of G.S. 93E-2-7:

- (1) Withholding or threatening to withhold timely payment for the appraisal report;
- (2) Withholding or threatening to withhold future business or demoting or terminating or threatening to demote or terminate a real estate appraiser;
- (3) Expressly or impliedly promising future business, promotions, or increased compensation for a real estate appraiser;
- (4) Conditioning the ordering of the appraisal report or the payment of an appraisal fee, salary, or bonus on the opinion, conclusion, or valuation;
- (5) Stating a desired, estimated, needed, or required appraised value on an appraisal engagement order, other than a contract price;
- (6) Requesting that a real estate appraiser provide an estimated or predetermined valuation in a real estate appraisal report or provide estimated values or comparable sales at any time before the appraiser's completion of the appraisal report;
- (7) Providing to a real estate appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits;
- (8) Altering, modifying, or otherwise changing the value on a completed appraisal report submitted by an independent appraiser without the appraiser's written knowledge and consent;
- (9) Requiring or attempting to require an appraiser to prepare an appraisal if the appraiser, in the appraiser's own independent professional judgment, believes the appraiser does not have the necessary expertise for the assignment or for the specific geographic area and has notified the appraisal management company and declined the assignment; or
- (10) Requiring or attempting to require an appraiser to prepare an appraisal under a time frame that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations if the appraiser has notified the appraisal management company and declined the assignment.

(b) An appraisal management company shall not:

- (1) Require an appraiser to indemnify an appraisal management company or hold an appraisal management company harmless for any liability, damage, losses, or claims arising out of the services performed by the appraisal management company, and not the services performed by the appraiser;
- (2) Require an appraiser to relinquish control of his digital signature or seal to the appraisal management company;
- (3) Require an appraiser to collect the appraisal fee from the borrower, homeowner, or any other person or entity, other than the appraisal management company.

- (4) a state sex offender search for each state lived in for the last seven years;
- (5) a federal sex offender search; and
- (6) an address trace on the applicant's Social Security number.

(b) If an appraisal management company requests a background check from an appraiser and that appraiser has had a criminal background check performed within the preceding 12 months, it shall be the responsibility of the appraiser to provide a complete copy of that background check to the appraisal management company.

(c) If an appraisal management company's client requires a background check that is more comprehensive than the one required under G.S. 93E-1-6(c1) nothing in this Rule prohibits the client from obtaining that background check as long as the appraiser is not required to pay for that background check.

(d) An appraisal management company may obtain more than one background check on an appraiser in a 12 month period as long as the appraiser is not required to pay for that additional background check.

(e) An appraiser who alters, amends, or otherwise changes the results of a criminal background check submitted to an appraisal management company or a lender or who knowingly submits a background check that has been altered shall be subject to discipline pursuant to G.S. 93E-1-12.

Authority G.S. 93E-2-3; 93E-2-4(h).

Authority G.S. 93E-2-3; 93E-2-7.

21 NCAC 57D .0403 CRIMINAL BACKGROUND CHECKS

(a) A criminal background check for the purpose of this Rule consists of all of the following:

- (1) a state court felony and misdemeanor criminal records search for each state lived in for the last seven years;
- (2) a state probation and incarceration check for each state lived in for the last seven years;
- (3) a federal court felony and misdemeanor criminal records check;

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 07 – DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

SUBCHAPTER 04R - ARCHAEOLOGY AND HISTORIC PRESERVATION SECTION

Rule-making Agency: Department of Natural and Cultural Resources

SECTION .0900 - TAX ACT CERTIFICATION REVIEW

Rule Citation: 07 NCAC 04R .0909, .0918 - .0926

07 NCAC 04R .0909 SCOPE OF RULES AND OVERVIEW OF STATUTORY AUTHORITY

Effective Date: January 1, 2016

(a) Rules .0901 - .0908 of this Section relate to recommendations made by the State Historic Preservation Officer (SHPO) to the Secretary of the Interior in connection with federal tax incentives involving the rehabilitation of ~~income-producing~~ income producing historic properties ~~properties in accord with the Code of Federal Regulations, 36 CFR 67.~~

Date Approved by the Rules Review Commission: December 17, 2015

(b) The SHPO makes certifications of historic significance and certifications of rehabilitation in connection with state tax incentives involving the rehabilitation of non-income-producing historic properties. The rules .0909 - .0915 of this Section are applicable to these certifications under Articles 3D and 3H of Chapter 105 of the General Statutes. ~~certifications.~~

Reason for Action: The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Current Operations and Capital Improvements Appropriations Act of 2015 (SL 2015-241), Section 32.3.(a). Effective Date: September 18, 2015 for SL 2015-241; January 1, 2016 for new Article 3L historic tax credit program.

(c) The procedures for obtaining certifications under Articles 3D and 3H of Chapter 105 of the General Statutes are set forth in Rules .0909 - .0915 of this ~~Section.~~ Section are applicable to these certifications for projects in which qualified rehabilitation expenditures and expenses were incurred prior to January 1, 2015, under Articles 3D and for rehabilitation projects for which an application for eligibility certification was submitted prior to January 1, 2015, under 3H of Chapter 105 of the General Statutes. Owners wishing certifications shall provide sufficient documentation to the SHPO to make certification ~~decisions.~~ decisions based on these Rules. These procedures shall be applicable to future and pending certification requests except as otherwise provided herein.

Following sunset (not repeal) of the state historic tax credit set forth in Articles 3D and 3H of Chapter 105, a new state historic tax credit was created in Article 3L with an effective date of January 1, 2016, necessitating adoption of new rules prior to said effective date for this new program. The new Article 3L program requires deferral approval for income-producing historic rehabilitation projects in order for a taxpayer to be allowed a state credit, and continues with the same "piggybacking" relationship between the federal and state credits as set out in the Articles 3D and 3H programs. The State Historic Preservation Office has a role under federal law in cooperation with the National Park Service for federal historic tax credit review; the National Park Service has final approval for the federal program with the State Office making recommendations and first level reviews. Please note that the Articles 3D and 3H programs were not repealed, and we anticipate continued review of legacy projects for rehabilitation expenses incurred prior to January 1, 2015. Certain projects eligible for the Article 3H program have a special grandfathering provision for rehabilitation expenses incurred through January 1, 2023. The proposed change to 07 NCAC 04R .0909 clarifies the separate nature of the rules for the Articles 3D and 3H programs, and adoption of new rules (07 NCAC 04R .0919 through .0926) for the Article 3L program. With a program effective date of January 1, 2016, sufficient time was not granted between the effective date of SL 2015-241 and the start of the new program to accommodate permanent rule making before January 1. We want to have rules in place by the program effective date, and will pursue adoption of permanent rules immediately afterwards.

(d) Requests for certifications and approvals of proposed rehabilitation work shall be sent by an owner to the SHPO for review. All certification decisions based on these Rules shall be made by the SHPO based upon review by HPO staff of the application and supporting documentation.

(e) Rule .0916 of this Section relates to fees charged for reviewing income-producing and ~~nonincome-producing non-income producing~~ rehabilitation certification requests. ~~requests for projects in which qualified rehabilitation expenditures and expenses were incurred prior to January 1, 2015, under Articles 3D and for rehabilitation projects for which an application for eligibility certification was submitted prior to January 1, 2015, under 3H of Chapter 105 of the General Statutes.~~

(f) The SHPO makes certifications of rehabilitation in connection with state tax incentives involving the rehabilitation of income-producing historic properties. Rule .0917 of this Section is applicable to the coordination with the Federal Certified Historic Rehabilitation Program for these rehabilitation certification ~~requests.~~ requests for projects in which qualified rehabilitation

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expenditures and expenses were incurred prior to January 1, 2015, under Articles 3D and for rehabilitation projects for which an application for eligibility certification was submitted prior to January 1, 2015, under 3H of Chapter 105 of the General Statutes.

History Note: Authority G.S. 105-129.35; 105-129.36A; 105-129.74; 105-130.42; 105-151.23.

07 NCAC 04R .0918 SCOPE OF RULES AND OVERVIEW OF STATUTORY AUTHORITY UNDER ARTICLE 3L OF CHAPTER 105 OF THE GENERAL STATUTES

(a) Rules .0901 - .0908 of this Section relate to recommendations made by the State Historic Preservation Officer (SHPO) to the Secretary of the Interior in connection with federal tax incentives involving the rehabilitation of income-producing historic properties. A taxpayer who is allowed a federal income tax credit under section 47 of the Internal Revenue Code for making qualified rehabilitation expenditures for an income-producing certified historic structure located in this State is allowed a state tax credit as set forth in Article 3L of Chapter 105 of the General Statutes, and federal approval of said rehabilitation in accord with the Code of Federal Regulations, 36 CFR 67, is required for the Article 3L state tax credit.

(b) The SHPO makes certifications of historic significance and certifications of rehabilitation in connection with state tax incentives involving the rehabilitation of historic properties. The rules .0918 - .0924 of this Section are applicable to these certifications for projects in which qualified rehabilitation expenditures and expenses are incurred on or after January 1, 2016, under Article 3L of Chapter 105 of the General Statutes.

(c) The procedures for obtaining certifications under Article 3L of Chapter 105 of the General Statutes are set forth in Rules .0918 - .0924 of this Section. Owners wishing certifications shall provide the required documentation based on these Rules to the SHPO to make certification decisions. These procedures shall be applicable to future and pending certification requests except as otherwise provided herein.

(d) Requests for certifications and approvals of proposed rehabilitation work shall be sent by an owner to the SHPO for review. All certification decisions shall be made by the SHPO based on these Rules upon review by HPO staff of the application and supporting documentation.

(e) Rule .0925 of this Section relates to fees charged for reviewing income-producing and nonincome-producing rehabilitation certification requests.

(f) The SHPO makes certifications of rehabilitation in connection with state tax incentives involving the rehabilitation of income-producing historic properties. Rule .0926 of this Section is applicable to the coordination with the Federal Certified Historic Rehabilitation Program for these rehabilitation certification requests.

Authority G.S. 105-129.100; 105-129.101; 105-129.102.

07 NCAC 04R .0919 DEFINITIONS

For purposes of Rules .0918 through .0925 of this Section, the following definitions shall apply:

(1) "Certification" means the process established by these Rules to determine the historic significance of properties within National Register or certified historic districts as well as to approve proposed and completed rehabilitation work.

(2) "Certified Historic District" means any district which is:

(A) designated under a local ordinance which has been certified by the Secretary of the Interior as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district; and

(B) certified by the Secretary of the Interior as meeting substantially all of the requirements for the listing of districts in the National Register of Historic Places.

(3) "Certified Historic Structure" means any building (and its structural components) which is:

(A) listed in the National Register of Historic Places; or

(B) located in a registered historic district and is certified by the Secretary of the United States Department of the Interior to the Secretary of the United States Department of the Treasury as being of historic significance to the district. Portions of larger buildings, such as single condominium apartment units, shall not be considered to be individual structures for purposes of income-producing rehabilitation certifications. Rowhouses, even with abutting or party walls, shall be considered as separate buildings. For purposes of the certification decisions set forth in these Rules, a certified historic structure encompasses the historic building and its site, landscape features, and environment, generally referred to herein as a "property" as defined in this Rule.

(4) "Certified rehabilitation" means repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer.

(5) "Department of the Interior" means the United States Department of the Interior.

(6) "Discrete property parcel" means a lot or tract described by metes and bounds, a deed or plat of which has been recorded in the deed records of the county in which the property is located,

- and on which a State-certified historic structure is located, or a single condominium unit in a State-certified historic structure.
- (7) "Historic District" means a geographically definable area, urban or rural, possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.
- (8) "Inspection" means a visit by the State Historic Preservation Office (HPO) to a historic structure for the purposes of reviewing and evaluating the significance of the structure and the proposed, ongoing, or completed rehabilitation work.
- (9) "National Park Service" (NPS) means the division within the United States Department of the Interior responsible for administering national parks and historic preservation programs.
- (10) "National Register Historic District" means any historic district listed in the National Register of Historic Places.
- (11) "National Register Nomination" means the documentation for a resource that includes the National Register Nomination Form NPS 10-900 with accompanying continuation sheets, maps, and photographs and that is prepared in accord with requirements and guidance in the NPS publication How to Complete the National Register Registration Form: Bulletin 16A and in other NPS technical publications on the subject.
- (12) "National Register of Historic Places" means the official federal roster of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the Secretary of the Interior is authorized to expand and maintain pursuant to the National Historic Preservation Act of 1966, as amended (often referred to as the "National Register").
- (13) "Owner" means a person, partnership, corporation, or public agency holding a fee-simple interest in a property or any other person or entity recognized by the North Carolina Department of Revenue for purposes of the applicable tax benefits.
- (14) "Period of Significance" as defined by guidelines for the National Register means the length of time when a property was associated with important events, activities, or persons, or attained the characteristics which qualify it for National Register listing.
- (15) "Property" means a building(s) and structure and its site and landscape features.
- (16) "Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant to its historic, architectural, and cultural values as determined by the SHPO.
- (17) "Secretary of the Interior" means the Secretary of the United States Department of the Interior or the designee authorized to carry out his/her responsibilities.
- (18) "Standards for Rehabilitation" means the Secretary of the Interior's "Standards for Rehabilitation" as cited in the Code of Federal Regulations, 36 CFR 67. The "Standards for Rehabilitation" include all subsequent amendments and editions, which are provided at the following website: www.nps.gov/tps/standards/rehabilitation.htm.
- (19) "State Historic Preservation Office (HPO)" means the section within the North Carolina Office of Archives and History responsible for administering historic preservation programs.
- (20) "State Historic Preservation Officer (SHPO)" means the Deputy Secretary of the Office of Archives and History of the Department of Natural and Cultural Resources, or the Deputy Secretary's designee, who acts to administer the historic preservation programs with the State.
- (21) "State-certified historic structure" means a structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior. For purposes of non-income producing rehabilitation certifications, a single condominium unit in a State-certified historic structure will be considered an individual structure and a discrete property parcel.
- (22) "Structure" means a building created to shelter any form of human activity, such as a house, barn, church, hotel, warehouse, mill, or similar structure. However, sites and objects as defined in the Code of Federal Regulations, 36 CFR 60.3 do not qualify as structures.

Authority G.S. 105-129.100; 105-129.101; 105-129.102.

07 NCAC 04R .0920 INTRODUCTION TO HISTORIC PRESERVATION CERTIFICATIONS AND INFORMATION COLLECTION

(a) Ordinarily, only the fee-simple owner of the property in question may apply for the historic preservation certifications described in Rules .0921 and .0923 in this Section. If an

application for a certification is made by someone other than the fee-simple owner, however, the application must be accompanied by a written statement from the fee-simple owner indicating that he or she is aware of the application and has no objection to the request for certification.

(b) Owners of properties which are not yet individually listed in the National Register of Historic Places or which are in areas that are not yet National Register or certified historic districts may obtain certifications from the SHPO on whether or not rehabilitation proposals meet the "Standards for Rehabilitation" and proceed with the rehabilitation prior to the listing of the individual property or district in the National Register. Because final certifications of rehabilitation shall be issued only to owners of certified historic structures, properties must be individually listed in the National Register or be located within National Register or certified historic districts by the time a request for final certification is submitted to the SHPO.

(c) If a property is located in a National Register or certified historic district but outside the district's period of significance, the National Register nomination or certification report for the district must be amended to expand the period of significance by the time a request for final certification is submitted to the SHPO.

(d) Applications for certifications of proposed rehabilitation, historic significance, and completed rehabilitation as set forth by Rules .0921 and 0923 of this Section shall be submitted on the Historic Preservation Certification Application. Two copies of the application and supporting documentation such as photographs and plans are required. The applicant may obtain a preliminary and non-binding determination of a property's historic significance within a National Register or certified historic district prior to undertaking a rehabilitation project.

(e) Applications are available from the HPO at the following website: www.hpo.ncdcr.gov.

(f) Requests for certifications and approvals of proposed rehabilitation projects shall be mailed to the HPO at the following address: Attention: Tax Credit Coordinator, 109 East Jones Street, Raleigh, NC 27601.

(g) Where documentation as defined in Rules .0921 and .0923 of this Section is not provided, the owner will be notified in writing of the additional information needed to undertake or complete the review. At such time the application shall be placed on hold pending the receipt of complete information. If complete information is not received within 30 days from the date of the request to the owner, the application shall be returned to the owner due to insufficient documentation.

(h) Approval of applications and amendments to applications shall be conveyed to the owner only in writing by the SHPO or his/her/his or her duly authorized representative. Decisions with respect to certifications shall be made on the basis of the descriptions contained in the application forms and other documentation as defined in Rule .0923(a)(1) of this Section. In the event of any discrepancy between the application and other supplementary material submitted with it (such as architectural plans, drawings, specifications, etc.), the applicant shall be requested to resolve the discrepancy in writing. In the event the discrepancy is not resolved, the description in the application shall take precedence.

Authority G.S. 105-129.100; 105-129.101; 105-129.102.

07 NCAC 04R .0921 CERTIFICATIONS OF HISTORIC SIGNIFICANCE

(a) Requests for determinations of historic significance for properties within National Register or certified historic districts shall be made to the HPO by the owner to determine:

- (1) that a property located within a National Register or a certified historic district contributes to the historic significance to the district and is, therefore, a "certified historic structure"; or
- (2) that a property located within a National Register or certified historic district is not of historic significance to the district.

(b) The owner may contact the HPO to determine whether or not a property is individually listed in the National Register of Historic Places or is located within a National Register or certified historic district.

(c) If a property is located within the boundaries of a National Register or certified historic district and the owner seeks certification by the SHPO that the property contributes to the historic significance of the district, the owner must provide the following documentation for determination of historic significance and submit it with the request for final certification:

- (1) Name and address of property;
- (2) Current photographs of property including photographs of the building and its site and landscape features; photograph(s) showing the property along with adjacent properties and structures on the street; and photographs of interior features and spaces adequate to document significance;
- (3) Brief written description of physical appearance including distinctive features and spaces, any alterations, and date(s) of construction;
- (4) Brief statement of significance summarizing how the property does or does not reflect the values that give the district its distinctive historical and visual character, and explaining any significance attached to the property itself (e.g., unusual building techniques, important event that took place there, etc.); and
- (5) Map of the historic district clearly delineating property's location within the district.

(d) Properties in National Register or certified historic districts containing more than one building where the buildings are judged by the SHPO to have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, shall be treated as a single certified historic structure when rehabilitated as part of an overall project. Buildings that are functionally related historically are those which have functioned together to serve an overall purpose during the property's period of significance. An evaluation shall be made to determine whether the component buildings contribute to the historic significance of the property and whether the property contributes to the significance of the historic district.

(e) If a building is to be moved as part of a rehabilitation for which certification is sought, the owner must follow the procedures outlined in this Paragraph. When a building is moved, every effort shall be made to re-establish its historic orientation, immediate setting, and general environment. Moving a building within a National Register or certified historic district may result in denial of a certification of historic [significance.]significance if it does not meet the requirements of the Code of Federal Regulations, 36 CFR 60 and 36 CFR 67.4(h).

- ~~(1) Documentation must be submitted that demonstrates:~~
 - ~~(A) the effect of the move on the building's integrity and appearance (any demolition, changes in foundations, etc.);~~
 - ~~(B) photographs of the original site and general environment of the new site;~~
 - ~~(C) evidence that the new site does not possess historical significance that would be adversely affected by the moved building;~~
 - ~~(D) the effect of the move on the distinctive historical and visual character of the district, where applicable; and~~
 - ~~(E) the method of moving the building.~~
- (1) If an owner moves a building into a National Register or certified historic district or moves a building elsewhere within a district, the required information described in Subparagraph (e)(2) of this Rule shall be included. The moved building shall be evaluated to determine if it contributes to the historic significance of the district both before and after the move as in Paragraph (f) of this Rule. The owner may obtain a preliminary and non-binding determination that a building proposed to be moved will contribute to the historic significance of the district after the move.
- (2) Documentation must be submitted that demonstrates:
 - (A) the effect of the move on the building's integrity and appearance (any demolition, changes in foundations, etc.);
 - (B) photographs of the original site and general environment of the new site;
 - (C) evidence that the new site does not possess historical significance that would be adversely affected by the moved building;
 - (D) the effect of the move on the distinctive historical and visual character of the district, where applicable; and
 - (E) the method of moving the building.

(f) Properties within National Register or certified historic districts shall be evaluated to determine if they contribute to the historic significance of the district by application of the "Standards for Evaluating Significance within National Register or Certified Historic Districts" as set forth in Rule .0922 of this Section.

(g) Once the significance of a property located within a National Register or certified historic district has been determined by the SHPO, written notification shall be sent to the owner.

Authority G.S. 105-129.100; 105-129.101; 105-129.102.

07 NCAC 04R .0922 STANDARDS FOR EVALUATING SIGNIFICANCE WITHIN NATIONAL REGISTER OR CERTIFIED HISTORIC DISTRICTS

(a) Properties located within National Register or certified historic districts shall be reviewed by the SHPO to determine if they contribute to the historic significance of the district by applying the following Standards for Evaluating Significance within National Register or Certified Historic Districts:

- (1) A building contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place and historical development;
- (2) A building not contributing to the historic significance of a district is one which does not add to the district's sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling, and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost; and
- (3) Ordinarily buildings that have been built within the past 50 years do not meet the National Register Criteria for Evaluation and are not considered to contribute to the significance of a district. Buildings less than 50 years old are considered to contribute to the significance of a district if the period of significance specified in the National Register nomination (or Certified Historic District designation report) includes the date of the building, or if the nomination (or designation report) establishes that the building individually meets the National Register Criteria Exception for properties less than 50 years old.

(b) If non-historic surface material obscures a facade, the owner shall remove the surface material as part of the rehabilitation so that a determination of significance in accord with the Code of Federal Regulations, 36 CFR 67.5(e), can be made. If the previously obscured facade has retained substantial historic integrity and the property otherwise contributes to the historic district, it will be determined to be a certified historic structure.

Authority G.S. 105-129.100; 105-129.101; 105-129.102.

07 NCAC 04R .0923 CERTIFICATIONS OF REHABILITATION

(a) Owners who want rehabilitation projects for certified historic structures to be certified by the SHPO as being consistent with the "Standards for Rehabilitation" shall comply with the procedures and application components of this Rule.

(1) To initiate review of a rehabilitation project for certification purposes, an owner shall submit an application to the SHPO. In all cases, photographs adequate to document the appearance of the structure(s), both on the exterior and on the interior, and its site and environment prior to rehabilitation must shall accompany the application. The social security or taxpayer identification number(s) of all owners must shall be provided in the application. Other documentation items shall be required by the SHPO to evaluate rehabilitation to clarify components of the application. Plans for any attached, adjacent, or related new construction shall also accompany the application. Because the circumstances of each rehabilitation project are unique to the particular certified historic structure involved, certifications that may have been granted to other rehabilitations are not specifically applicable and may not be relied on by owners as applicable to their projects; and

(2) A project does not become a certified rehabilitation until it is completed by the owner and certified by the SHPO. As part of the application the owner shall submit the request for final certification as defined in this Rule and provide the project completion date and a signed statement that the completed rehabilitation project meets the "Standards for Rehabilitation" and is consistent with project work previously approved. Also required in requesting certification of a completed rehabilitation project are costs attributed to the rehabilitation, photographs adequate to document the completed rehabilitation, and the social security or taxpayer identification number(s) of all owners.

(b) A rehabilitation project for certification purposes encompasses all work on the interior and exterior of the certified historic structure(s) and its site and environment as determined by the SHPO as well as related demolition, new construction or rehabilitation work which may affect the historic qualities, integrity or landscape features, and environment of the certified historic structure(s). More specific considerations in this regard are as follows:

(1) In order to receive certification, all elements of the rehabilitation project must meet the "Standards for Rehabilitation." Portions of the rehabilitation project not in conformance with the "Standards for Rehabilitation" shall not be

exempted and certification shall be denied. An owner undertaking a rehabilitation project shall not be held responsible for prior work not part of the current project and undertaken prior to January 1, 2016. An owner undertaking a rehabilitation project shall not be held responsible for work that was undertaken by previous owners or third parties, who have no business or immediate family relationship to the owner either at the time of the previous work or at the time the application is made.

(2) If the SHPO has reason to believe that a project submitted for certification does not include the entire rehabilitation project subject to review hereunder, the SHPO may choose to withhold a decision on such a certification until such time as the proper scope of the rehabilitation project to be reviewed has been determined. Factors to be taken into account by the SHPO in this regard include, but are not limited to, the facts and circumstance of each application, and:

(A) whether previous demolition, construction, or rehabilitation work irrespective of ownership or control at the time was in fact undertaken as part of the rehabilitation project for which certification is sought; and

(B) whether property conveyances, reconfigurations, ostensible ownership transfers, or other transactions were transactions which purportedly limit the scope of a rehabilitation project for the purpose of review by the SHPO without substantially altering beneficial ownership or control of the property. The fact that a property may still qualify as a certified historic structure after having undergone inappropriate rehabilitation, construction, or demolition work as defined by the "Standards for Rehabilitation" does not preclude the SHPO from determining that such inappropriate work is part of the rehabilitation project to be reviewed.

(3) Conformance to the "Standards for Rehabilitation" shall be determined on the basis of the application documentation and other available information by evaluating the property as it existed prior to the commencement of the rehabilitation project.

(4) For rehabilitation projects involving more than one certified historic structure where the structures are judged by the SHPO to have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, rehabilitation

certification shall be issued on the merits of the overall project rather than for each structure or individual component. For rehabilitation projects where there is no historic functional relationship among the structures, the certification decision shall be made for each separate certified historic structure regardless of how they are grouped for ownership or development purposes.

(5) Demolition of a building as part of a rehabilitation project involving multiple buildings may result in denial of certification of the rehabilitation. In projects where there is no historic functional relationship among the structures being rehabilitated, related new construction which physically expands one certified historic structure undergoing rehabilitation and, therefore, directly causes the demolition of an adjacent structure will generally result in denial of certification of the rehabilitation unless a determination has been made that the building to be demolished is not a certified historic structure. In rehabilitation projects where the structures have been determined to be functionally related historically, demolition of a component may be approved, in limited circumstances, when:

- (A) the component is outside the period of significance of the property;
- (B) the component is so deteriorated or altered that its integrity has been irretrievably lost; or
- (C) the component is a secondary one that generally lacks historic, engineering, or architectural significance or does not occupy a major portion of the site and persuasive evidence is present to show that retention of the component is not technically or economically feasible.

(6) In situations involving the rehabilitation of a certified historic structure in a historic district, the SHPO shall review the rehabilitation project first as it affects the certified historic structure and second as it affects the district and make a certification decision accordingly.

(7) In the event that an owner of a portion of a certified historic structure requests certification for a rehabilitation project related only to that portion of the structure, but there is or was a larger related rehabilitation project(s) occurring with respect to other portions of the certified historic structure, the SHPO's decision on the requested certification shall be based on review of the overall rehabilitation project(s) for the certified historic structure.

(c) Upon receipt of a complete application describing the rehabilitation project, the SHPO shall determine if the project is

consistent with the "Standards for Rehabilitation." If the proposed project does not meet the "Standards for Rehabilitation," the owner shall be advised of that fact in writing and, where possible, shall be advised of necessary revisions, in the form of conditions that will bring the proposed rehabilitation project into compliance with the Standards.

(d) Once a proposed project has been approved, changes in the work as described in the application must be brought promptly to the attention of the SHPO by written statement to ensure continued conformance to the Standards. The SHPO shall notify the owner in writing whether the revised project continues to meet the Standards. Oral approvals of revisions are not authorized or valid.

(e) Completed projects may be inspected by the HPO to determine if the work meets the "Standards for Rehabilitation."

(f) If a completed rehabilitation project does not meet the "Standards for Rehabilitation," an explanatory letter from the SHPO or [his/her]his or her duly authorized representative shall be sent to the owner. If a property was not rehabilitated in conformance with the "Standards for Rehabilitation" and the nonconforming work appears to have resulted in the loss of the qualities for which the property or the district in which it is located was listed in the National Register, the SHPO, as administrator of the National Register program in North Carolina, shall notify the National Register of Historic Places in accord with the Code of Federal Regulations.

Authority G.S. 105-129.100; 105-129.101; 105-129.102.

07 NCAC 04R .0924 STANDARDS FOR REHABILITATION

(a) The North Carolina Historical Commission interprets the "Standards for Rehabilitation" to require that the quality of materials and craftsmanship used in a rehabilitation project must be commensurate with the quality of materials and craftsmanship of the historic building in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Improper physical treatments include, but are not limited to: damaging masonry repointing techniques; exterior cleaning methods such as sandblasting or damaging water pressure; or the introduction of sealers or "non-breathable" materials on masonry surfaces, insulation, storm windows, and epoxy where the application of such treatments or materials does not conform to NPS Guidelines for Rehabilitating Historic Buildings and NPS "Preservation Briefs." Improper use of these materials and treatments may result in denial of certification. Similarly, exterior additions that duplicate the form, material, and detailing of the structure to the extent that they compromise the historic character of the structure shall result in denial of certification. The NPS Guidelines for Rehabilitating Historic Buildings and NPS "Preservation Briefs" can be found at the following website: www.nps.gov/tps/standards/rehabilitation/rehab/guide.htm and www.nps.gov/tps/education/free-pubs.htm. Other typical denial issues in which the historic integrity of the structure is compromised include but are not limited to the following:

- (1) removal of character defining historic exterior/interior materials and features such as doors, windows, woodwork, and significant landscape features;
- (2) excessive site paving; installing undocumented or non-period features; excessive alteration of exterior/interior features or spaces; removal of plaster from interior masonry walls to expose underlying masonry surface;
- (3) installation of inappropriate replacement doors and windows such as metal or vinyl clad windows in place of wood windows; and
- (4) replacement of non-deteriorated or repairable materials such as windows or millwork; painting unpainted masonry surfaces; installation of artificial siding.

(b) In limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In such cases, the SHPO shall consider such extreme intervention as part of a certified rehabilitation if:

- (1) the necessity for dismantling is justified in supporting documentation;
- (2) significant architectural features and overall design are retained; and
- (3) adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure. The "Standards for Rehabilitation" require retention of distinguishing historic materials of external and internal walls as well as structural systems. In limited instances, rehabilitations involving removal of existing external walls, i.e., external walls that detract from the historic character of the structure such as in the case of a nonsignificant later addition or walls that have lost their structural integrity due to deterioration, may be certified as meeting the "Standards for Rehabilitation."

Authority G.S. 105-129.100; 105-129.101; 105-129.102.

07 NCAC 04R .0925 FEES FOR PROCESSING REHABILITATION CERTIFICATION REQUESTS

- (a) The North Carolina Department of Natural and Cultural Resources shall charge fees for reviewing income-producing and nonincome-producing rehabilitation certification requests in accordance with the schedule below, in Paragraph (e) of this Rule.
- (b) Payment shall be made payable to: North Carolina Department of Natural and Cultural Resources. A certification decision by the State Historic Preservation Office shall not be issued on an application until the appropriate remittance is received by the department. Fees are nonrefundable.
- (c) No fee shall be charged for rehabilitations under twenty five thousand dollars (\$25,000).
- (d) The fee for review of proposed rehabilitation projects over twenty five thousand dollars (\$25,000) is two hundred fifty dollars

(\$250.00). The initial fee for review of a proposed rehabilitation project shall be deducted from the final review fee.

(e) The fees for review of completed rehabilitation projects are based on the dollar amount of the costs attributed solely to the rehabilitation of the certified historic structure as provided by the owner in the Historic Preservation Certification Application, Request for Certification of Completed Work, in accordance with the schedule below.

<u>Completed Rehabilitation Expenditures</u>	<u>Qualifying Fee</u>
<u>\$10,000 - \$24,999</u>	<u>\$0</u>
<u>\$25,000 - \$49,999</u>	<u>\$250</u>
<u>\$50,000 - \$99,999</u>	<u>\$500</u>
<u>\$100,000 - \$149,999</u>	<u>\$750</u>
<u>\$150,000 - \$199,999</u>	<u>\$1,000</u>
<u>\$200,000 - \$299,999</u>	<u>\$1,250</u>
<u>\$300,000 - \$399,999</u>	<u>\$1,750</u>
<u>\$400,000 - \$499,999</u>	<u>\$2,250</u>
<u>\$500,000 - \$999,999</u>	<u>\$2,750</u>
<u>\$1,000,000 - \$4,999,999</u>	<u>\$5,250</u>
<u>\$5,000,000 or more</u>	<u>\$7,750</u>

(f) In the following cases the fee for preliminary review is two hundred fifty dollars (\$250.00) and the fee for final review is computed on the basis of the total completed qualifying rehabilitation expenditures.

- (1) In the case of a rehabilitation project which includes more than one certified historic structure where the structures are judged by the reviewing authority to have been functionally related historically to serve an overall purpose; or
- (2) In the case of multiple building projects where:
 - (A) there is no historic functional relationship among the structures and which are under the same ownership;
 - (B) are located in the same historic district;
 - (C) are adjacent or contiguous;
 - (D) are of the same architectural type (e.g., rowhouses, loft buildings, commercial buildings); and
 - (E) are submitted by the owner for review at the same time.

Authority G.S. 105-129.100; 105-129.101; 105-129.102.

07 NCAC 04R .0926 COORDINATION WITH THE FEDERAL INCOME-PRODUCING HISTORIC PRESERVATION REHABILITATION PROGRAM

(a) A taxpayer is not required to apply for or pay the state fee for reviewing an income-producing rehabilitation certification request if the taxpayer is not going to utilize the state tax incentive.

(b) National Park Service certification of a property as historically significant shall be deemed to be certification of a property as historically significant by the State Historic Preservation Officer.

(c) The State Historic Preservation Officer shall certify and forward income-producing rehabilitation projects to the National Park Service for review, and National Park Service review shall constitute final certification. The National Park Service certification shall not be deemed to be project certification by the State Historic Preservation Officer.

(d) Taxpayers are cautioned that deadlines and requirements for state certifications may differ from deadlines and requirements for federal certifications.

Authority G.S. 105-129.100; 105-129.102.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 28 – LANDSCAPE CONTRACTORS'

Rule-making Agency: *Landscape Contractors' Licensing Board*

Rule Citation: *21 NCAC 28B .0101-.0103, .0201-.0204, .0301-.0302, .0401-.0404, .0501-.0511, .0601, .0701 and .0801-.0804.*

Effective Date: *January 1, 2016*

Date Approved by the Rules Review Commission: *December 17, 2015*

Reason for Action: *Because of the recent effective date of S.L. 2014-103, s.3(b), August 1, 2015, the NC Landscape Contractors' Licensing Board is adopting temporary rules necessary to regulate licensees who provide landscape contracting services governed by these laws.*

All landscape contractors who wish to conduct landscaping contracting work as defined in the G.S. 89D-11 (effective August 1, 2015) must now be licensed by the Board and are required to maintain licensure. This recently established licensing Board does not yet have rules in place to implement these statutes. The Board has adopted temporary rules to remedy this situation and will begin the permanent rulemaking process in a timely manner.

SUBCHAPTER 28B – LICENSING BOARD RULES

SECTION .0100 – BOARD; MEETINGS; DEFINITIONS

21 NCAC 28B .0101 NAME AND LOCATION OF BOARD

(a) Unless otherwise directed, all communications shall be addressed to the North Carolina Landscape Contractors' Licensing Board ("Board") at 3901 Barrett Drive, Suite 202, Raleigh, North Carolina 27609. Applications and other information are available on the Board's website: www.nclblc.com.

(b) The Board office is open from 9:00 a.m. until 5:00 p.m., Monday through Friday.

(c) The Board office is closed on State and Federal holidays.

Authority G.S. 89D-14; 89D-15(2).

21 NCAC 28B .0102 MEETINGS

(a) Regular meetings of the Board will be held at the Board office or other location chosen by the Chairman. Additional meetings may be held at such other times and places as the Board deems necessary.

(b) The Board shall hold an annual meeting every January. At that meeting, the Board shall elect a chairman, a vice chairman, a secretary-treasurer, and such other officers as may be deemed necessary by the Board.

Authority G.S. 89D-14; 89D-15(2).

21 NCAC 28B .0103 PRACTICE OF LANDSCAPE CONTRACTING

An individual who is "readily available to exercise supervision over the landscape construction and contracting work" as set forth in G.S. 89D-12(a) and G.S. 89D-17(f) is an individual who is physically located no more than 100 miles from where the construction or contract project is located or who is available electronically with the ability to view the construction or contract project.

Authority G.S. 89D-12(a); 89D-15(2).

SECTION .0200 – LICENSURE; RECIPROCITY; SEAL

21 NCAC 28B .0201 APPLICATIONS FOR LICENSURE

(a) All applicants for licensure or examination shall submit an application to the Board. The application form shall be available on the Board website or may be obtained by contacting the Board office. The application shall require the following:

- (1) The Social Security Number of applicant;
- (2) The applicant's contact information;
- (3) The name of business under which licensee will be operating, if any;
- (4) Information about ~~any criminal convictions;~~ all crimes of which the applicant has been convicted;
- (5) ~~The supporting documentation~~ Documentation regarding ~~any criminal convictions;~~ all crimes of which the applicant has been convicted;
- (6) Information indicating whether the applicant has any disciplinary history with any other occupational licensing, registration or certification board or agency;
- (7) Contact information for three personal references;
- (8) Contact information for two professional references;
- (9) The corporate surety bond or an irrevocable letter of credit as prescribed by G.S. 89D-16(a)(4);

(10) The application fee as set forth in Rule .0601 of this Subchapter.

(b) Once an applicant has submitted a complete application and has been determined to have met the minimum qualifications set forth in G.S. 89D-16(a), the Board will notify the applicant that the applicant is permitted to take an examination. Prior to taking the examination, the applicant shall submit an examination fee as set out in this Subchapter.

(c) All applications shall be notarized. Incomplete applications shall not be processed. Application fees are non-refundable.

Authority G.S. 89D-15(2); 89D-15(4); 89D-16; 89D-20.

21 NCAC 28B .0202 RECIPROCITY

(a) All applicants for licensure by reciprocity shall submit an application to the Board. The application form shall be available on the Board website or may be obtained by contacting the Board office located as described in Rule .0101 of this Subchapter.

(b) All applications shall include the following:

- (1) The license by reciprocity application fee as set forth in Rule .0601 of this Subchapter;
- (2) Documentation establishing that the applicant holds an active license, certification, or registration as a landscape contractor in another state or country;
- (3) Information indicating whether the applicant has any disciplinary history with any other occupational licensing, registration or certification board or agency;
- (4) ~~The corporate surety bond as set forth in Rule .0601 of this Subchapter; or an irrevocable letter of credit as prescribed by G.S. 89D-16(a)(4);~~
- (5) Contact information for three personal references;
- (6) Contact information for two professional references; and
- (7) ~~Supporting documentation~~ Documentation regarding any criminal convictions, all crimes of which the applicant has been convicted.

If there is any evidence to show that the applicant has been disciplined in any jurisdiction where the applicant is currently or has been licensed, certified, or registered or that the applicant has committed any acts that would constitute a violation under G.S. 89D-22, the applicant shall not be licensed by reciprocity.

(c) Once an applicant has submitted a complete application and the Board has determined that the requirements for licensure, certification, or registration in the applicant's home jurisdiction are substantially equivalent to the requirements in G.S. 89D-16, the Board shall issue a license to the applicant. ~~applicant shall be licensed.~~

(d) All applications shall be notarized. Incomplete applications shall not be processed. Application fees are non-refundable.

Authority G.S. 89D-15(2); 89D-15(3); 89D-15(4); 89D-16; 89D-19; 89D-22.

21 NCAC 28B .0203 MILITARY-TRAINED APPLICANT; MILITARY SPOUSE

(a) Licensure for a military-trained applicant. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submission of a complete application for licensure;
- (2) submission of an application fee in accordance with Rule .0601 of this Subchapter; and
- (3) providing documentation to satisfy conditions set out in ~~G.S. 93B-15.1(a)(1) and (2); G.S. 93B-15.1(b)(1), (2) and (3).~~ G.S. 93B-15.1(b)(1), (2) and (3). ~~and~~
- (4) ~~providing documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed.~~

(b) Licensure for a military spouse. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submission of a complete Application for Licensure;
- (2) submission of a license fee in accordance with G.S. 89D-21(a);
- (3) submission of written documentation demonstrating that the applicant is married to an active member of the U.S. military; and
- (4) providing documentation to satisfy conditions set out in ~~G.S. 93B-15.1(b)(1) and (2); G.S. 93B-15.1(b)(1), (2), (3) and (4).~~ G.S. 93B-15.1(b)(1), (2), (3) and (4).
- (5) ~~providing documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed; and~~
- (6) ~~is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.~~

Authority G.S. 89D-15(2); 89D-15(4); 89D-21; 93B-15.1.

21 NCAC 28B .0204 MAINTAIN CURRENT INFORMATION

(a) Every licensee shall keep the Board advised of the licensee's current mailing address, phone number, email address, and the name or names under which the licensee is practicing. If any change occurs, the licensee shall notify the Board in writing of the change within 60 days.

(b) Upon the dissolution of a professional relationship, the member or members thereof shall notify the Board in writing concerning such ~~dissolution, dissolution~~ and of the succeeding status and addresses of the individuals or firm.

(c) Upon the lapse of a surety bond or revocation of a letter of credit prescribed in G.S. 89D-16(a)(4), a licensee shall notify the Board in writing. If a licensee fails to renew the surety bond or

obtain a new letter of credit within thirty days after the lapse or revocation, the license shall be revoked.

(d) Failure to notify the Board of the changes described in Paragraphs (a), (b), or (c) of this Rule shall constitute a violation of G.S. 89D-22.

Authority G.S. 89D-15(2); 89D-15(11); 89D-16(a)(4); 89D-17(h); 89D-22(8).

**SECTION .0300 – LICENSE RENEWAL;
REINSTATEMENT**

21 NCAC 28B .0301 LICENSE RENEWAL; WAIVER

(a) All licensees seeking renewal shall submit annually to the Board a renewal application. The deadline for submission is August 1 in the renewal year. Applications shall be postmarked or received by the Board no later than August 1. If August 1 falls on a Saturday or Sunday, the application shall be postmarked or received no later than the following Monday. The application form is available on the Board website or may be obtained by contacting the Board office.

- (b) All renewal applications shall include the following:
- (1) The application fee set forth in Rule .0601 of this Subchapter;
 - (2) Documentation showing that the licensee has met the Board's continuing education requirements as set forth in section .0400; and
 - (3) ~~Supporting documentation~~ Documentation regarding any criminal convictions occurring all crimes of which the applicant has been convicted since the previous licensure or renewal.

(c) Incomplete applications shall not be processed. Application fees are non-refundable.

(d) An individual who is serving in the Armed Forces of the United States shall receive an extension of time to pay the license renewal fee upon submission of the following to the Board:

- (1) Written request for waiver; and
- (2) Documentation that the licensee is serving in the Armed Forces of the United States and is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.

Authority G.S. 89D-15(2); 89D-15(4); 89D-20; 93B-15; 105-249.2.

21 NCAC 28B .0302 REINSTATEMENT

(a) Any licensee whose license has ~~expired~~ been revoked due to non-renewal pursuant to 89D-20(a) for no more than one year may request reinstatement by the Board. The licensee shall submit the following to the Board:

- (1) Application for Reinstatement;
- (2) Reinstatement fee as set forth in Rule .0601 of this Subchapter;
- (3) Corporate surety bond or an irrevocable letter of credit pursuant to as prescribed by G.S. 89D-16(a)(4);

- (4) Documentation showing that the licensee has met the Board's continuing education requirements;
- (5) ~~Supporting documentation~~ Documentation regarding any criminal convictions occurring all crimes of which the applicant has been convicted since the previous application or renewal was filed with the Board; and
- (6) Attestation that the licensee has not engaged in the practice of landscape construction or contracting after the notice of revocation was issued.

(b) Any licensee whose license is suspended for failure to obtain continuing education as required by G.S. 89D-20(b) and this Subchapter may request reinstatement pursuant to G.S. 89D-20(b).

Authority G.S. 89D-15(2); 89D-15(4); 89D-20.

SECTION .0400 – CONTINUING EDUCATION

21 NCAC 28B .0401 GENERAL

To ensure continuing efforts on the part of licensed contractors to remain current with new developments in landscape technology and to encourage better business practices and safety in the profession, continuing education is required as a condition of license renewal. A licensee shall submit, as a part of his or her renewal application, evidence that he or she has met the Board's continuing education requirements. Renewal applications that do not contain this information shall be deemed incomplete.

Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20.

21 NCAC 28B .0402 CONTINUING EDUCATION UNITS

(a) A licensee shall ~~be required to~~ complete seven continuing education units (CEUs) during the year preceding renewal. Beginning with renewals filed after August 1, 2016, at least three of the seven CEUs must be technical credits and at least two of the seven CEUs must be business credits. If the information provided to the Board is unclear, the Board may request additional information from a licensee in order to assure compliance with continuing education requirements.

(b) For the purposes of this Rule, "technical credits" are defined as credits relating directly to the subject matter of landscape contracting as described in G.S. ~~89D-11(3)~~, 89D-11(3), and "business credits" are defined as credits relating to general business practices, including business planning, contracts, liability exposure, human resources, basic accounting, financial statements, and safety.

(c) CEUs shall be determined as follows:

Type of Qualifying Activity	Minimum time required for 1 CEU
Live course	50 minutes
Online course	50 minutes
Volunteer work	3 hours

Trade Shows, Field Days, and Tours	4 hours
Board Member Service	1 hour
Teaching or instructing	1 hour
In-house or Green Industry training	1 hour

- (d) No more than five CEU credits will be given for qualifying volunteer work or board member service in one year. No more than two CEU credits will be given for qualifying teaching or instructing in one year.
- (e) Credit shall not be given in increments of less than .5 CEUs. Breaks in courses shall not be counted towards CEU credit.
- (f) Requests for pre-approval shall be submitted at least 45 days prior to the first day of the course or event.

Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b).

21 NCAC 28B .0403 CONTINUING EDUCATION RECORDS; AUDIT

- (a) A licensee shall maintain records of attendance at continuing education programs for which CEUs have been approved for two years following the renewal approval date to which the CEUs were applied.
- (b) Compliance with annual CEU requirements shall be determined through an audit process conducted by the Board. Licensees selected for auditing shall provide the Board with the following documentation of the CEU activities claimed for the renewal period:
 - (1) Attendance verification records; and
 - (2) Information regarding course content, instructors, and sponsoring organization.
- (c) Licensees selected for audit shall ~~all submit~~ submit all requested information to the Board within 21 calendar days after the date the licensee was notified by the Board of the audit.

Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b).

21 NCAC 28B .0404 EXTENSION OF TIME

- (a) The Board shall grant a licensee an extension of time to complete CEU requirements during a period of service in the Armed Forces of the United States upon submission of the following to the Board:
 - (1) Written request for an extension; and
 - (2) Documentation that the licensee is serving in the Armed Forces of the United States and is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.

~~Upon providing the documentation, the licensee shall be granted an extension of time to obtain the CEUs required during that renewal period.~~
- (b) The Board shall grant a licensee an extension of time or waiver to obtain CEU requirements if he or she has a disability or illness that prevents him or her from complying with CEU requirements. In order to receive the waiver, a licensee shall provide the Board with the following:
 - (1) Written request for waiver; and

- (2) Documentation that describes the disability or illness and explains how the disability or illness prevents the licensee from complying with the Board's CEU requirements. If the Board ~~deems the waiver appropriate,~~ determines that, because of the disability or illness, the licensee could not reasonably be expected to comply with the Board's CEU requirements, the licensee shall be granted an extension of time in which to obtain the required CEUs.

~~(c) All other requests for extensions of time to obtain CEU credits shall be determined on a case-by-case basis. Where on a case-by-case basis the Board determines that the licensee could not reasonably be expected to comply with the Board's CEU requirements, the licensee shall be granted an extension of time in which to obtain the required CEUs. To be considered for an extension of time, a licensee shall submit the following:~~

- (1) Written request for extension; and
- (2) Documentation that supports the reason for the extension.

- (d) The Board shall grant a waiver of CEU requirements upon submission of documentation that a licensee is in active duty while serving in the Armed Forces and is or has been deployed for at least eight months during the twelve-month period during which CEUs were required.
- (e) An extension granted under Paragraphs (b) or (c) of this Rule shall not exceed one year.

Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b); 93B-15; 105-249.2.

21 NCAC 28B .0405 REQUESTS FOR APPROVAL

- (a) All requests for CEU approval shall include the following:
 - (1) An application for Continuing Education Credit;
 - (2) The number of Continuing Education Units (CEUs) requested; and
 - (3) The Location, ~~date(s)~~ date(s), and time(s) of course, activity, or Landscape Contractor's Licensing Board ~~board~~-meetings attended or to be attended.
- (b) For live and online courses and teaching or instructing activity, in addition to the requirements of Paragraph (a) of this Rule, all requests shall include the following:
 - (1) The course title(s) and a description of course content;
 - (2) The name and educational or professional credentials of the instructor;
 - (3) The duration of the course or activity; and
 - (4) An attestation that the course provider will maintain attendance records for one year after the date of the course.
- (c) For volunteer work, requests for approval shall, in addition to the requirements of Paragraph (a) of this Rule, include the following:
 - (1) A description of activity performed or to be performed; and

- (2) The time spent or to be spent performing volunteer activity.
- (d) For trade shows, field days, and tours, requests for approval shall, in addition to the requirements of Paragraph (a) of this Rule, include ~~materials/handouts~~materials or handouts promoting or obtained during the event.
- (e) For in-house or Green Industry training, requests for approval shall include the following, in addition to the requirements of Paragraph (a) of this Rule:
 - (1) A description of training provided; and
 - (2) The name(s) of training instructors.
- (f) For the purposes of this Rule, "Green Industry" is defined as greenhouse, nursery, floriculture, sod, Christmas tree producers, and related industry trades.

Authority G.S. 89D-15(2); 89D-15(4); 89D-20(b).

SECTION .0500 – MINIMUM STANDARDS

21 NCAC 28B .0501 GENERAL

- (a) Prior to commencing work, services performed by a licensed landscape contractor ("licensed contractor") that exceed five thousand dollars (\$5,000.00) in value shall be described in writing and provided to the client or customer. This agreement may be authored by either party. This document shall contain:
 - (1) ~~Business~~The business name, license number, business address, and telephone number of the licensed contractor;
 - (2) ~~Name~~The name and address of client or customer;
 - (3) ~~Address~~The address or location of work to be performed, if different from the client or customer's address;
 - (4) ~~Date~~The date of the proposal;
 - (5) ~~Description~~The description of the work to be performed;
 - (6) ~~Total~~The total value in lump sum or time and material price;
 - (7) ~~Estimated~~The estimated time of completion;
 - (8) ~~Terms~~The terms of payment;
 - (9) ~~Terms~~The terms of warranty (if any);
 - (10) ~~Terms~~The terms of maintenance, including the party responsible for maintenance;
 - (11) ~~Signature~~The signatures of all parties by authorized individuals;
 - (12) ~~Statement~~A statement that the licensed contractor is licensed by the ~~Board~~Board and the current address and phone number of the Board; and
 - (13) ~~Date~~The date of signing.
- (b) All work performed by a licensed contractor shall meet all ~~pertinent~~applicable building codes, local ordinances, and project specifications. All work performed by a licensed contractor shall meet manufacturer's specifications.
- (c) If project plans or specifications prepared by someone other than the licensed contractor do not meet pertinent codes and ordinances, the licensed contractor shall bring this to the attention of the client or customer.

- (d) If the licensed contractor observes a condition while the work is being performed that requires attention beyond the original scope of work, ~~the condition shall be reported~~the contractor shall report the condition to an immediate supervisor, the owner, or the person responsible for authorizing the work.
- (e) The licensed contractor shall call for utility location services ~~per N.C. 811 law~~pursuant to the N.C. 811 law, G.S. 87-115 et. seq.
- (f) The licensed contractor shall maintain ~~a safe work site~~a worksite that meets OSHA standards for a safe workplace.

Authority G.S. 89D-15(2); 89D-15(16).

21 NCAC 28B .0502 PLANTING

When planting, the licensed contractor shall:

- (1) Avoid potential planting conflicts with utilities and sight lines.
- (2) Protect plant material from physical damage and desiccation during transport.
- (3) Maintain plants during landscape construction.
- (4) Consider the cultural requirements of individual plants.
- (5) Excavate the plant hole ~~sufficient~~sufficiently to ensure ~~ease of~~ plant establishment and to promote long-term ~~health~~health, typically ~~measured at~~ two times the width of the plant ball or container size.
- (6) ~~Sidewalls of planting pit shall be scarified~~Scarify the sidewalls of the planting pit.
- (7) Set plants in an upright, plumb position, unless design intent dictates otherwise.
- (8) Set plants on a firm, solid base.
- (9) Remove all strings, twine, and strapping from around the trunk of trees.
- (10) Remove the top third to top half of burlap or other wrapping material ~~on~~from the rootball of balled and burlapped trees.
- (11) Remove top third to top half of wire baskets on balled and burlapped trees or bend basket wire back to be flush with the side of the ball.
- (12) Set the plant so that the top of root ball is at or slightly above surrounding soil and does not exceed four inches above the surrounding soil.
- (13) Prior to planting, insure that the trunk flare of a tree is not covered with soil, is at or above the surrounding finished grade, and that no soil has been placed on top of the root ball.
- (14) Prior to planting containerized plants, manage the rootball to mitigate problems such as circling roots. Acceptable mitigation methods shall include slicing the rootball, shaving the rootball, or redirecting roots.
- (15) Utilize backfill soil that is similar to the soil at the planting site or is amended to meet a specific landscaping objective.
- (16) Not firm backfill to a density that inhibits root growth.

- (17) Install backfill soil in such a manner that it is settled in layered sections to limit future settling.
- (18) Not utilize screened soil as the sole material for backfill.
- (19) When mulching plants, maintain a mulch depth that is beneficial to the health of the plants.
- (20) When mulch is applied, apply mulch so that it does not touch a tree trunk or root flare.
- (21) Water plants thoroughly and immediately after planting.
- (22) Notify client of his or her responsibility to water plants following installation.
- (23) Stake trees only when required due to high winds, extreme slopes, or soft soils;
 - (a) If trees are staked, the guys shall not be installed so as to provide pressure on the trunk.
 - (b) Guys in contact with the tree shall be of a material that will not damage the tree.
- (24) Provide plants that are true to name and species.
- (25) Provide plants that are healthy and in good condition.
- (26) Prune any broken limbs.
- (27) Prune co-dominant leaders in shade trees that typically have dominant leaders.
- (28) If a condition is observed while the work is being performed that is detrimental to the long-term health of the plant, the condition shall be reported to the customer or client, an immediate supervisor, the owner, or person responsible for authorizing the work.

- (9) Roll sod after installation to provide good soil contact;
- (10) Distribute sprigs evenly;
- (11) Insure that sprigs and sod plugs are in good contact with the soil;
- (12) Water lawn areas thoroughly and immediately after installation; and
- (13) Notify client of his or her responsibility to water turf following installation.

Authority G.S. 89D-15(2); 89D-15(16).

21 NCAC 28B .0504 FINISH GRADE

When grading, the licensed contractor shall:

- (1) Grade the surface such that the finish grade ~~shall be~~ is smooth and free of depressions and debris;
- (2) Insure positive water flow through the site, away from structures, and in such a manner that there is no puddling or ponding; and
- (3) Comply with all applicable local and national building codes and ordinances regarding slopes and drainage.

Authority G.S. 89D-15(2); 89D-15(16).

21 NCAC 28B .0505 DESIGN AND CONSULTATION

(a) ~~With regard to design and consultation, the~~ The licensed contractor shall be permitted to perform work as defined in G.S. 89D-11(3) and G.S. 89D-12 on the following project sites:

- (1) A single family residential project of any size;
- (2) A non-single family project under one acre in total area;
- (3) A residential, institutional, or commercial project over one acre in total area that involves only planting and mulching; and
- (4) Any other project not prohibited by, or specifically exempted from, the provisions of G.S. 83A, G.S. 89A, or G.S. 89C.

(b) Additionally, the licensed contractor shall:

- (1) Obtain direct knowledge of site conditions by visiting the site;
- (2) Insure that designs meet all applicable state and local codes and standards; and
- (3) Consider the cultural requirements of individual plants.

Authority G.S. 89D-11(3); 89D-15(2); 89D-15(16).

21 NCAC 28B .0506 DRAINAGE SYSTEMS AND CISTERNS

Licensed contractors shall:

- (1) Install drainage systems and cisterns ~~per~~ in accordance with state and local codes and ordinances;
- (2) Install drainage conveyances in such a way that there is a positive flow;

Authority G.S. 89D-15(2); 89D-15(16).

21 NCAC 28B .0503 TURF

When establishing turf, the licensed contractor shall:

- (1) Notify the owner or the construction manager whether there is adequate time to establish the specified turf from seed within the construction schedule and prior to finish of the job;
- (2) Prior to lawn installation, loosen soil to a minimum depth of three inches;
- (3) Confirm that all lawn seed meets the standards of the NC Seed Law of 1963, as set forth in G.S. 106, Art. 31;
- (4) Evenly distribute seed;
- (5) Apply seed at manufacturer's recommended rates;
- (6) Roll or rake after seeding to insure good soil contact;
- (7) Install sod within 36 hours of harvesting unless weather conditions ~~and~~ or turf types dictate a shorter timeframe;
- (8) Lay sod strips in a staggered pattern, horizontal to ~~slopes,~~ slopes and with tight seams;

- (3) Install drainage systems with measures that allow cleaning of the system;
- (4) Install drainage systems with adequate structural integrity so as to prevent crushing of the drainage system;
- (5) Install French drain systems to drain to daylight or into existing storm drainage; and
- (6) Insure that cisterns and closed drywells include provisions for excess water overflow, an overflow outlet.

~~(7)(5) Include adequate sub drainage systems behind the wall, a subdrain system that is constructed and sized to release the subsurface water behind the wall and not allow hydrostatic pressure to build behind the wall.~~

~~(8)(6) Construct on a level, well compacted well-compacted base of granular material at least 6 inches deep.~~

~~(9)(7) Place backfill behind retaining walls in lifts no greater than 6 inches before compacted (each lift shall be well compacted, well-compacted.~~

~~(10) Insure that when constructing terracing walls not designed by an NC licensed design professional, the horizontal separation between walls shall be at least 50 feet or to current code.~~

~~(11)(8) Prevent excessive runoff from passing over a retaining wall.~~

~~(12) Limit construction of vertically set timber walls to 4 feet in height.~~

~~(13)(9) Construct vertically-set timber walls with above-ground heights equal to or less than the depth of timbers below grade.~~

~~(14)(10) Install deadmen every fourth course on 8 feet centers when constructing horizontally-set timber retaining walls with staggered joints.~~

~~(15)(11) Stagger the joints when constructing dry-laid stone walls. If successive vertical joints occur, the licensed contractor shall avoid running vertical joints more than two courses.~~

Authority G.S. 89D-15(2); 89D-15(16).

21 NCAC 28B .0507 LOW-VOLTAGE LIGHTING; POOLS

(a) When installing low-voltage landscape lighting systems, the licensed contractor shall:

- (1) Insure that all wire connections are waterproof;
- (2) Only use weather-proof fixtures;
- (3) Supply ~~proper~~appropriate lamps with all fixtures;
- (4) Ensure that the total lamp wattage of each circuit does not exceed the National Electrical Code (NEC) standard for the size of wire being used;
- (5) Not load a wire to more than 80 percent of the wire's capacity;
- (6) Connect all exterior low-voltage wiring to a ground fault circuit interrupter (GFCI) circuit;
- (7) Mount transformers a minimum of 18 inches above grade;
- (8) Perform a post-installation inspection to verify that the lighting system is fully operational as intended; and
- (9) Provide literature to the client~~for~~ about the lighting components that lists proper appropriate lamps for fixtures to the client fixtures.

(b) All garden pools shall be installed per all regional and local codes.

Authority G.S. 89D-15(2); 89D-15(16).

21 NCAC 28B .0508 WALLS

(a) When installing retaining walls, the licensed contractor shall:

- (1) Adhere to all pertinent codes.
- (2) Adhere to manufacturer's or design professionals specifications.
- (3) Bury the first course of a retaining wall.
- ~~(4) Insure that a retaining wall over 5 feet in height is designed by a professional engineer licensed under G.S. 89C.~~
- ~~(5) Insure that a retaining wall closer than 5 feet from a structure, regardless of height, is designed by a professional engineer licensed under G.S. 89C.~~
- ~~(6)(4) Not construct dry-laid stone walls of a height more than 3 feet above grade.~~

(b) When installing freestanding walls, the licensed contractor shall:

- (1) Install footings for masonry and cast-in-place concrete freestanding walls of reinforced concrete. The top of the footing shall be at least 1 foot below grade.
- (2) Reinforce freestanding walls as needed to prevent displacement from wind loads.
- (3) Insure that moisture is prevented from entering a cavity wall during construction.
- (4) Insure that segmental wall construction meets segmental wall manufacturer's specifications.

Authority G.S. 89D-15(2); 89D-15(16).

21 NCAC 28B .0509 PAVING

When paving, the licensed contractor shall:

- (1) Follow manufacturer's recommendations and specifications;
- (2) Choose paving materials that are appropriate for the ~~project;~~ project, based on the contractor's professional judgment;
- (3) Install paving on a ~~suitable, well compacted base;~~ well-compacted base that will prevent settlement;
- (4) Install paved surfaces ~~with slopes sufficient to allow for surface drainage and to prevent ponding;~~

- (5) Install reinforcement in concrete slabs so that the reinforcement is suspended within the concrete and not resting on the base course;
- (6) Not pour concrete if air temperatures, away from artificial heat or in the shade, ~~drop below~~ is less than 35 degrees Fahrenheit;
- (7) Not pour concrete if the air temperature in the shade is 90 degrees Fahrenheit and rising or if the concrete temperature is greater than 95 degrees Fahrenheit;
- (8) Use a ~~suitable~~-vibratory compacting device to set unit pavers and after joints are swept; and
- (9) Utilize an edge restraint on unit paver installations.

- (5) Use a temporary cover, nurse ~~erop~~crop, or mulch when seeding that is non-allelopathic and ~~seasonably~~-seasonally appropriate.
- (6) Use highest seed rates on slopes greater than 30 degrees or when a dormant seeding schedule is utilized.
- (7) Employ a seeding method that buries seed less than one-quarter inch in ~~depth~~; depth, and cultipack or roll after seed distribution.

Authority G.S. 89D-15(2); 89D-15(16).

SECTION .0600 - FEES

21 NCAC 28B .0601 FEE SCHEDULE

(a) The Board shall charge the following fees:

- (1) Application: \$75.00;
- (2) Examination: \$150.00;
- (3) License fee: \$60.00;
- (4) License renewal: \$60.00;
- (5) Late renewal: \$25.00;
- (6) Reinstatement: \$100.00;
- (7) License by reciprocity: \$100.00;
- (8) Duplicate license: \$25.00.

(b) If the Board elects to use a testing service for the preparation, administration, or grading of examinations, the Board shall charge the applicant the actual cost of the examination services and a prorated portion of the examination fee.

(c) All fees charged by the Board are non-refundable.

Authority G.S. 89D-15(2); 89D-15(10); 89D-21.

SECTION .0700 – COMPLAINTS; INVESTIGATIONS

21 NCAC 28B .0701 COMPLAINTS; INVESTIGATIONS

(a) All complaints filed with the Board shall be filed either on a form provided by the Board or via the Board's online complaint ~~process~~-process at www.ncclcb.com. All complaints must contain the complainant's contact information. The Board ~~shall~~will not investigate anonymous complaints. Incomplete complaints will not be investigated.

(b) Initial review of a complaint will be conducted by Board staff. If further review and investigation is warranted, the Board will assign an investigator who will conduct an investigation.

(c) Upon completion of the investigation, the investigator's report will be forwarded to a designated Board member and Board staff, who will make a ~~recommendation~~recommendation, based upon whether the investigation produces evidence of a violation of G.S. 89D or the rules of this Subchapter, to the full Board as to whether the case should be dismissed or whether further action by the Board is warranted.

Authority G.S. 89D-15(2); 89D-15(6); 89D-15(7).

SECTION .0800 – HEARINGS PROCESS; SUMMARY SUSPENSION

Authority G.S. 89D-15(2); 89D-15(16).

21 NCAC 28B .0510 PRUNING

When pruning, unless to achieve artistic intent, such as pleaching, pollarding, sculpting, topiary, or espalier, a licensed contractor shall:

- (1) Use sharp tools;
- (2) When making a pruning cut that removes a branch at its point of origin, make the cut close to the trunk or parent branch without cutting into the branch bark ridge or branch collar or leaving a stub;
- (3) Not flush cut;
- (4) Not top trees;
- (5) Remove branches in such a manner as to avoid damage to other parts of the plant or to other plants or property; and
- (6) Precut branches that are too large to support with one hand to avoid splitting the wood or tearing the bark.

Authority G.S. 89D-15(2); 89D-15(16).

21 NCAC 28B .0511 WILDFLOWER, NATIVE GRASS, AND NO-MOW SEED ESTABLISHMENT

When establishing wildflower, native ~~grass~~-grass, or no-mow seeding, a licensed contractor shall:

- (1) ~~During the preconstruction phase of the job~~ Prior to construction, inform the owner or construction manager of the ~~lead~~-time required to establish native bunch grasses and forbs from seed and ~~if whether this lead-time is compatible with the construction schedule, providing clear expectations~~-schedule.
- (2) Confirm the suitability of the specified seed for the project.
- (3) Select seed that is regionally appropriate and of the geographic ecotype for the location of the project.
- (4) Use pure live seed (PLS) rates for seeding. If bulk seed is utilized, adjust the rates accordingly.

21 NCAC 28B .0801 PROBABLE CAUSE

Upon a determination that there is probable cause to believe a violation of G.S. 89D or the rules of this Subchapter exists, the Board shall issue a Notice of Hearing pursuant to G.S. 150B-38(b) and (c). Any party served with a Notice of Hearing may file a written response pursuant to G.S. 150B-38(d).

Authority G.S. 89D-15(2); 89D-15(7); 89D-15(8); 150B-38.

21 NCAC 28B .0802 HEARINGS

(a) Contested case hearings shall be conducted by a majority of the Board unless the Board requests the designation of an administrative law judge pursuant to G.S. 150B-40(e). The Board chairman shall serve as the presiding officer unless he or she is absent or disqualified, in which case the vice-chairman shall preside. Hearings shall be conducted pursuant to G.S. 150B-40.

(b) An affidavit seeking disqualification of any Board member, if filed in good faith and in a timely manner, shall be ruled on by the remaining members of the Board. An affidavit is considered timely ~~filed~~ if it is filed:

- (1) Prior to the hearing; or
- (2) As soon after the commencement of the hearing as the affiant becomes aware of facts that give rise to his or her belief that a Board member should be disqualified.

Authority G.S. 89D-15(2); 89D-15(8); 150B-38; 150B-40.

21 NCAC 28B .0803 SUBPOENAS

(a) Pursuant to G.S. 150B-39, the Board may issue subpoenas for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of ~~investigation or discovery.~~

(b) After a notice of hearing in a contested case has been issued and served upon a licensee or, in a case concerning an application

for licensure, the applicant, the respondent may request subpoenas for the attendance of witnesses and the production of evidence.

(c) Requests by a licensee or applicant for subpoenas shall be made in writing to the Board and shall include the following:

- (1) the ~~full~~ name and home or business address of all persons to be subpoenaed; and
- (2) the identification of any documents or information being sought.

Upon submission of a written request containing the information in Subparagraphs (1) and (2) of this Paragraph, the Board shall issue the subpoenas to the requesting party within three business days of the Board's receipt of the request.

(d) Subpoenas shall be served by the party requesting the subpoena as provided by the Rules of Civil Procedure, G.S. 1A, Rule 45. The cost of service, fees, and expenses of any witnesses or documents subpoenaed is prescribed by G.S. 150B-39.

Authority G.S. 89D-15(2); 89D-15(8); 150B-39; 150B-40(c).

21 NCAC 28B .0804 SUMMARY SUSPENSION

~~(a) If the Board finds that the public health, safety, or welfare requires emergency action, pursuant to G.S. 150B-3(c), it may summarily suspend a license without a hearing or opportunity for the licensee to be heard. The Board may summarily suspend a license pursuant to G.S. 150B-3(c).~~

(b) Upon the issuance of an order summarily suspending a license, the Board shall schedule a hearing to occur at the earliest practicable date. The order of summary suspension shall remain in effect until the proceedings are determined.

~~(c) An order of summary suspension is not a final agency decision.~~

Authority G.S. 89D-15(2); 89D-15(4); 150B-3(c).

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission December 17, 2015 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House

Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Anna Baird Choi
Jeanette Doran
Danny Earl Britt, Jr.

COMMISSION COUNSEL

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

RULES REVIEW COMMISSION MEETING DATES

January 21, 2016	February 18, 2016
March 17, 2016	April 17, 2016

**RULES REVIEW COMMISSION MEETING
MINUTES**

December 17, 2015

The Rules Review Commission met on Thursday, December 17, 2015, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Bobby Bryan, Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Poley, and Stephanie Simpson.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:05 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the November 19, 2015 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Child Care Commission

10A NCAC .2001, .2002, .2003, .2004, and .2005 – The Commission voted to continue the extension for the period of review for the above-referenced rules in accordance with G.S. 150B-21.10.

Property Tax Commission

17 NCAC 11 .0216 and .0217 – The agency is addressing the objections from the October meeting by publishing a Notice of Text in the North Carolina Register. No action was required by the Commission.

Board of Massage and Bodywork Therapy

21 NCAC 30 .1001, .1002, .1003, .1004, .1005, .1006, .1007, .1008, .1009, .1010, .1011, .1012, .1013, .1014, and .1015 – Pursuant to G.S. 150B-21.2(a)(2), the Board requested that the rules be returned to it. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

Pesticide Board

02 NCAC 09L .1009 was unanimously approved.

Board of Crop Seed Improvement

02 NCAC 29B .0103 was unanimously approved.

Board of Agriculture

All rules were unanimously approved.

Industrial Commission

All rules were unanimously approved.

911 Board

The Board requested a waiver of 26 NCAC 05 .0108. The Commission denied the request, with Commissioner Simpson voting in favor.

The Commission extended the period of review for these rules in accordance with G.S. 150B-21.10. The Commission did so because the Board did not submit rewritten rules in the timeframe set forth in 26 NCAC 05 .0108. Therefore, the Commission did not have before it all information necessary to approve or object to the rules.

Richard Bradford, with the Attorney General's Office representing the agency, addressed the Commission.

Medical Care Commission

10A NCAC 13O .0301 was unanimously approved.

Prior to the discussion of the rule from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rule because he represents the Medical Care Commission from time to time.

Radiation Protection Commission

All rules were unanimously approved.

Environmental Management Commission

The Commission extended the period of review on these rules in accordance with G.S. 150B-21.10 and G.S. 150B-21.13. The Commission extended the period of review in response to a request from the Environmental Management Commission to allow additional time for review of technical change requests.

Board of Cosmetic Art Examiners

All rules except 21 NCAC 14T .0302 were unanimously approved.

The Commission objected to 21 NCAC 14T .0302, finding that the Board failed to comply with the Administrative Procedure Act. Specifically, the Commission found that changing the requirement that cosmetology schools have an additional station per every five students as published in the North Carolina Register on August 17, 2015, to a requirement that schools have an additional station per every two students following public comment, resulted in a substantial change.

The Board of Cosmetic Art Examiners requested the Commission to waive 26 NCAC 05 .0108(a) and review the rewritten version of 21 NCAC 14T .0302 at the December meeting. The Commission granted the request, with Commission Doran voting against, therefore; the final rewritten version of 21 NCAC 14T .0302 was reviewed.

Upon review of 21 NCAC 14T .0302, the Commission approved the rewritten rule contingent upon receiving 21 NCAC 14T .0302 with the published language of requiring an additional station per every five students. The Rule with the pertinent language was subsequently received.

Lynda Elliot with the agency addressed the Commission.

Irrigation Contractors Licensing Board

All rules were unanimously approved.

Medical Board

All rules were unanimously approved.

Board for Licensing of Soil Scientists

21 NCAC 69 .0104 was unanimously approved.

LOG OF RULES (TEMPORARY RULES)

Prior to the discussion of the temporary rules, Commissioner Choi announced she would not participate in any discussion or vote concerning the Temporary Rules.

Department of Natural and Cultural Resources

All rules were unanimously approved.

Ramona Bartos with the agency addressed the Commission.

Landscape Contractors' Licensing Board

All rules were unanimously approved with the following exceptions:

21 NCAC 28B .0803 and .0805 were withdrawn at the request of the agency.

The approved final rewritten version of 21 NCAC 28B .0804 was renumbered to 21 NCAC 28B .0803, and 21 NCAC 28B .0806 was renumbered to 21 NCAC 28B .0804

Prior to the discussion of the temporary rules from the Landscape Contractors' Licensing Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal representation to the Board, including actively assisting with the drafting of these temporary rules.

Anna Choi, the attorney representing the agency, addressed the Commission.

EXISTING RULES REVIEW

Environmental Management Commission

15A NCAC 02D – The Commission unanimously approved the report as submitted by the agency.

15A NCAC 02Q – The Commission unanimously approved the report as submitted by the agency.

COMMISSION BUSINESS

Commissioners concluded the discussion regarding consistency in review of rules pursuant to G.S. 150B-2(8a)d.

The meeting adjourned at 11:28 a.m.

The next regularly scheduled meeting of the Commission is Thursday, January 21, 2016 at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

Garth Dunklin, Chair

December 2015

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Jon Granger	DHHS
Jenny Rollins	DHHS
Christy Britt	DHHS
Richard Bradford	Attorney General - 911 Board
Nadine Pfeiffer	DHSR
Teresa Bank	411 Board Rulemaking Coord
Jennifer Everett	DEQ
Kathy Turner	DHHS/DHSR
Meredith Henderson	NC Industrial Commission
Kendall Boudreau	NC Industrial Commission
Jesse Guss	DHHS/DHSR
RICHARD TAYLOR	NC 911 Board
Margaret Coisexual	NCDCS
Henry Patterson	Patterson Hankins LLP
Mike Abraszewski	DENR
Marcus Janda	NCMB
RAMONA BARTOS	NC NDCR / Hst Proj office
MURTA WILDS	NC DNCR / SHPO
TIM SIMMONS	NC DCR / SHPO
Connie Hayes	NCLandscape Contractor license Bd
Victor Fann	Atty

LIST OF APPROVED PERMANENT RULES
December 17, 2015 Meeting

PESTICIDE BOARD

Notification of Apiaries 02 NCAC 09L .1009

CROP SEED IMPROVEMENT, BOARD OF

Appeal Board 02 NCAC 29B .0103

AGRICULTURE, BOARD OF

Recording Flue-Cured Varieties 02 NCAC 48C .0113

Recording Blends 02 NCAC 48C .0115

Intrastate Requirements: Cervidae 02 NCAC 52C .0701

INDUSTRIAL COMMISSION

Location of Main Office and Hours of Business 04 NCAC 10A .0101

Electronic Filings with the Commission; How to File 04 NCAC 10A .0108

Termination and Suspension of Compensation 04 NCAC 10A .0404

Reinstatement of Compensation 04 NCAC 10A .0405

Compromise Settlement Agreements 04 NCAC 10A .0502

Motions Practice in Contested Cases 04 NCAC 10A .0609

Medical Motions and Emergency Medical Motions 04 NCAC 10A .0609A

Pre-Trial Agreement 04 NCAC 10A .0610

Expert Witnesses and Fees 04 NCAC 10A .0613

Attorneys Retained for Proceedings 04 NCAC 10A .0617

MEDICAL CARE COMMISSION

Nurse Aide I Training and Competency Evaluation 10A NCAC 13O .0301

RADIATION PROTECTION COMMISSION

Communications 10A NCAC 15 .0111

Operating Requirements 10A NCAC 15 .0805

COSMETIC ART EXAMINERS, BOARD OF

First Aid 21 NCAC 14H .0404

Systems of Grading Beauty Establishments 21 NCAC 14H .0504

Rule Compliance and Enforcement Measures 21 NCAC 14H .0505

All Cosmetic Art Schools 21 NCAC 14T .0201

Natural Hair Care Schools 21 NCAC 14T .0205

Equipment for Cosmetology Schools 21 NCAC 14T .0302

Equipment for Esthetics Schools 21 NCAC 14T .0303

Equipment for Manicuring Schools 21 NCAC 14T .0304

Equipment for Natural Hair Care Styling Schools 21 NCAC 14T .0305

<u>Cosmetic Art Curricula</u>	21	NCAC 14T .0601
<u>Cosmetology Curriculum</u>	21	NCAC 14T .0602
<u>Apprentice Cosmetology Curriculum</u>	21	NCAC 14T .0603
<u>Esthetics Curriculum</u>	21	NCAC 14T .0604
<u>Manicuring Curriculum</u>	21	NCAC 14T .0605
<u>Natural Hair Care Curriculum</u>	21	NCAC 14T .0606
<u>Cosmetology Teacher Trainee Curriculum</u>	21	NCAC 14T .0607
<u>Esthetic Teacher Trainee Curriculum</u>	21	NCAC 14T .0608
<u>Manicurist Teacher Trainee Curriculum</u>	21	NCAC 14T .0609
<u>Natural Hair Care Teacher Curriculum</u>	21	NCAC 14T .0610
<u>Instruction Guidelines</u>	21	NCAC 14T .0612
<u>School Operations/Licensure Maintenance</u>	21	NCAC 14T .0701
<u>School Performance Requirements</u>	21	NCAC 14T .0705

IRRIGATION CONTRACTORS LICENSING BOARD

<u>Continuing Education</u>	21	NCAC 23 .0104
<u>Conduct of Hearing</u>	21	NCAC 23 .0206
<u>Decision of Board</u>	21	NCAC 23 .0207
<u>Components and Zone Designs</u>	21	NCAC 23 .0406
<u>Trenching and Piping</u>	21	NCAC 23 .0505

MEDICAL BOARD

<u>Reentry to Active Practice</u>	21	NCAC 32B .1370
<u>Application for Resident's Training License</u>	21	NCAC 32B .1402
<u>Qualifications and Requirements for License</u>	21	NCAC 32S .0202

SOIL SCIENTISTS, BOARD FOR LICENSING OF

<u>Fees</u>	21	NCAC 69 .0104
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**LIST OF APPROVED TEMPORARY RULES
December 17, 2015 Meeting**

NATURAL AND CULTURAL RESOURCES, DEPARTMENT OF

<u>Scope of Rules and Overview of Statutory Authority</u>	07	NCAC 04R .0909
<u>Scope of Rules and Overview of Statutory Authority under ...</u>	07	NCAC 04R .0918
<u>Definitions</u>	07	NCAC 04R .0919
<u>Introduction to Historic Preservation Certification and I...</u>	07	NCAC 04R .0920
<u>Certification of Historic Significance</u>	07	NCAC 04R .0921
<u>Standards for Evaluating Significance within National Reg...</u>	07	NCAC 04R .0922
<u>Certifications of Rehabilitations</u>	07	NCAC 04R .0923
<u>Standards for Rehabilitation</u>	07	NCAC 04R .0924
<u>Fees for Processing Rehabilitation Certification Requests</u>	07	NCAC 04R .0925
<u>Coordination with the Federal Income-Producing Historic P...</u>	07	NCAC 04R .0926

LANDSCAPE CONTRACTORS' LICENSING BOARD

<u>Name and Location of Board</u>	21 NCAC 28B .0101
<u>Meetings</u>	21 NCAC 28B .0102
<u>Practice of Landscape Contracting</u>	21 NCAC 28B .0103
<u>Applications for Licensure</u>	21 NCAC 28B .0201
<u>Reciprocity</u>	21 NCAC 28B .0202
<u>Military-Trained Applicant; Military Spouse</u>	21 NCAC 28B .0203
<u>Maintain Current Information</u>	21 NCAC 28B .0204
<u>License Renewal; Waiver</u>	21 NCAC 28B .0301
<u>Reinstatement</u>	21 NCAC 28B .0302
<u>General</u>	21 NCAC 28B .0401
<u>Continuing Education Units</u>	21 NCAC 28B .0402
<u>Continuing Education Records; Audit</u>	21 NCAC 28B .0403
<u>Extension of Time</u>	21 NCAC 28B .0404
<u>Requests for Approval</u>	21 NCAC 28B .0405
<u>General</u>	21 NCAC 28B .0501
<u>Planting</u>	21 NCAC 28B .0502
<u>Turf</u>	21 NCAC 28B .0503
<u>Finish Grade</u>	21 NCAC 28B .0504
<u>Design and Consultation</u>	21 NCAC 28B .0505
<u>Drainage Systems and Cisterns</u>	21 NCAC 28B .0506
<u>Low-Voltage Lighting; Pools</u>	21 NCAC 28B .0507
<u>Walls</u>	21 NCAC 28B .0508
<u>Paving</u>	21 NCAC 28B .0509
<u>Pruning</u>	21 NCAC 28B .0510
<u>Wildflower, Native Grass, and No-Mow Seed Establishment</u>	21 NCAC 28B .0511
<u>Fee Schedule</u>	21 NCAC 28B .0601
<u>Complaints; Investigations</u>	21 NCAC 28B .0701
<u>Probable Cause</u>	21 NCAC 28B .0801
<u>Hearings</u>	21 NCAC 28B .0802
<u>Subpoenas</u>	21 NCAC 28B .0803
<u>Summary Suspension</u>	21 NCAC 28B .0804

**RRC DETERMINATION
PERIODIC RULE REVIEW
December 17, 2015
Necessary with Substantive Public Interest**

Rule	15A NCAC 02D .0402	15A NCAC 02D .0506
15A NCAC 02D .0101	15A NCAC 02D .0403	15A NCAC 02D .0507
15A NCAC 02D .0201	15A NCAC 02D .0404	15A NCAC 02D .0508
15A NCAC 02D .0202	15A NCAC 02D .0405	15A NCAC 02D .0509
15A NCAC 02D .0301	15A NCAC 02D .0407	15A NCAC 02D .0510
15A NCAC 02D .0302	15A NCAC 02D .0408	15A NCAC 02D .0511
15A NCAC 02D .0303	15A NCAC 02D .0409	15A NCAC 02D .0512
15A NCAC 02D .0304	15A NCAC 02D .0410	15A NCAC 02D .0513
15A NCAC 02D .0305	15A NCAC 02D .0501	15A NCAC 02D .0514
15A NCAC 02D .0306	15A NCAC 02D .0502	15A NCAC 02D .0515
15A NCAC 02D .0307	15A NCAC 02D .0503	15A NCAC 02D .0516
15A NCAC 02D .0401	15A NCAC 02D .0504	15A NCAC 02D .0517

RULES REVIEW COMMISSION

15A NCAC 02D .0519	15A NCAC 02D .0947	15A NCAC 02D .1405
15A NCAC 02D .0521	15A NCAC 02D .0948	15A NCAC 02D .1407
15A NCAC 02D .0524	15A NCAC 02D .0949	15A NCAC 02D .1408
15A NCAC 02D .0527	15A NCAC 02D .0951	15A NCAC 02D .1409
15A NCAC 02D .0528	15A NCAC 02D .0952	15A NCAC 02D .1410
15A NCAC 02D .0529	15A NCAC 02D .0955	15A NCAC 02D .1411
15A NCAC 02D .0530	15A NCAC 02D .0956	15A NCAC 02D .1412
15A NCAC 02D .0531	15A NCAC 02D .0957	15A NCAC 02D .1413
15A NCAC 02D .0532	15A NCAC 02D .0958	15A NCAC 02D .1414
15A NCAC 02D .0533	15A NCAC 02D .0959	15A NCAC 02D .1415
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15A NCAC 02D .0540	15A NCAC 02D .0966	15A NCAC 02D .1705
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15A NCAC 02Q .0201	15A NCAC 02Q .0515	15A NCAC 02Q .0903
15A NCAC 02Q .0202	15A NCAC 02Q .0516	

**RRC DETERMINATION
PERIODIC RULE REVIEW
December 17, 2015
Necessary without Substantive Public Interest**

Rule
15A NCAC 02D .0103
15A NCAC 02D .0104
15A NCAC 02D .0105
15A NCAC 02D .1905

**RRC DETERMINATION
PERIODIC RULE REVIEW
December 17, 2015
Unnecessary**

Rule

15A NCAC 02D .1601	15A NCAC 02D .2407	15A NCAC 02D .2504
15A NCAC 02D .1602	15A NCAC 02D .2408	15A NCAC 02D .2505
15A NCAC 02D .1603	15A NCAC 02D .2409	15A NCAC 02D .2506
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15A NCAC 02D .2405	15A NCAC 02D .2502	
15A NCAC 02D .2406	15A NCAC 02D .2503	

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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NC Alcoholic Beverage Control Commission v. Partnership T/A Poor Boys	14 ABC 07103	08/21/15	30:08 NCR 918
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Alcoholic Beverage Control Commission v. AMH Diana Market Corp., T/A Green's Market	14 ABC 05071	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07115	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07116	01/14/15	
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Alcoholic Beverage Control Commission v. Greenleaf Food and Beverage Inc T/A Bunker Jacks	14 ABC 09037	03/07/15	
Alcoholic Beverage Control Commission v. S.D.C. Group Inc T/A Perkeo Wine Bistro	14 ABC 09039	02/09/15	
Alcoholic Beverage Control Commission v. Alquasem Mustafa Salameh T/A KP Mini Mart	14 ABC 09231	02/04/15	
Alcoholic Beverage Control Commission v. Ash and Z Inc T/A 5 th Ave Speedmart	15 ABC 00355	04/22/15	
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Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth	14 BMS 07597	02/23/15	
Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth	14 BMS 08028	02/23/15	
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FILED
OFFICE OF ADMINISTRATIVE HEARINGS
8/25/2015 10:51 AM

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14CPS08579

<p>EDWARD ANDREW CARDER PETITIONER,</p> <p>V.</p> <p>NORTH CAROLINA DIVISION OF VICTIM COMPENSATION SERVICES RESPONDENT.</p>	<p>FINAL DECISION</p>
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THIS MATTER came on for hearing before the Honorable J. Randall May Administrative Law Judge presiding, on July 6, 2015, in Charlotte, North Carolina.

APPEARANCES

For Petitioner: Edward Andrew Carder, *Pro Se*
939 Owen Boulevard, Apt. B
Charlotte, NC 28213

For Respondent: Yvonne B. Ricci
Assistant Attorney General
N.C. Department of Justice
Public Safety Section
9001 Mail Service Center
Raleigh, NC 27699-9001

WITNESSES

The following witnesses appeared and testified on behalf of Petitioner:

1. Constance Carder, Petitioner's wife
2. Edward Andrew Carder, Petitioner

The following witnesses appeared and testified on behalf of Respondent:

1. Sergeant Andy Greenway, Lake Lure Police Department
2. Edward Andrew Carder, Petitioner
3. Liddie Shropshire, Claims Investigator, N.C. Department of Public Safety, Division of Victim Compensation Services

EXHIBITS

Petitioner:

1(a) – 1(e) - Twenty-six photographs taken by Constance Carder.

Respondent:

1. Petitioner's Application for Victim's Compensation
3. Crime Victims Compensation Commission Initial Investigator Case Report
4. Decision of Director: Denied
5. ACIS Report for the alleged offender Gary Coleman
6. Crime Victims Compensation Commission Updated Investigator Case Report (case opened for re-review)
7. Substitute Decision of Director: Denied

ISSUES

I. Whether Respondent substantially prejudiced Petitioner's rights and acted outside its authority, erroneously, arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule, when it denied Petitioner's claim for crime victim's compensation.

II. Whether the victim was participating in a non-traffic misdemeanor at or about the time that the victim's injury occurred, within the meaning of N.C. Gen. Stat. § 15B-11(b)(1).

III. Whether the victim engaged in contributory misconduct, within the meaning of N.C. Gen. Stat. § 15B-11(b)(2).

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner is Edward Andrew Carder, a resident of Charlotte, North Carolina. At the outset of this hearing, Petitioner knowingly and voluntarily consented to proceeding *pro se*.

2. Respondent is the Division of Victim Compensation Services within the North Carolina Department of Public Safety. Respondent is created under Chapter 15B of the North Carolina General Statutes and charged with administering the Crime Victims Compensation Fund in North Carolina. On September 26, 2014, Respondent denied Petitioner's claim for victim's compensation, based on an investigation concluding that the "criminally injurious conduct for which claimant has applied for compensation was not reported to a law enforcement officer or agency within 72 hours of its occurrence, and investigation of this claim has established no good cause for the delay" citing N.C. Gen. Stat. § 15B-11(a)(3). Respondent conducted a subsequent review of the facts and circumstances of Petitioner's claim. As a result

the re-investigation and Substitute Decision of Director concluded that the “victim engaged in misconduct that contributed to the circumstances which resulted in the injury from which this claim for compensation arises,” citing N.C. Gen. Stat. § 15B-11(b). Petitioner timely filed his Petition for a contested case hearing on November 5, 2014.

3. At the hearing, Respondent specifically relied on N.C. Gen. Stat. § 15B-11(b) as the basis for its denial of Petitioner’s claim. The statute provides in pertinent part:

- (b) A claim may be denied or an award of compensation may be reduced if
 - (1) The victim was participating in a nontraffic misdemeanor at or about the time that the victim’s injury occurred; or
 - (2) The claimant or a victim through whom the claimant claims engaged in contributory misconduct.

(b1) The Commission or Director [Respondent] . . . shall exercise discretion in determining whether to deny a claim under subsection (b) of this section. In exercising discretion, the Commission or Director shall consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct, when applicable. **The Director or Commission shall deny claims when it finds that there was contributory misconduct that is a proximate cause of becoming a victim.** However, contributory misconduct that is not a proximate cause of becoming a victim shall not lead to an automatic denial of a claim.

N.C. Gen. Stat. § 15B-11(b)(1), (b)(2), and (b1) (emphasis added).

4. On July 19, 2014, Lake Lure Police Department Sergeant Andy Greenway responded to a reported fight at the “Tiki Bar” in the Geneva Hotel in Lake Lure. Sergeant Greenway approached the Petitioner who was holding a hatchet that he said he had gotten out of his car for protection. The Petitioner told Sergeant Greenway that some people had jumped him. According to Sergeant Greenway the Petitioner told him that his wife told him that someone at the bar had touched her inappropriately. The Petitioner confronted the alleged offender Gary Coleman and then they got into a fight. Sergeant Greenway did notice that the Petitioner had some blood on his ear and had the Petitioner checked out by EMS. Sergeant Greenway did not see any blood on Mr. Coleman. (Testimony of Sergeant Greenway)

5. Sergeant Greenway testified that at that time it was the practice of the Lake Lure Police Department not to complete an incident report unless it was an incident that was going to be investigated by the Department. Since the incident occurred outside of law enforcement’s presence and Sergeant Greenway was being told conflicting stories about why and how the fight occurred he told both the Petitioner and Mr. Coleman that they could take out warrants against each other for misdemeanor assault. Sergeant Greenway testified that he talked with the manager and staff at the “Tiki Bar.” Sergeant Greenway testified that the bartender and bar staff who allegedly witnessed the incident told him that the Petitioner came up and started the altercation with Mr. Coleman. (Resp. Ex. 6; Testimony of Sergeant Greenway)

6. Liddie Shropshire, a fifteen year Claims Investigator for the N.C. Department of Public Safety, Division of Victim Compensation Services was assigned to investigate and process the claim submitted by the Petitioner to the Respondent. Ms. Shropshire initially recommended that Petitioner's claim be denied for failure to report the incident to law enforcement within 72 hours; however, since the Petitioner did obtain a warrant against the alleged offender, Gary Coleman she reinvestigated Petitioner's application. (Resp. Exs. 3 and 4; Testimony of Shropshire)

7. Ms. Shropshire completed a criminal history check for Mr. Coleman that showed that he was charged with misdemeanor sexual battery and misdemeanor assault inflicting serious injuries and was subsequently found not guilty of these charges on February 13, 2015. (Resp. Ex. 5; Testimony of Shropshire)

8. Ms. Shropshire's reinvestigation of the Petitioner's claim included interviews with Sergeant Greenway and Rutherford County Assistant District Attorney McCalman and the review of the criminal history of the alleged offender Gary Coleman. Following the reinvestigation of Petitioner's claim, Ms. Shropshire recommended that Petitioner's claim be denied due to contributory misconduct and misdemeanor criminal activity. Ms. Shropshire specifically noted in her updated case report that "[a]lthough no charges were filed at the scene, LE states both couples could have been charged with mutual assault. However, based on information received by LE from witnesses most likely the victim [Petitioner] would have been charged with misdemeanor assault as he was reported to be the aggressor." (Resp. Ex. 6; Testimony of Shropshire).

9. The Petitioner's wife Constance Carder testified that the Petitioner was protecting her from being attacked by a group of women at the hotel and that this in part contributed to the altercation between Petitioner and Mr. Coleman. Mrs. Carder admitted that the Petitioner had been drinking all day on July 19, 2014. Mrs. Carder alleged in her testimony that while she was standing at the bar waiting on her drink Mr. Coleman assaulted her sticking his hand in her crotch. Mrs. Carder later told her husband while seated at a table what Mr. Coleman had allegedly done to her. According to Mrs. Carder the Petitioner stood up and told Mr. Coleman to keep his hands off my wife. The two men argued with one another, and Mr. Coleman allegedly charged at the Petitioner like a bull and there was a fight. (Testimony of Mrs. Carder)

10. The Petitioner testified that he was at the bar getting drinks for he and his wife and he noticed that something was wrong with her. When the Petitioner brought the drinks to the table where his wife was seated she told him what Mr. Coleman had allegedly done to her and the two men began to argue. Allegedly Mr. Coleman hit the Petitioner in the forehead and then the two men begin to "scuffle." The bar staff eventually break the two men apart. Petitioner alleged that three men attacked him from behind seriously injuring him.

11. Petitioner testified that on August 9, 2014, he took out a warrant against Gary Coleman as a result of the alleged incident that occurred at the bar in the Geneva Hotel. Mr. Coleman was charged with misdemeanor sexual battery and misdemeanor assault inflicting serious injuries. Petitioner admitted that Mr. Coleman was tried on these charges in Rutherford

County District Court and was found not guilty of these charges. (Resp. Ex. 5; Testimony of Petitioner)

BASED UPON the foregoing Findings of Fact, the undersigned hereby makes the following:

CONCLUSIONS OF LAW

1. Both parties were properly before the Administrative Law Judge, in that jurisdiction and venue are proper and both parties received notice of the hearing.
2. Respondent has the authority and responsibility under Chapter 15B of the North Carolina General Statutes to investigate and award or deny claims for compensation under the Crime Victims Compensation Act.
3. N.C. Gen. Stat. § 15B-4(a) provides that “compensation for criminally injurious conduct shall be awarded to a claimant if substantial evidence establishes that the requirements for an award have been met.”
4. To meet all the requirements for an award, Petitioner must show he is a “claimant” and has incurred an “allowable expense” as or on behalf of a “victim” of “criminally injurious conduct.” N.C. Gen. Stat. § 15B-2(2), (1), (5), (13). In addition, Petitioner bears the burden of showing none of the disqualifying criteria in N.C. Gen. Stat. § 15B-11 operate to bar his claim. *See Richardson v. N.C. Dep’t of Pub. Instruction Licensure Section*, 199 N.C. App. 219, 228, 681 S.E.2d 479, 485 (“It is well-settled that a petitioner has the burden of proof at an administrative hearing to prove that he is entitled to relief from the action of the administrative agency. This burden is on the petitioner even if he must prove a negative.” (citing *Overcash v. N.C. Dep’t of Env’t & Natural Res.*, 179 N.C. App. 697, 635 S.E.2d 442 (2006), *disc. rev. denied*, 361 N.C. 220, 642 S.E.2d 445 (2007))), *disc. rev. denied*, 363 N.C. 745, 688 S.E.2d 694 (2009).
5. Substantial evidence is defined as “relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” N.C. Gen. Stat. § 15B-2(12a).
6. Substantial evidence exists to show that Petitioner properly filed his application as a “victim” of “criminally injurious conduct” pursuant to N.C. Gen. Stat. § 15B-2(5) and (13).
7. Pursuant to N.C. Gen. Stat. § 15B-11(b), “[a] claim may be denied or an award of compensation may be reduced if: (1) The victim was participating in a nontraffic misdemeanor at or about the time that the victim’s injury occurred; or (2) The claimant or a victim through whom the claimant claims engaged in contributory misconduct.”
8. “The Commission or Director, whichever has the authority to decide a claim under G.S. 15B-10, shall use the Commission’s/Director’s discretion in determining whether to deny a claim under subsection (b) of this section. In exercising its discretion, the Commission or Director shall consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct, when applicable. The Director or Commission shall

deny claims when it finds that there was contributory misconduct that is a proximate cause of becoming a victim. However, contributory misconduct that is not a proximate cause of becoming a victim shall not lead to an automatic denial of a claim.” N.C. Gen. Stat. § 15B-11(b1).

9. First, with respect to the nontraffic misdemeanor, “[a]ssault is defined as either ‘a show of violence causing a reasonable apprehension of immediate bodily harm’ or ‘an intentional offer or attempt by force or violence to do injury to the person of another.’” *State v. Uvalle*, 151 N.C. App. 446, 454, 565 S.E.2d 727, 732 (2002) (quoting *State v. Thompson*, 27 N.C. App. 576, 577, 219 S.E.2d 566, 567-68 (1975), *disc. rev. denied*, 289 N.C. 141, 220 S.E.2d 800 (1976). Pursuant to N.C. Gen. Stat. § 14-33(a), “[a]ny person who commits a simple assault . . . is guilty of a Class 2 misdemeanor.”

10. Substantial evidence demonstrates that Petitioner committed simple assault at or about the time of the criminally injurious conduct, and accordingly, Respondent properly denied Petitioner’s claim based upon N.C. Gen. Stat. § 15B-11(b)(1).

11. Next, in determining whether Petitioner’s claim was properly barred based upon contributory misconduct, “[t]he test . . . is two-pronged, that is, 1) was there misconduct on the part of [the victim] and, if so, 2) was that misconduct a proximate cause of his injury?” *McCrimmon v. Crime Victims Comp. Comm’n*, 121 N.C. App. 144, 148, 465 S.E.2d 28, 31 (1995).

12. “Misconduct is defined as . . . ‘[a] transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior.’ While misconduct includes unlawful conduct as a matter of law, it may be something less than unlawful conduct, though more than an act done in poor taste. Misconduct requires some deviation from the accepted norm or standard of proper behavior. Accordingly, the conduct of the claimant is misconduct if it is not within the accepted norm or standard of proper behavior, which includes unlawful conduct. Consistent with principles of tort law, the test for determining accepted norms and proper behavior is best determined by use of a reasonable man standard or what a reasonable person would have done under similar and like circumstances.” *Evans v. N.C. Dep’t of Crime Control & Pub. Safety*, 101 N.C. App. 108, 117-18, 398 S.E.2d 880, 885 (1990) (quoting Black’s Law Dictionary 901 (5th ed. 1979)).

13. For a victim’s misconduct to constitute “contributory misconduct” for purposes of N.C. Gen. Stat. § 15B-11(b)(2), the misconduct “must combine with criminal action on the part of another to become a real, efficient and proximate cause of the injury. . . . This Court has defined proximate cause as a cause which in natural and continuous sequence, unbroken by any new and independent cause, produced the plaintiff’s injuries, and without which the injuries would not have occurred, and one from which a person of ordinary prudence could have reasonably foreseen that such a result, or consequences of a generally injurious nature, was probable under all the facts as they existed. The test of foreseeability as an element of proximate cause does not require that the actor should have been able to foresee the injury in the precise manner in which it actually occurred. Neither does the actor need to foresee the events which are merely possible, but only those which are reasonably foreseeable. Therefore, where a claimant’s

injuries are a direct result of the criminally injurious conduct of another, the claimant's own misconduct must have been a proximate cause of those injuries in order for the Commission to deny or reduce a claim under the statute." *Id.* at 117, 398 S.E.2d at 885.

14. "Accordingly, if there is in the record substantial evidence that a person of ordinary prudence would have reasonably foreseen that the conduct in question would lead to an injurious result, and if this conduct was unlawful or if it breached the standard of conduct acceptable to a reasonable person, the Commission should be affirmed in denying or reducing claimant's benefits. If there is not substantial evidence in the record to support such conclusions, any order of the Commission reducing or barring claimant's recovery under the Act must be reversed." *Id.* at 118, 398 S.E.2d at 885.

15. Although contributory misconduct can take many forms, "when a victim challenges another, or the victim accepts the challenge of another, to engage in a physical encounter, or voluntarily participates in a multi-person fracas, wherein either one or both or any of the parties receive physical injuries, whether by fair or foul means, such victim's conduct constitutes contributory misconduct as a matter of law. Neither such victim, or anyone claiming through him, is entitled to an award of reparations from the Victim of Crimes Fund." *In re Pettry*, 587 N.E.2d 983, 984 (Ohio Ct. Cl. 1990) (internal quotations marks and citation omitted); *see also Fisher v. Kan. Crime Victims Comp. Bd.*, 124 P.3d 74, 84 (Kan. 2005) (noting that one factor for finding contributory misconduct is the "failure to retreat or withdraw from a situation when an option to do so is readily available").

16. Although Petitioner may not have been the primary aggressor in the fight that resulted in the injuries to Petitioner, the evidence does show that Petitioner participated in the fight. Petitioner admitted that he confronted Mr. Coleman in the bar and that they engaged in a "scuffle." Additionally, Sergeant Greenway testified that he told both the Petitioner and Mr. Coleman that they could take out warrants against each other for misdemeanor assault. Petitioner voluntarily participated in a fight, and although Petitioner may have received the most severe injuries, the evidence shows that Petitioner engaged in contributory misconduct. Accordingly, the evidence supports Respondent's decision to deny Petitioner's claim for compensation based upon N.C. Gen. Stat. § 15B-11(b)(2).

17. Ultimately, Petitioner has not carried his burden in demonstrating that Respondent acted outside its authority, acted arbitrarily and capriciously, used improper procedure, failed to act as required by law or rule, or acted erroneously when it denied Petitioner's claim for crime victim's compensation based upon N.C. Gen. Stat. § 15B-11(b)(1) and (b)(2).

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby makes the following:

DECISION

Respondent's decision to deny Petitioner's claim for Crime Victims Compensation is hereby **AFFIRMED**.

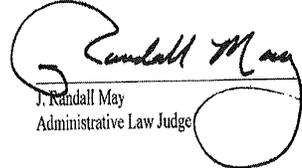
NOTICE

This is a **Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within thirty (30) days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' Rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, North Carolina General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within thirty (30) days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 25th day of August, 2015.


J. Randall May
Administrative Law Judge

STATE OF NORTH CAROLINA IN THE OFFICE OF
COUNTY OF WAKE ADMINISTRATIVE HEARINGS
2015 AUG -7 PM 12: 22 14 REV 09184

SEAN E. CONDREN,)
Petitioner,)
v.) FINAL DECISION
NC DEPARTMENT OF REVENUE)
Respondent)

This matter came on for hearing on the 29th day of May, 2015, before the Honorable Donald Overby, Administrative Law Judge Presiding, in the Office of Administrative Hearings in Raleigh, North Carolina, with the Petitioner, Sean E. Condren, appearing *pro se* and the Respondent, North Carolina Department of Revenue appearing through counsel, Peggy S. Vincent. Petitioner filed this action on December 17, 2014, seeking to dispute penalty, interest, and collection assistance fees pursuant to the collection of Petitioner’s individual income taxes for tax year 2012, claiming lack of due process.

ISSUE

Did the Petitioner receive due process for the assessment of income tax penalties when he was mailed a notice of Collection and Notice of Garnishment and Attachment to his last known address?

STATEMENT OF FACTS

1. Petitioner and his spouse, timely filed their 2012 income tax return under extension on August 1, 2013, reflecting a tax due of \$38,621 and interest on underpayment of estimated tax of \$342. No payment was remitted with the return.
3. A Notice of Collection (“Notice”) was mailed to Petitioner at his last known address on April 5, 2014, notifying him and his spouse that the Department had authority to begin

collection procedures immediately for the amounts due on their 2012 return plus accrued interest and a 10% penalty for failure to pay their taxes when due pursuant to N.C. Gen. Stat. 105-236(4).

4. The address on the Notice was the same as used by Petitioner on his tax return and on his Petition in this matter.

5. Petitioner claims to have moved and not received the Notice. The Notice was not returned to the Department.

6. The Notice contained instructions on the taxpayers' remedies and the time limits for pursuing those options. It included notice that the taxpayer would be assessed a 20% statutory collection fee pursuant to N.C. Gen. Stat. § 105-243.1 if they failed to pay the amount owed in full or enter into an installment payment agreement within 90 days.

7. A Notice of Garnishment and Attachment ("Garnishment") was sent to Petitioner on August 13, 2014, at the same address as previously used. The Garnishment was not returned to the Department.

8. Petitioner and his spouse paid the 2012 tax liability on or about October 30, 2014, leaving a balance of \$42.32 in penalty.

9. The Department received no request for a refund or any request to waive the penalty or collection assistance fee as required by law.

10. Petitioner admits he took no action to inform the Department or the U.S. Postal Service of his change of address.

CONCLUSIONS OF LAW

"Procedural due process restricts governmental actions and decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the

Fifth or Fourteenth Amendment." *Peace v. Employment Sec. Comm'n*, 349 N.C. 315, 321, 507 S.E.2d 272, 277 (1998). "Due process does not require that a property owner receive actual notice before the government may take his property." *Delhaize Am., Inc. v. Lay*, 222 N.C. App. 336, 731 S.E.2d 486 (2012) citing *Dusenbery v. United States*, 534 U.S. 161 (2002).

Respondent properly followed the law throughout the process with Petitioner and properly gave notice to Petitioner. Petitioner received due process in accordance with law. Respondent did not exceed its authority or jurisdiction; act erroneously; fail to use proper procedure; act arbitrarily or capriciously; or fail to act as required by law or rule.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby finds in favor of the Respondent, North Carolina Department of Revenue, that the Petitioner is entitled to no refund of the 2012 taxes and penalties and must pay any remaining balance of his 2012 taxes and penalties as assessed with interest at the legal rate of 8% per annum from the date of this judgment until paid.

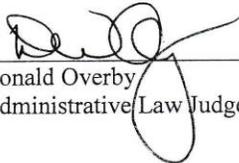
NOTICE AND ORDER

This Final Decision is issued under the authority of N.C. Gen. Stat. § 150B-34. Pursuant to N.C. Gen. Stat. § 150B-45 and 105-241.16, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County and in accordance with the procedures for a mandatory business case set forth in N.C. Gen. Stat. § 7A-45.4(b) through (f). The party seeking review must pay the tax due and file the **petition within 30 days after being served** with a written copy of the Administrative Law Judge's Decision and Order.

N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. N.C. Gen. Stat. § 150B-47 requires the Office of Administrative Hearings to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. To ensure the timely filing of the record, the appealing party must send a copy of the Petition for Judicial Review to the Office of Administrative Hearings when the appeal is initiated.

IT IS SO ORDERED.

This the 7th day of August, 2015.



Donald Overby
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF WAKE

FILED

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS
15 BSW 04491

NORTH CAROLINA SOCIAL WORK CERTIFICATION AND LICENSURE BOARD,)

Petitioner,)

v.)

STEPHANIE HELBECK CORNFIELD)
Respondent.)

OFFICE OF ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

THIS MATTER comes before the undersigned Augustus B. Elkins II, Administrative Law Judge, on the North Carolina Social Work Certification and Licensure Board (hereinafter "Petitioner" or "Board") having moved for Summary Judgment. A motion's hearing was conducted on October 8, 2015 in Raleigh, North Carolina. Appearing for the Petitioner were attorneys Catherine E. Lee and M. Jackson Nichols. The Respondent, Stephanie Helbeck Cornfield, did not appear nor did any representative for Respondent appear.

A hearing on the Motion for Summary Judgment was scheduled for September 10, 2015. On September 9, 2015, the Undersigned received communication from an attorney, Grey Powell, stating that Respondent was in the process of retaining him and that a continuance was necessary. A continuance was granted. Later the Undersigned was notified that Mr. Powell would not be representing Respondent. The motion's hearing was rescheduled for October 8 and Petitioner and Respondent were notified by both mail and email. Moreover, Respondent, Ms. Cornfield, notified the Undersigned's paralegal that October 8, 2015 was an acceptable date.

The undersigned Administrative Law Judge, the requested Court Reporter and the Petitioner's attorneys and witnesses were present at the Office of Administrative Hearings in Raleigh, N.C., at 10:30 a.m. on October 8, 2015 for the contested case hearing. Respondent was not present nor was a representative of the Respondent present. The undersigned Administrative Law Judge waited until 11:00 a.m. to allow Respondent time to appear for the contested case hearing. The Respondent failed to appear and no representative for the Respondent appeared. At 11:07 a.m., the undersigned Administrative Law Judge officially called the contested case hearing to order, and heard Petitioner's Motion to for Summary Judgment. As of the close of business on October 9, 2015, no communication from Respondent was made to explain her absence.

FINDINGS OF FACT

1. The Board is a state occupational licensing agency, created by Chapter 90B of the North Carolina General Statutes, which exists to set “the standards for qualification, training and experience for those who seek to represent themselves to the public as certified social workers or licensed clinical social workers.” N.C. Gen. Stat. § 90B-1.
2. A licensed clinical social worker is “a person who is competent to function independently, who holds himself or herself out to the public as a social worker, and who offers or provides clinical social work services or supervises others engaging in clinical social work practice.” N.C. Gen. Stat. § 90B-3 (6a).
3. The Board is tasked with examining and passing “on the qualifications of all applicants for certificates and licenses under [Chapter 90B].” N.C. Gen. Stat. § 90B-6 (c).
4. To establish eligibility for licensure as a clinical social worker, an applicant must: (a) hold or be qualified for a current certificate as a Certified Master Social Worker; (b) show to the satisfaction of the Board that s/he has had two years of clinical social work experience with appropriate supervision in the field of specialization in which the applicant will practice; and (c) pass the Board examination for the certification of persons in this licensure. N.C. Gen. Stat. § 90B-7 (d).
5. An individual who wishes to become licensed as a clinical social worker but who has not yet met the eligibility requirements may apply for a provisional (a/k/a an associate) license to practice clinical social work, if s/he holds a masters or doctoral degree from a college or university with an approved social work program. N.C. Gen. Stat. § 90B-7 (f).
6. While practicing with an associate license, individuals must be supervised by a licensed clinical social worker or Board-approved alternate.
7. The Board is prohibited by statute from issuing an associate license for a period of time longer than two (2) years, unless the individual passes a qualifying clinical examination prescribed by the Board within the two (2) year period. N.C. Gen. Stat. § 90B-7 (f). Moreover, associate licensees are required to complete all requirements for full licensure within six (6) years, unless otherwise directed by Petitioner Board. *Id.*
8. Petitioner Board has enacted certain rules regarding associate licenses, as authorized to do under N.C. Gen. Stat. §§ 90B-6 (h) and 90B-7. Specifically, Petitioner Board requires that “all associate licensees shall submit reports of their clinical social work experience and supervision on the appropriate Board forms every six months for review and evaluation by the Board.” 21 N.C. Admin. Code .0210 (e).
9. For an individual who is licensed as a social worker in another jurisdiction, the Board may grant reciprocal licensure in North Carolina. N.C. Gen. Stat. § 90B-8 (a). However, to show eligibility for reciprocal licensure, an applicant must show that the criteria for licensure in the licensing state are at least substantially equivalent to those in North Carolina. Moreover, the applicant must show that s/he has passed an examination in the

- licensing state that is equivalent to the examination required for the level of licensure sought in North Carolina. *Id.*
10. On April 8, 2003, the Board received a letter from Respondent requesting licensure as a Provisional Licensed Clinical Social Worker (“P-LCSW”). Following a statutory change, the P-LCSW is now referred to as a Licensed Clinical Social Worker Associate (“LCSWA”).
 11. On May 2, 2003, the Board staff wrote a letter to Respondent notifying her of approval for a P-LCSW license. Board staff also informed Respondent that she would be required to take and pass the ASWB clinical level exam during the two-year period of her provisional licensure.
 12. On May 9, 2003, the Board issued Respondent P-LCSW License No. P002508.
 13. During Respondent’s period of provisional licensure from May 9, 2003 - May 31, 2005, Respondent did not report any clinical practice or supervision as required by 21 N.C. Admin. Code 63 .0210(e), nor did she take and pass the ASWB clinical exam as required by N.C. Gen Stat 90B-7(f) and 21 N.C. Admin. Code 63 .0301.
 14. For all times relevant to this proceeding, the clinical examination provided by the Association of Social Work Board (“ASWB”) has been the only qualifying clinical examination prescribed by Petitioner Board for provisional licensure.
 15. On May 31, 2005, Respondent’s P-LCSW license expired.
 16. On April 30, 2015, the Board received Respondent’s application for LCSW licensure by comity, based upon Respondent’s licensure with the South Carolina Board of Social Work Examiners (“S.C. Board”). Although Respondent indicated in her application that she currently is licensed to practice social work in New York, a search of the New York Office of the Professions database revealed that Respondent is not currently registered to practice social work in New York State.
 17. On May 11, 2015, the Board received the S.C. Board’s certification of Respondent’s license.
 18. On May 12, 2015, the Board staff wrote to Respondent requesting that she submit the Clinical Social Work Supervision Forms documenting her clinical supervision received within the past four years.
 19. The May 12, 2015 letter also stated that the Board would review any forms that Respondent submitted and, if the hours were approved, the Board could grant Respondent eligibility to take the ASWB examination.
 20. On May 14, 2015, the Board received the S.C. Board’s Verification of Licensure Form.
 21. On the Verification form, the S.C. Board verified Respondent’s licensure as a Licensed Master Social Worker but responded “no” to question #6 that asked whether Respondent had taken the ASWB exam.
 22. In addition, the S.C. Board noted that the exam taken by Respondent in 1985 was given by New York State. The New York State exam administered in 1985 is not considered by

- the Board to be substantially equivalent to the ASWB clinical exam required by the Board for LCSW licensure or licensure by comity.
23. On the Verification form, the S.C. Board responded “no” to #9 which asked whether Respondent completed “Regulatory Agency or Board approved supervision.”
 24. On May 19, 2015, Respondent sent the Board staff an email, requesting a provisional license to begin practicing clinical social work immediately, while her request for LCSW licensure by comity was under review.
 25. On May 19, 2015, in response to Respondent’s email, the Board staff informed Respondent that she was not eligible for a provisional license since she previously held a P-LCSW and still had not taken and passed the ASWB Clinical exam. The Board staff reiterated that the Board required appropriate supervision information before it could complete its review of Respondent’s application for LCSW.
 26. On May 28, 2015, the Board received Respondent’s request to appeal the determination of the Board’s staff that she was not eligible for a provisional license and that she must submit documentation of the clinical supervision that she had received within the past four years.
 27. On June 1, 2015, the Board’s Executive Director, Micki Lilly, wrote a detailed letter to Respondent regarding the status of her application for licensure. (Exhibit 11.) Specifically, Ms. Lilly informed Respondent that the Board had not denied her application for licensure. However, Ms. Lilly also informed Respondent that, based on her review, Respondent had not yet demonstrated eligibility for LCSW licensure or for provisional licensure for the following reasons:
 - a. She had applied for LCSW licensure by comity, but without having passed the required clinical exam;
 - b. Her LMSW license was not equivalent to the North Carolina LCSW license and she had not taken and passed the ASWB clinical exam as required for LCSW licensure;
 - c. She had not taken and passed the ASWB clinical exam while provisionally licensed between May 9, 2003 and May 31, 2005; and
 - d. Her six-year allotted time frame for completing the supervised clinical practice for LCSW licensure as a provisional licensee had expired.
 28. On June 1, 2015, Respondent emailed the Board staff requesting that the Board consider her appeal from the Board staff’s determination that Respondent was not qualified for licensure, and Ms. Lilly responded to that email on June 2, 2015, explaining again why Respondent had not yet demonstrated eligibility for licensure, in accordance with Petitioner Board’s governing statutes and rules.
 29. At the June 5, 2015 Board meeting, Respondent’s request was submitted to the Board, and the Board decided to refer the matter to the Office of Administrative hearings for a decision.
 30. On June 10, 2015, the Board staff received Respondent’s Clinical Social Work Supervision Form completed by Ms. Penni Sutton, LISW, licensed in South Carolina.

31. Ms. Sutton indicated on the Supervision Form that, although she acted as Respondent's supervisor in South Carolina, she did not provide supervision for licensure.
32. On June 6, 2015, in accordance with accordance with N.C. Gen. Stat. §§ 150B-38, 150B-40(e); N.C. Gen. Stat. § 90B-7 *et. seq.*; and 21 N.C. Admin. Code 63 .0209, Petitioner Board filed a Petition for a Contested Case Hearing requesting a determination on Respondent's eligibility for licensure under the Board's governing statutes and rules.
33. On July 8, 2015, the undersigned Administrative Law Judge Presiding issued an Order for Prehearing Statements from both parties within 30 days.
34. On August 5, 2015, Petitioner filed its Prehearing Statement. On August 5, Petitioner also filed a Motion for Summary Judgment, a Memorandum of Law in Support of the Motion for Summary Judgment, and other supporting documents.
35. As of October 8, 2015, Respondent had not filed a Prehearing Statement as ordered by the Undersigned's July 8, 2015, Order for Prehearing Statements.

CONCLUSIONS OF LAW

1. This matter is properly before the Office of Administrative Hearings ("OAH") as OAH has both personal and subject matter jurisdiction over this case. The parties were properly noticed for hearing. To the extent that the Findings of Fact contain Conclusions of Law, or that Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.
2. "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.'" *Variety Wholesalers, Inc. v. Salem Logistics Traffic Servs., LLC*, 365 N.C. 520, 523, 723 S.E.2d 744, 747 (2012) (quoting N.C. Gen. Stat. § 1A-1, Rule 56(c)) (citations omitted).
3. This case involves the determination under N.C. Gen. Stat. §§ 90B-6(c)(g), 90B-7(d)(f), 90B-8(a)(b) and 21 NC Admin. Code 63 .0209, .0210(a), .0211(a), .0301 as to whether Respondent currently is eligible for licensure under the Board's governing rules and statutes.
4. Respondent cannot show that she is eligible for licensure as a clinical social worker (LCSW) by comity. Despite having represented in her 2015 licensure application that she has done so, Respondent has not taken and passed the ASWB clinical examination, which is the only qualifying clinical examination prescribed by the Board. Moreover, Respondent has not taken and passed an equivalent examination in South Carolina, which is the only state from which Respondent holds an active license to practice clinical social work. Although Respondent passed an examination in New York State in 1985, she is not

- currently registered to practice in New York and therefore cannot rely on the passage of such examination for comity purposes, pursuant to N.C. Gen. Stat. § 90B-8 (a).
5. Respondent cannot show that South Carolina's licensure criteria are at least substantially equivalent to those in North Carolina. Specifically, evidence shows that South Carolina did not require Respondent to complete any Board-approved supervision prior to being licensed as a LMSW in South Carolina. A LMSW license in South Carolina is not equivalent to an independent LCSW license in North Carolina. North Carolina requires applicants to demonstrate two years of clinical social work experience with appropriate supervision prior to independent licensure. N.C. Gen. Stat. § 90B-7 (d)(2). By contrast, South Carolina statute provides that LMSW licensees "may engage only in supervised practice . . . and may not practice privately or independently." S.C. Code Ann. 40-63-20 (26). As such, Respondent is not eligible for licensure by comity by virtue of her active licensure in South Carolina.
 6. Respondent cannot show that she is eligible for licensure as an associate clinical social worker because she failed to pass a qualifying clinical examination prescribed by Petitioner Board while previously licensed as a LCSW Associate between May 9, 2003 and May 31, 2005. During this time period, the only qualifying clinical examination offered by Petitioner Board was the ASWB clinical examination. Moreover, Respondent failed to submit any reports of her clinical social work experience and supervision while provisionally licensed between May 9, 2003 and May 31, 2005, in violation of 21 N.C. Admin. Code .0210 (e). Pursuant to N.C. Gen. Stat. § 90B-7 (f), Respondent was statutorily required to pass the ASWB clinical examination prior to May 31, 2005 in order to renew her LCSW Associate license. Respondent did not do so. Therefore, Petitioner Board has no discretion to renew Respondent's LCSW Associate.
 7. To date, Respondent has not applied for a new LCSW Associate license. However, Respondent is not eligible for a new LCSW Associate license without first passing the ASWB clinical examination. N.C. Gen. Stat. § 90B-7(f) requires associate licensees to complete all requirements for full licensure—including passage of the ASWB clinical examination—within six years of obtaining an associate licensee. *See* N.C. Gen. Stat. § 90B-7 (f). Respondent obtained her first associate license in May 2003; the six-year period by which she was required to complete all requirements for full licensure expired in May 2009. Therefore, Petitioner Board cannot grant Respondent a new associate license if she has not yet passed the ASWB examination. Allowing individuals to repeatedly apply for new associate licenses rather than follow renewal requirements for existing associate licenses, without complying with mandated deadlines for passing the clinical examination, would defeat the purposes of the provisional license, which is to promote the advancement of unlicensed individuals toward full LCSW licensure.

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. Based on the Findings of Fact and those Conclusions, the undersigned Administrative Law Judge grants Petitioner's Motion for Summary Judgment and proposes that the North Carolina Social Work Certification and Licensure Board find Respondent not currently eligible for licensure as an LCSW or an LCSW Associate.

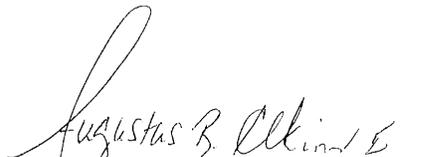
NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact, and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Social Work Certification and Licensure Board.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42. It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This is the 9th day of October, 2015.



Augustus B. Elkins II
Administrative Law Judge

FILED

STATE OF NORTH CAROLINA

COUNTY OF WAKE

Allison Rascoe,
Petitioner,

v.

North Carolina State Board of
Education,
Respondent.

2015 AUG 28 ADMINISTRATIVE HEARINGS
NO. 15 EDC 00272

OFFICE OF
ADMIN HEARINGS

FINAL DECISION

This matter came before the Office of Administrative Hearings after Petitioner filed a contested case petition appealing Respondent's denial of Petitioner's application for a North Carolina teaching license. On May 27, 2015, Administrative Law Judge Melissa Owens Lassiter conducted a contested case hearing on this matter in Raleigh, North Carolina.

On June 29, 2015, the undersigned issued an Order that based upon the preponderance of the evidence presented at the May 27, 2015 administrative hearing, the pleadings, and the entire record in this case, the undersigned determined Respondent had properly denied Petitioner's application for a teaching license, and ordered Respondent to file a proposed Final Decision. On July 20, 2015, Respondent's counsel filed a proposed Final Decision with the Office of Administrative Hearings.

APPEARANCES

For Petitioner: Allison Rascoe, *Pro se*, 505 N. Jefferson Ave., Apartment 206, Springfield, MO 65806

For Respondent: Tiffany Y. Lucas, Assistant Attorney General, North Carolina Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001

ISSUE

Whether Respondent acted properly in denying Petitioner's application for a North Carolina teaching license?

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1

For Respondent: 1 - 5

WITNESSES

For Petitioner: Allison Rascoe
For Respondent: Katie Cornetto, C.J. Korenek

FINDINGS OF FACT

1. On or about June 24, 2014, Petitioner applied for a teaching license in North Carolina by submitting a license application to Respondent. On her license application, Petitioner indicated that she had been convicted of a crime other than a minor traffic violation. (Resp. Ex. 2)

2. Upon Respondent's request for a written explanation of the incidents resulting in the criminal conviction, Petitioner submitted a statement to DPI confirming that she had a criminal conviction on her record and explaining the circumstances of the criminal record. (Resp. Ex. 2)

3. Records from the Bulloch County Superior Court (Georgia) indicated that on or about February 19, 2002, Petitioner pled guilty to one felony count of financial transaction card theft. Petitioner was given First Offender Treatment – sentenced to two years of probation, ordered to pay fines, and ordered to perform community service. (Resp. Ex. 2)

4. Respondent's staff reviewed Petitioner's explanation regarding her criminal conviction, and sent Petitioner's application to Superintendent June Atkinson's Ethics Advisory Committee for review. The Superintendent's Ethics Advisory Committee consists of professional educators appointed by the Superintendent of Public Instruction, Dr. June Atkinson, to review applications for a teaching license where the applicant has indicated he or she has a prior conviction and/or has had a license revoked or suspended.

5. On December 12, 2014, the Ethics Advisory Committee read Petitioner's application and interviewed Petitioner. The Ethics Advisory Committee interviewed Petitioner regarding the circumstances surrounding her arrest and criminal conviction. Petitioner admitted during the interview that she plead guilty to felony financial transaction card theft. Petitioner denied having done anything wrong, and explained that her signed personal checks were stolen by a friend of her roommate, which were then used to pay off a credit card, which had been fraudulently opened in her roommate's name.

6. During the interview with the Ethics Advisory Committee, Petitioner further explained that the Court found that she violated the terms of her probation, because she failed to attend a meeting with her probation officer in August 2003. Petitioner explained that she did not attend the scheduled probation meeting, because she had fallen ill and was hospitalized. Notwithstanding that reason, the Court revoked her probation in December 2003 for having missed the August meeting. Consequently, the Court

sentenced Petitioner to 120 days of jail in the probation detention center. (Resp. Exs 2 & 3)

7. Katie Cornetto is the in-house attorney for Respondent, and chair of the Ethics Advisory Committee. Ms. Cornetto participated in the Ethics Committee's December 12, 2014 interview of Petitioner, but is a nonvoting member of such committee. Ms. Cornetto thought Petitioner's explanation regarding her role in the credit card theft conviction wasn't believable. The fact that Petitioner did not call the police after she learned a third party supposedly stole items and checks from her apartment didn't make sense. Petitioner's roommate reported the incident to the police and had Petitioner come to the police station to discuss the theft of the roommate's credit card. Cornetto thought Petitioner did not take ownership of her role in the credit card theft.

8. After interviewing Petitioner, the Ethics Advisory Committee reviewed the relevant documents and information presented by Petitioner, focusing on Petitioner's felony conviction and her jail time. The Committee discussed how Petitioner failed to exhibit any learning, responsibility, and remorse about the credit card incident. North Carolina case law supports the principle that a teacher is a role model in showing kids how to conduct themselves. Based on Petitioner's information and interview, it was unclear that Petitioner could be a role model for children as a teacher or guidance counselor. (Cornetto's testimony)

9. The Ethics Advisory Committee voted unanimously to recommend to Dr. June Atkinson that Petitioner's application for a teaching license be denied. Superintendent Atkinson agreed with the Ethics Committee's recommendation, and denied Petitioner's application for a license. (Resp. Exs 3 & 4)

10. On January 14, 2015, Petitioner appealed Respondent's decision to deny her request for a teaching license by filing a contested case petition at the Office of Administrative Hearings.

11. C.J. Korenek is the Human Resources Director with Onslow County Public Schools, and a member of Superintendent Atkinson's Ethics Committee that interviewed Petitioner as an applicant for a North Carolina teacher's license. According to Ms. Korenek, the Ethics Advisory Committee's recommendation to Superintendent Atkinson to deny Petitioner's application for a teaching license was based on various factors, including: (1) Petitioner's criminal history, (2) the role of a public school student counselor, (3) the nature of the crime to which Petitioner pled guilty, (4) the credibility of Petitioner's explanation to the Ethics Committee of the circumstances resulting in the Petitioner's arrest and conviction, (5) the credibility of Petitioner's explanation to the Ethics Committee of the circumstances resulting in the revocation of Petitioner's probation, (6) the fact that Petitioner had served time in jail, and (7) the impact those factors have on Petitioner's ability to be a role model for students.

12. The Ethics Advisory Committee considered the biggest factors, in its denial of Petitioner's application, to be Petitioner's felony conviction, her incarceration, and the

revocation of Petitioner's probation. Ms. Korenek explained at hearing that Petitioner didn't explain what she had learned from the credit card theft experience, and didn't show remorse for her actions in the theft of her roommate's credit card. Instead, Petitioner claimed innocence, and that she hadn't done anything wrong.

13. As an Ethics Advisory Committee member, Ms. Korenek didn't believe Petitioner's claim that she kept signed, completed checks in her apartment. Korenek was also surprised Petitioner didn't report the theft of her checks to the police. Korenek thought Petitioner's stated reason for missing her probation appointment was not credible. As a result, Korenek thought Petitioner lacked credibility, honesty and integrity, which are integral parts of the interview process. Parents of school kids would not expect a teacher or counselor to be a convicted felon, and Petitioner didn't show she was an exception to that.

14. Teachers in this State are expected to be role models for their students. Petitioner's past behavior does not demonstrate the high standard of integrity, character and conduct expected of teachers in this State. Parents are entitled to have their children entrusted to individuals of the highest moral character, personal conduct, and professional ethics. Persons convicted of a felony, who violate probation, and serve time, simply do not meet the threshold requirement demanded by communities and parents for the school teachers we expect to be examples and role models for our children.

15. In this case, Petitioner applied for a teaching license to be a counselor, and admitted she had been convicted of a financial transaction card theft felony. Petitioner also admitted that she violated the terms of her probation, and consequently served time in a detention center. Further, Petitioner failed to comply with the terms of her probation, and consequently served time in a Georgia Department of Corrections detention center. The critical issue in dispute in this case is whether the Petitioner's conduct bears an adverse relationship to her ability to be an effective school counselor.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case, and the parties received a proper Notice of Hearing for this case. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. The State Board of Education may revoke or deny a teaching license for conviction of a crime, including a plea of guilty to a crime, if there is a reasonable and adverse relationship between the underlying crime and the continuing ability of the person to perform any of his/her professional functions in an effective manner. 16 N.C.A.C. 6C.0312(a)(3) The State Board of Education may also revoke or deny a teaching license for any illegal, unethical or lascivious conduct if there is an adverse relationship between that conduct and the continuing ability of the person to be an effective teacher. 16 N.C.A.C. 6C.0312(a)(8)

3. The burden is on Petitioner to demonstrate, by a preponderance of the evidence, that the Respondent erred in denying her request for a teaching license. *Peace v. Employment Sec. Comm'n*, 349 N.C. 315, 507 S.E.2d 272 (1988)

4. Teachers are required in this State, by both rule and by case law, to maintain the highest level of ethical and moral standards, and to serve as a positive role model for children. 16 N.C.A.C. 6C.0602(b)(2), *Faulkner v. New Bern-Craven Bd. of Educ.*, 311 N.C. 42, 59, 316 S.E.2d 281, 291 (1984). Our Supreme Court observed in *Faulkner*:

Our inquiry focuses on the intent of the legislature with specific application to teachers who are entrusted with the care of small children and adolescents. We do not hesitate to conclude that these men and women are intended by parents, citizenry, and lawmakers alike to serve as good examples for their young charges. *Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil.* It is not inappropriate or unreasonable to hold our teachers to a *higher standard of personal conduct*, given the youthful ideals they are supposed to foster and elevate.

Id. (Emphasis Added)

5. In this case, Petitioner's conduct, which resulted in her being convicted of a felony, violating her probation, and serving time in jail, bears a "reasonable and adverse relationship" to Petitioner's ability to perform her professional duties in an effective manner.

6. Petitioner's conduct is not consistent with the high standards of conduct expected of teachers in this State. See *Faulkner v. Bd. of Educ.*, 311 N.C. 42, 316 S.E.2d 281 (1984).

7. Petitioner has not met her burden of proof by the preponderance of the evidence that Respondent erred in denying her request for a teaching license.

8. Respondent did not act arbitrarily or capriciously, did not unlawfully deprive Petitioner of any property to which she is entitled, and did not prejudice Petitioner's rights in denying Petitioner's application for a North Carolina teaching license.

FINAL DECISION

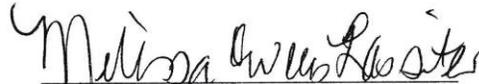
Based upon the Findings of Fact, and Conclusions of Law, the undersigned hereby **AFFIRMS** Respondent's decision to deny Petitioner's application for a North Carolina teaching license.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed.

The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' rule 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This 28th day of August, 2015.


Melissa Owens Lassiter
Administrative Law Judge

NORTH CAROLINA

OFFICE OF ADMINISTRATIVE HEARINGS

ORANGE COUNTY

15 EDC 3643

PARTNERSHIP ACHIEVING COMMUNITY)
 EDUCATION "PACE" ACADEMY)
)
 Petitioner)
)
 v)
)
 NORTH CAROLINA STATE BOARD)
 OF EDUCATION)
)
 Respondent)
 _____)

FINAL DECISION

OFFICE OF
ADMIN HEARINGS

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This matter coming on to be heard and being heard July 7-9, 2015, and concluding on July 14, 2015, and it appearing that the Petitioner is represented by Attorney Mr. Philip S. Adkins, and the Respondent is represented by Special Deputy Attorney General Laura E. Crumpler and Assistant Attorney General Tiffany Y. Lucas, and based upon the evidence presented and the arguments of counsel, the undersigned makes the following findings of fact by a preponderance of the evidence:

1. The Petitioner is a charter school organized and existing under the laws of the State of North Carolina.
2. The Respondent is a body created by the North Carolina Constitution and subject to the laws of this state.
3. As more fully set forth herein, Respondent revoked the charter to operate a public school in this state issued to the Petitioner. The Petitioner subsequently filed a Petition for a Contested Case Hearing on May 20, 2015, alleging that the Respondent deprived the Petitioner of property without due process, substantially prejudiced the Petitioner's rights, exceeded its authority, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, and failed to act as required by law or rule.

Charter Schools in North Carolina

4. Charter schools are public schools authorized by N.C. Gen. Stat. §115C-238.29A, and are intended to operate independently of traditional public schools. §115C-238.29A(a).
5. A public charter school is its own local education agency, and a board of directors governs the school's budget, curriculum, and operations. N.C. Gen. Stat. §115C-238.29E(d).

6. Pursuant to N.C. Gen. Stat. §115C-238A(a), the stated goals for these public schools are to:
 - a. improve learning;
 - b. expand learning opportunities for all children, but especially for those “who are at risk of academic failure” or those who are academically gifted;
 - c. utilize “different and innovative teaching methods;”
 - d. give teachers the ability to “create new professional opportunities” centered around program development;
 - e. provide parents and students with greater choice in educational opportunities; and
 - f. be accountable for meeting goals, while at the same time changing “from rule-based to performance based accountability systems.”

7. Charter schools are accountable to the Respondent for “ensuring compliance with applicable laws and the provisions of their charter.” N.C. Gen. Stat. 115C-238.29E(a).

8. The Charter School Advisory Board (hereinafter CSAB) oversees all public charter schools in North Carolina, and is charged with making recommendations to the Respondent for rules concerning charter schools, establishment, renewal, and revocation of charters, and other duties delegated by the Respondent. N.C. Gen. Stat. §115C-238(b)(10).

9. To become a charter school, Respondent must approve an application from a prospective school which sets forth, among other things, the educational program and goals of the school, budgetary information, and “the number of students to be served.” N.C. Gen. Stat. §115C-238.29B(b).

10. Respondent is authorized by statute to grant an initial charter for up to ten years, and may renew a charter for an additional ten year period. N.C. Gen. Stat. §115C-238.29D(d).

11. The Respondent is required to “review the operations of each charter school at least once every five years to ensure the school is meeting the expected academic, financial, and governance standards.” N.C. Gen. Stat. §115C-238.29D(d).

12. Public charter schools are required to operate within the parameters of their charter, and any material revision of the charter requires approval from the Respondent. N.C. Gen. Stat. §115C-238.29(e).

13. Public charter schools are required to provide a minimum of 185 days or 1025 hours of instruction, meet performance standards set forth by the state and the terms of their charters, perform student assessments, comply with the Individuals with Disabilities Education Improvement Act, and comply with state laws related to discipline. N.C. Gen. Stat. §115C-238.29F.

14. A charter may be subject to termination or non-renewal if the Respondent finds there is a failure to meet student performance goals set forth in the charter; "failure to meet generally accepted standards of fiscal management;" a material violation of the terms of the charter, the faculty has requested such action, or other good cause exists. N.C. Gen. Stat. §115C-238.29G.

15. The Respondent and any public charter school should "make a good-faith attempt to resolve the differences that may arise between them." N.C. Gen. Stat. §115C-238.29G(c).

Charter Application

16. In 2004, Petitioner was granted a ten-year charter by Respondent to operate a high school in Orange County, North Carolina.

17. PACE's stated purpose, as set forth in its charter application, was to target and attract students "at-risk for academic failure." (Resp. Ex. 3, p6).

18. The charter application is the underlying basis for the charter agreement issued by the Respondent.

19. Petitioner's lengthy charter application included a number of seemingly standard provisions to follow applicable state and federal laws.

20. PACE's application also included an explanation of their educational program, which was to "address the academic, social, and vocational needs" of their students through a "self-paced learning model." Students would be encouraged "to work at their own pace to accomplish academic goals". (Resp. Ex. 3, p2).

21. PACE sought "to create a personal education plan" for each of their students. (Resp. Ex. 3, p2).

22. PACE stated that to improve student learning, they would require students to "take progressively greater responsibility for their academic progress and career goals." (Resp. Ex. 3, p6).

23. The application also stated that "many students of PACE will require remediation and academic support to acquire the prerequisite skills ... necessary for academic success." (Resp. Ex. 3, p6).

24. While citing a flexible and structured curriculum, PACE was to utilize schedules that allowed for remediation and educational techniques that were individualized and success oriented. (Resp. Ex. 3, p7).

25. PACE's application also specifically stated that new teaching opportunities would include individualized services that facilitate "self-paced learning with limited direct classroom instruction". (Resp. Ex. 3, p8).

26. PACE also frequently references the North Carolina Standard Course of Study throughout the application, but focused on “self-paced learning,” “learner-centered instructional techniques,” and creation of “personal education plans.” (Resp. Ex. 3, p21-23).

27. PACE determined that various evaluations would be necessary to determine their success, including: improvement on standardized tests, increased graduation rates for at-risk students, and “sustained increase of individual student attendance rates.” (Resp. Ex. 3, p30).

28. The student handbook attached as Appendix F to the charter application stated that students would be required to be on time for school and “be in regular attendance in school and in class.” (Resp. Ex. 3, Appendix F, p1).

29. Further, students were required to “spend a certain number of hours on task in school.” (Resp. Ex. 3, App. F, p3).

30. Petitioner’s General Procedures of Operation, set forth in Appendix H of the charter application, touches on an independent study course, but has no details associated therewith. (Resp. Ex. 3, App. H, p2).

31. Petitioner’s application to operate a high school was approved by the Respondent effective July 1, 2004.

PACE Academy

32. Ms. Rhonda Franklin is the principal at PACE Academy. She testified about the positive impact PACE Academy has had on her students and faculty.

33. According to Ms. Franklin, PACE Academy was a school that was student-focused.

34. By all accounts, the school is welcoming and accepting of all students, especially students with special needs.

35. Many of the children who attend PACE Academy have had negative experiences in traditional public schools, but have thrived and succeeded at PACE.

36. In its 2012 Charter School Self Study, Petitioner stated that just under half of the students enrolled in PACE Academy were identified with disabilities. (Resp. Ex. 4, p19).

37. Evidence presented demonstrated that PACE’s demographic makeup was as follows:

- a. In the 2009-2010 school year was 48% African-American and 36% Caucasian, while nearly one-third of their students were eligible for free or reduced lunch.

- b. In 2010-2011, 34% of students were African-American and 42% Caucasian. Nearly one-third of students were eligible for free or reduced lunch.
- c. In 2011-2012, 33% of PACE students were African-American and 44% were Caucasian. Again, nearly one-third of students were eligible for free or reduced lunch.
- d. In 2012-2013, 34% of the students at PACE were black and 43% were white. No figures were provided for the free lunch program in this year.
(Resp. Ex. 4, p22).

Charter Renewal Process

38. On December 1, 2012, Petitioner formally requested their charter be renewed by Respondent, and submitted a letter to OCS regarding the same.

39. As part of the renewal process, OCS conducted a site visit at PACE on May 2, 2013, which included interviews of parents, teachers, and students.

40. The site visit revealed that parents had a positive view of the school's impact on their children, teachers had a great deal of flexibility in teaching students, and the positive interaction between parents, teachers, and students fostered an inclusive atmosphere in which all kids were appreciated and felt included.

41. The site visit also revealed that PACE was "a school of second and third chances." (Resp. Ex. 4).

42. Petitioners acknowledged that there were problems they had encountered in educating and assisting their at-risk population, and that they were trying to save children through "flexible scheduling" and catering to student needs. (Resp. Ex. 4).

43. The site visit also revealed that there were issues with Individual Education Plans that were conducted in the past, but that a new process had been implemented by Ms. Franklin.

44. During this visit, Petitioner stated that "[m]ost students are enrolled in at least 3 courses in order to be considered full time students." (Resp. Ex. 4).

45. The board and administration conceded that PACE's biggest issue was meeting state EC requirements. (Resp. Ex. 4)

46. Renewal documents also revealed that PACE failed to meet the 95% participation requirement for testing students in 2010 and 2011, and only met growth once in five years. (Resp. Ex. 4, p25).

47. In November, 2013, a financial report issued by the Division of School Business found that PACE had been compliant in financial matters for the preceding five year period. (Resp. Ex. 4, p35).

48. In addition, PACE Academy's 2013-2014 financial statements were audited, and "no material weaknesses" were noted. (Resp. Ex. 8, p1).

49. Despite Petitioner's positive financial history, the Division of School Business noted they had "serious concerns" about the financial well-being of the school. (Resp. Ex. 4, p35).

50. On December 10, 2013, Petitioner's representatives appeared before the Charter School Advisory Board as part of the charter renewal process. At that time, the Charter School Advisory Board (hereinafter "CSAB") recommended that the Respondent not renew Petitioner's charter.

51. On February 6, 2014, Respondent followed the CSAB's recommendation, and voted not to renew Petitioner's charter.

52. Petitioner filed a Petition for a Contested Case Hearing with the Office of Administrative Hearings on February 7, 2014 in 14 EDC 1006, challenging Respondent's decision not to renew the charter.

Settlement Agreement

53. On June 30, 2014, the parties reached a settlement agreement disposing of the contested case.

54. By the terms of that agreement, the Respondent granted Petitioner a three-year charter, effective through and until June 30, 2017.

55. The Settlement Agreement required the Petitioner to meet certain conditions concerning board membership, board meetings, record keeping, compliance, and development of strategic plans. (Pet. Ex. 17).

56. Specifically, Petitioner's board of directors was to be expanded to 7 members and hold monthly meetings; a Secretary and Treasurer would be elected, and the board's attorney was required to attend all meetings; minutes of the board's meetings would be provided to OCS within a specified time frame; and the board would participate in training provided by DPI. (Pet. Ex. 17).

57. In addition, the Settlement Agreement mandated a board retreat and development of a strategic plan to be provided to the Respondent within a specified time frame. The strategic plan was to address participation in the state assessments and objective evaluation of the principal's performance. (Pet. Ex. 17).

58. Petitioner agreed that they would comply with all state and federal rules and regulations, "maintain accurate and verifiable student records", and that they would be fiscally responsible and audits would reveal "no material weaknesses." (Pet. Ex. 17).

59. The settlement agreement also provided that “[f]ollowing notice of a material failure to comply with this Agreement and a meaningful opportunity to be heard before the [Respondent] or a subcommittee of the [Respondent]” Petitioner would surrender its charter if they “failed to materially meet any of the conditions” set forth in the agreement. (Pet. Ex. 17)

2014 Charter

60. On August 6, 2014, Respondent issued a three-year charter to Respondent to operate a high school in Orange County, North Carolina.

61. Relevant to this discussion, paragraph 26.3 of the charter sets forth the procedure to be followed in the event of termination, including service of notice to the school.

62. Specifically, DPI is required to send by certified mail, return receipt requested, “written notice of its intention to recommend revocation of the Charter,” along with the grounds for said recommendation “in reasonable detail.” (Resp. Ex. 7, p9).

63. If the Respondent approves DPI’s recommendation, “notice will again be sent as specified in Paragraph (b) (1).” (Resp. Ex. 7, p9). There is no paragraph (b) (1) in the charter, nor is there a statutory reference for the same.

64. If the charter recipient objects to termination of the charter, the charter agreement states that OCS submits the request for review “to the appropriate Review Panel appointed by the Chair of the SBE.” (Resp. Ex. 7, p9).

65. Pursuant to the charter agreement, “[t]he Review Panel may review the matter with or without a formal hearing” and then must submit its recommendation to the Respondent in writing. (Resp. Ex. 7, p9).

66. The Respondent is then required to make a final decision on the Review Panel’s recommendation at the next regularly scheduled board meeting. (Resp. Ex. 7, p9).

67. The charter agreement also sets forth the grounds for amending the same, which include enrollment growth, relocation, transfer of the charter to another entity, and change in the mission, targeted population, management company, school lunch program, and/or transportation.

68. Changes in by-laws, school name, articles of incorporation, class size, length of the school day or academic calendar, and curriculum must be requested and can be approved by DPI without action from the board. Further, “potential changes” not specifically delineated in the charter agreement “must be reviewed and approved by the State Board of Education.” (Petitioner’s Exhibit 7, p9).

69. Petitioner opened for the 2014-2015 school year in late August, 2014.

Attendance

70. The first day of school for students at PACE Academy for the 2014-2015 school year was August 25, 2014.

71. The Division of School Business at DPI visited PACE Academy four times during the first month of the school year to conduct headcounts of students present at the school, including on the first day.

72. Scott Douglass, a former DPI employee with over two decades of student accounting experience, conducted headcounts of students present at PACE Academy during four visits to the school.

73. The purpose of the Fall, 2014 visits was to verify data the school certified in PowerSchool. (Resp. Ex. 8)

74. Mr. Douglass testified that PowerSchool is the authoritative student accounting data system used by all LEAs and charter schools in the state. PowerSchool is the definitive source for all student accounting information, including attendance and student schedules.

75. Mr. Douglass first visit to PACE Academy during the 2014-2015 school year was on August 25, 2015, the first day of school for students.

76. Mr. Douglass testified that upon arrival at the school, he requested class rosters from PowerSchool as part of his standard headcount procedure.

77. Mr. Douglass was escorted through the school by Ms. Jane Miller, an assistant principal, and they observed each classroom in the school.

78. Mr. Douglass would check students off from the class rosters to determine which students were absent from each class.

79. At the end of the visit, Ms. Miller signed off on the student count performed by the consultant and agreed to provide the sign in/sign out data so that students who arrived late could be included in the totals of the student counts. (Resp. Ex. 8).

80. On August 25, 2014, Mr. Douglass counted 66 students physically present in the school. (Resp. Ex. J, p3).

81. Mr. Douglass visited the school on August 28, 2014, September 5, 2014, and September 16, 2014. (Resp. Ex. J).

82. Mr. Douglass repeated the headcount procedure he followed during his earlier visit.

83. The student headcounts revealed there were 57, 72, and 58 students physically present in the school, respectively. (Resp. Ex. J, p3).

84. These counts are in line with the 70 students for which PACE was funded during the 2014-2015 school year, but below the approximately 90 students based on the average daily attendance certified by PACE Academy for the first month. (Resp. Ex. 8)

85. On September 3, 2014, Mr. Darrell Johnson, a regional consultant from the Office of Charter Schools visited PACE Academy.

86. During that visit, Mr. Johnson counted 67 students physically present in the school.

87. Mr. Johnson also stated that during the course of his monthly visits to the school, there were approximately 60-70 students there each time.

88. On October 31, 2014, Mr. Johnson went to the school and counted approximately 76 students in attendance with 32 students reported absent.

89. DPI reported that 74 students were present during a March 26, 2015 visit to PACE Academy, with 27 absences, and 29 students who were neither present nor marked absent in PowerSchool. (Resp. Ex. L).

Average Daily Membership and Funding

90. Charter schools in North Carolina are funded on a per pupil basis and funds are generated based upon student headcount. More specifically, charter schools are funded based on their Average Daily Membership ("ADM") during their first twenty days of school. (N.C. Gen. Stat. § 115C-218.105).

91. In order to be counted as part of ADM, with few exceptions, a student must be present at school for at least half the instructional day, which amounts to three and a half hours. (Resp. Ex. E, p. 27).

92. At the end of the first twenty days of school for 2014-2015, PACE Academy certified an ADM of 103 students.

93. The average daily attendance for the first month was certified at 90 students; that is, on average 90 students were expected to be in attendance on any given school day. (Resp. Ex. 8).

94. Calculation of ADM, however, does not account for Respondent policies such as credit recovery courses, homebound instruction, etc.

95. To be included in the ADM, a student must physically be present in school; a student taking credit recovery courses (more fully discussed below), may not be included in the ADM even though he or she is still receiving educational instruction.

96. Initially, for the 2014-2015 school year, PACE Academy was provided access to funds for the first installment of the annual allotment based on 157 students. PACE contends this figure was determined by DPI, and Petitioner's budget for 2014-2015 was developed using this figure.

97. Based on an enrollment of 157 students, the school was granted authority to draw down \$351,640.00.

98. On September 25, 2014, Respondent issued a notice of financial noncompliance to Petitioner, and placed the school on "Financial Disciplinary Status." This designation prevented the school from further utilizing state funds until issues concerning average daily membership ("ADM") were rectified and funding was recalculated based on a new ADM.

99. The Division of School Business pulled back \$90,000.00 of requested funds before those monies were received by PACE Academy.

100. This decision was based not upon the budgetary figures certified by DPI, but rather by the headcounts performed by DPI after the start of the school year.

101. The headcounts led DPI to recalculate the allotment for Petitioner based upon 70 students.

102. Dr. Alexis Schauss, Director of School Business Administration testified that Petitioner was funded based on the number of students attending the school that DPI determined to be fair and reasonably accurate in light of the number of students actually seen at the school during DPI's multiple visits and in light of the fact that DPI serves as a steward of taxpayers' dollars.

103. The Division of School Business then used the reduction in the number of students to reduce Petitioner's funding.

104. The reduction and recalculation had serious implications for Petitioner's budget.

105. DPI reduced Petitioner's funding by more than one-half based on the recalculation.

106. Respondent stated that the school had requested approximately 60% of the expected final annual allotment based on the school's actual student counts performed by DPI.

107. While Respondent is correct in this statement, it is misleading. Petitioner had requested, and DPI had approved, draw-downs by the Petitioner based upon a budget approved by DPI.

108. The draw-downs by Petitioner at the beginning of the 2014-2015 school year were presumably in line with Petitioner's approved budget, or DPI would not have allowed Petitioner to have access to that amount in the first place.

109. After Respondent reduced the number of students for which funding would be granted, the overall budget of the school for the year was significantly reduced and the Petitioner's expenditures were only then determined to be out of line.

110. This same issue occurred in 2013-2014, when funding was reduced in June, at the end of the school year.

111. Petitioner does not appear to have been irresponsible in its spending under the initial 2014-2015 budget.

112. No evidence was presented that Petitioner, or any of its employees or representatives, was investigated or prosecuted for a violation of criminal law associated with its budget, student accounting, or expenditures.

113. Petitioner's issues appear to stem from an inability to effectively communicate their use of credit recovery and other programs allowed by Respondent, and Respondent's apparent unwillingness to consider evidence of Petitioner's use of credit recovery courses.

114. Respondent requested PACE provide evidence that students who were not present in school during headcounts were in fact attending PACE.

115. In an effort to provide proof to Respondent, PACE gathered student work, teacher notes, and attendance rosters taken manually.

116. Petitioner produced two boxes of student work samples and other materials to Mr. Andrew Cox at DPI.

117. Cox told Bittner to take the material back, as no one was available to look at the information. Bittner subsequently made copies of the information and took it back to DPI.

118. Dr. Shauss testified that even though she knew the requested information had been produced by PACE, neither she nor her staff reviewed it.

119. There is no question that PACE is operating a school that a significant number of students attend in person on school days.

Credit Recovery

120. Every child in North Carolina between the ages of 7 and 16 are required to attend school. N.C. Gen. Stat. § 115C-378(a)

121. A principal, superintendent, or their designee has the authority to excuse a child from attending school on a temporary basis due to illness or other unavoidable cause. N.C. Gen. Stat. § 115C-378(c)

122. No child subject to the compulsory attendance law can be unlawfully absent from school.

123. Article 26 of Chapter 115C does not define the terms “student” or “attendance.”

124. The North Carolina Administrative Code defines attendance as follows: “To be considered in attendance, a student shall be present in the school[.]” 16 N.C. Admin. Code 6E.0101.

125. Therefore, the rule in North Carolina is that to be considered “in attendance” for the purposes of state law, a child must be physically present in the school.

126. This definition would ordinarily end the inquiry; however, the Respondent has published policies which it holds out to the public as having the same force and effect as rules promulgated pursuant to the North Carolina Administrative Code.

127. One such policy concerns “credit recovery.”

128. There is no statute that defines credit recovery.

129. No rules concerning “credit recovery” have been promulgated or codified in the North Carolina Administrative Code.

130. The Respondent’s policy concerning “credit recovery” is set forth in the North Carolina State Board of Education Policy Manual, GCS-M-001.

131. Pursuant to Respondent’s policy, credit recovery is a “block of instruction that is less than the entirety of the Standard Course of Study” and is a subset of a regular, standard course. (Pet. Ex. 1, p4).

132. Credit recovery is designed to “address deficiencies in a student’s mastery of the course” and focus on specific areas which need to be completed by the student to obtain credit on a pass/fail basis. (Pet. Ex. 1, p4).

133. Paragraph 6.2 of the policy refers to these areas to be completed as “credit recovery courses.” (Pet. Ex. 1, p4).

134. There is no set time requirement or limitation for credit recovery courses; rather, the length of credit recovery courses are dictated by students’ knowledge. (Pet. Ex. 1, p4).

135. Respondent has published FAQs on its website concerning credit recovery courses. Interestingly, Respondent contradicts its own policy in FAQ number 8 in stating that

credit recovery courses must be completed in one semester or one summer session, unless there are extraordinary circumstances. (Pet. Ex. 2, p2).

136. Further, there is no “fixed length of seat time” for credit recovery courses, and a school board “may not limit the number of credit recovery courses taken by a student prior to graduation.” (Pet. Ex. 1, p4).

137. Petitioner contends it utilized credit recovery courses extensively in an effort to assist their at-risk student population make progress towards graduating.

138. The policy adopted by Respondent is ambiguous and incongruent with the rule defining attendance. A reasonable person could read the policy on credit recovery as, in essence, an independent study. Students are not required to be in their seats for the “course” which, by policy has no fixed time requirements. The only requirement for credit recovery is that it address deficiencies in the original course and if the student does so, he or she will receive a Pass/Fail grade.

139. In addition, the policy specifically states that a school may “not limit the number of credit recovery courses” a student takes. Conceivably, a student could have an entire course load of credit recovery courses.

140. While Respondent contends that this is neither the intent nor the definition of what credit recovery is designed to be, the fact remains that Petitioner seeks to educate children who are at-risk of academic failure. In this effort, they chose to utilize a program adopted by the Respondent.

141. Also, the policy does not limit the number of students in a school that can take such courses. Conceivably, the entire student body at PACE could be engaged in credit recovery courses and not set foot in the school every day, and still be in compliance with the Respondent’s policy.

142. Respondent also contends that such use of credit recovery violates the terms of the charter it granted to the Petitioner.

143. Petitioner’s application is part of the charter. Petitioner’s charter specifically states that the school would utilize a “self-paced learning model” in which students would be encouraged “to work at their own pace to accomplish academic goals”. (Resp. Ex. 3, p2).

144. Further, the charter, through the application, also stated that “many students of PACE will require remediation and academic support to acquire the prerequisite skills ... necessary for academic success.” (Resp. Ex. 3, p6). This clearly stated understanding of the academic situation many of PACE’s students find themselves in appears to be in line with the goals of credit recovery: acquire the foundational knowledge to obtain credit in a course so that students can succeed in subsequent courses.

145. While citing a flexible curriculum, PACE indicated they would utilize schedules that allowed for remediation and educational techniques that were individualized and success oriented. (Resp. Ex. 3, p7).

146. PACE's charter, through its application also specifically stated that new teaching opportunities would include individualized services that facilitate "self-paced learning with limited direct classroom instruction". (Resp. Ex. 3, p8).

147. This is not to suggest that Petitioner's liberal use of credit recovery is educationally sound or administratively workable.

148. Petitioner's use of credit recovery courses does not fit neatly in the box monitored by DPI. However, utilization of credit recovery courses as implemented by the Petitioner is consistent with their charter and within the boundaries established by Respondent.

149. This policy, intentionally or not, is an exception to the attendance requirement.

150. Petitioner cannot be punished for following Respondent's policy on credit recovery courses.

151. Such extensive use of this policy, however, requires a hands-on, organized administration, which PACE does not have. This failure on the part of the Petitioner has led to many of the student attendance issues.

Special Education

152. Ms. Carol Ann Hudgens with DPI's Exceptional Children's Division testified that her department performed an EC program assessment audit of student records at PACE Academy after referral by the Division of School Business and to assess compliance with recommendations made in 2013.

153. The Individual with Disabilities Education Improvement Act (IDEA), 20 U.S.C. 1400 (c)(1), provides federal funds to assist states in educating children with disabilities and requires each participating state to ensure that schools districts and other federally funded educational agencies in the state comply with the requirements of IDEA and its implementing regulations.

154. Further, section 616 of IDEA states that the primary focus of federal and state monitoring activities shall be on improving education results and functional outcomes for all children with disabilities and ensuring that states meet the program requirements that are most likely to closely relate to improving educational results for children with disabilities. (Resp. Ex. 17).

155. Article 9 of Chapter 115C of the General Statutes requires local school districts (including charter schools) to provide appropriate special education and related services and requires DPI to establish, monitor, and enforce regulations governing special education programs

in North Carolina public schools and all institutions wholly or partially supported by the state. These functions are carried out through the EC Division. (Resp. Ex. 17).

156. The program assessment audit is a comprehensive monitoring activity where data are collected in multiple area to determine the effectiveness of a charter school's or LEA's EC program. (Resp. Ex. 17)

December 10, 2014 On Site Review

157. On December 14, 2014, a monitoring team consisting of 9 DPI representatives visited PACE.

158. The purpose of this visit was to conduct a program assessment, and the team reviewed five EC records, conducted eight interviews, observed four classrooms, and reviewed other school records and information.

159. Through classroom observation, the EC Division staff concluded that specially designed instruction was not properly delivered by school staff, and it was unclear how specially designed instruction was being provided to address IEP goals. (Resp. Ex. 17).

160. Consistent with the Division of School Business' earlier findings regarding attendance record-keeping, the EC Division also noted problems with the school's attendance record-keeping procedures. (Resp. Ex. 17).

161. The December 2014 program audit concluded that PACE Academy was noncompliant with the requirements of IDEA and that it was noncompliant in the provision of a free, appropriate, public education for all students. (Resp. Ex. 17).

162. Based on this visit, a corrective action plan was developed.

163. This plan required PACE to report on EC teacher licensure, offer compensatory education for licensure deficits, implement communication procedures concerning IEPs, set deadlines for updating IEPs and student schedules, and reconcile student records, among other things.

164. On January 27, 2015, a letter was sent to PACE from DPI indicating the Petitioner was noncompliant in issues relating to educating students with disabilities.

February 4, 2015 Letter from OCS

165. On February 4, 2014, Dr. Joel Medley with OCS sent a letter to Ms. Franklin outlining the January 27, 2015 letter, and he specifically delineated that PACE was in violation of sections 5 and 9 of the charter concerning educating children with special needs.

166. As a result, PACE was notified, they were being placed on Governance Probationary Status until the corrective action outlined from the December 10, 2014 visit was completed.

167. PACE was also notified that failure to remedy the violations would lead to them being placed on Governance Noncompliance Status.

168. The parameters of Governance Probationary Status are set forth in Section II of State Board Policy TCS-U-006: "The school remains on Governance Probationary Status for 30 calendar days and during that time must correct the exceptions that caused all of the governance warnings." If the exceptions are corrected within the 30-day limit, the probationary status is lifted. However, if a school fails to make the corrections within 30 days, the school placed on Governance Noncompliance Status.

169. Governance Noncompliance Status allows the school 10 calendar days to "immediately address all of the exceptions that caused the governance warnings." Designation as a school in Governance Noncompliance Status also triggers funding adjustments and potential additional inquiry from DPI.

170. Dr. Medley's letter, while clear, is contrary to the stated terms in Policy TCS-U-006 in that PACE was placed on "Governance Probationary Status until this issue is resolved."

February 20, 2015 Letter

171. Dr. Medley sent another letter to Ms. Franklin and PACE Board Chair Paul Bedford on February 20, 2015, notifying Petitioner that they were included on the March 9, 2015 CSAB agenda. Officials from PACE were "requested to appear at this meeting." (Resp. Ex. 20, p1).

172. Specifically, Petitioner was notified to "be prepared to answer questions" about finances, noncompliance in the EC program, enrollment, and "[p]rogress of the Settlement Agreement." (Resp. Ex. 20, p1).

173. PACE received no notice of any specific purported violation concerning the schools finances the CSAB would consider at this meeting.

174. PACE received no notice of any specific purported violation concerning noncompliance with the EC program the CSAB would consider at this meeting.

175. PACE received no notice of any specific purported violation concerning the school's current enrollment the CSAB would consider at this meeting.

176. PACE received no notice of any specific purported violation of the settlement agreement the CSAB would consider at this meeting.

177. PACE received no notice that any potential action would or could be taken affecting their charter to operate a school in North Carolina during the CSAB's March 9, 2015 meeting.

178. Ms. Franklin testified that she had a conversation with Dr. Medley regarding this meeting, and that the meeting did not seem to be important because the CSAB was looking for an update on the settlement Agreement.

179. In fact, Dr. Medley provided an affidavit for this hearing in which he stated, "I had not informed the PACE board or administration that the CSAB would be voting." (Pet. Ex. 16, paragraph 17).

Charter School Advisory Board Meeting – March 9, 2015

180. On March 9, 2015, the CSAB voted to recommend to the Respondent that Petitioner had not met all of the requirements set forth in the settlement agreement. (Resp. Ex. 21, p5).

181. Dr. Medley swore in his affidavit that "I had not anticipated a vote for 'Material Breach' of the Settlement Agreement". (Pet. Ex. 16, paragraph 17).

182. While PACE was under the impression a vote would not be taken regarding their charter, a court reporter recorded and transcribed the portion of the meeting relating to the Petitioner. (Resp. Ex. 28).

183. In addition, representatives of DPI displayed a PowerPoint presentation which set forth some of their findings concerning PACE Academy.

184. During this meeting, Mr. Darrell Johnson with the Office of Charter Schools made a presentation to the CSAB outlining his findings from visits he had made to the school, including the following:

- a. The school had an ADM of 75 students.
- b. Petitioner's board consisted of 7 members as required in the settlement agreement.
- c. The board attorney had attended all but 2 meetings, and his failure to attend those meetings was related to illness.
- d. Petitioner provided board minutes following approval.
- e. Petitioner had elected a Secretary and Treasurer to their board.
- f. Petitioner completed a board retreat in August, 2014.
- g. Petitioner submitted a strategic plan to OCS.
- h. Petitioner completed board training.

185. Mr. Johnson noted that the board had taken a more proactive approach to governing the school, and that the board chair was in frequent contact with him. (Resp. Ex. 28, p7).

186. Mr. Johnson observed that "PACE continues to adhere to their settlement stipulations." (Resp. Ex. 28, p7).

187. In fact, Mr. Johnson presented a PowerPoint slide entitled "Recommendation" which stated, "OCS recommends that PACE Academy continues to adhere to settlement stipulations." (Resp. Ex. 20, p6).

188. Mr. Johnson discussed issues with the number of students at the school. While the Petitioner's representatives reported to him that the school claimed 115 students, head counts revealed actual students present in school were more in line with the ADM. (Resp. Ex. 28, p6).

189. Dr. Schauss also detailed her observations, which included:

- a. Results of an audit of student accounting conducted in 2013-2014 as part of the charter renewal process. As a result of that audit, Petitioner funding was reduced from approximately 150 students to 105 students.
- b. A subsequent audit was conducted for 2014-2015, and discrepancies continued in the headcount, reducing funding from 103 students to 75.
- c. The Petitioner's June 30, 2014 financial statement was "clean."
- d. Her concern over Petitioner's declining cash balance, which was \$26,000.00 on June 30, 2014.
- e. The Petitioner's fund balance on June 30, 2014 was \$151,000.00, which she characterized "about 10 percent of their expenditures, so it's still healthy."
- f. Her concern was with the 2014-2015 fiscal year because they were projecting a "significant deficit." Dr. Schauss did note that she believed the Petitioners could address the financial concerns.
(Resp. Ex. 28, pp10-15).

190. Ms. Hudgens presented to the CSAB on the Exception Children's (EC) program at the school. Ms. Hudgens set forth the following:

- a. Upon reviewing student files, there areas in which the school was noncompliant and "file corrections were needed."
- b. There were "deficits in understanding" Child Find and Individualized Education Plans.
- c. Issues concerning student schedules needed to be addressed to make certain EC students were receiving proper instruction from trained personnel.
- d. There was an issue with licensure for EC teachers, but that issue was rectified as set forth more herein below.
- e. Although it is unclear if this applied to EC students, Ms. Hudgens stated that "attendance records were not readily available" and the school did not appear to have a standard practice for taking attendance.
- f. The school submitted a corrective action plan on February 3, 2015, which was due on February 1, 2015. (February 1, 2015 was a Sunday.)

- g. The school submitted another corrective action plan in March, 2015.
- h. Her “next step with them would be to of course sit down with them and develop an action plan” concerning developments surrounding the licensure issue and compensatory education requirements.
- i. Even though the Petitioner had provided the corrective action plans which addressed issues of concern, she wanted to develop a “collaborative action plan.” (Resp. Ex. 28, pp15-21).

191. Following Ms. Hudgens presentation, CSAB member Mr. Steven Walker moved to go into closed session to “have some clarifications on some of the stuff that surrounds the legal part of this[.]” (Resp. Ex. 28, p22.)

192. The CSAB was in closed session for approximately 25 minutes. (Resp. Ex. 28, p22.)

193. Following the closed session, Petitioner had the opportunity to address the CSAB.

194. Ms. Franklin, responding to questions from members of the CSAB, explained that:

- a. PACE was not prepared to make a presentation, but would answer questions posed by the CSAB.
- b. PACE does not utilize a traditional school schedule, and that students at PACE have a variety of schedules. She also stated that “[w]e have some students that come for the statutory requirement of three and a half hours a day,”
- c. Some of their students can’t read or tell time, so they have implemented a computer-assisted sign-in process.
- d. Attendance at PACE is difficult to objectively measure, but they were attempting to address this area of concern.

(Resp. Ex. 28, pp23-47).

195. Ms. Franklin attempted to answer a number of questions from CSAB members, which, upon review of a transcript of that proceeding, can only be described as hostile.

196. Mr. Walker engaged in the following line of questioning:

Mr. Walker: So how many students were in attendance Friday?

Ms. Franklin: I don't know. I would--I don't know. I mean Friday was a two hour delay. That's an interesting question, so I don't--I don't know exactly. It was a two hour delay with--so I don't know.

Mr. Walker: And what percentage--I'm sorry.

Chairperson [Helen] Nance: That's okay.

Mr. Walker: Can I just have--just for a little while?

...

Mr. Walker: --just trying to get a grip on everything here. I mean when is the last time you remember that you had 105 students on a day?

Ms. Franklin: Like all at the same time?

Mr. Walker: Uh-huh, all in attendance on that day.

Ms. Franklin: At some point during the day or all at the same time, probably the first--

Mr. Walker: (interposing) Total attendance for that day.

Ms. Franklin: But not all at the same time.

Mr. Walker: Well, just all during that same--during that same day.

Ms. Franklin: It would have been in the beginning of the school year.

Mr. Walker: Okay, so you haven't since then.

(Resp. Ex. 28, pp24-26).

197. Ms. Becky Taylor stated that "the attendance one is bothering me tremendously for a lot of reasons," and then asked about the length of time a student was required to be in school to be counted as attending school for that day. Ms. Franklin responded "3.5 hours." (Resp. Ex. 28, pp28-29).

198. The bulk of the questions to Ms. Franklin centered around North Carolina's Compulsory Attendance Law.

199. CSAB member Mr. Joe Maimone also questioned Ms. Franklin about the Compulsory Attendance Law, leading to this exchange:

Mr. Maimone: Okay. Last question: what's your procedure when a student is missing ten days in a row and you're obliged to follow up? What do you do at PACE Academy to follow up a student who's been absent ten days in a row?

Ms. Franklin: Ten consecutive absences in a row--I don't--I can say very rarely. Now, see, it goes back to what Ms. Taylor asked: is it the entire day or is it per class? ...

Ms. Taylor: Right; one more attendance question and then I have some other questions.

Ms. Franklin: Okay.

Ms. Taylor: I know I keep hearing you talk about the number of consecutive absences. I may need to refer to another charter school or our attorneys. What about--I mean cumulative absences? Have students missed ten cumulative?

Ms. Franklin: Cumulative; well, our policy is, and we adopted this policy years ago. The students--our attendance policy, overall policy, is, you know, I guess the same as any, three unexcused--three unexcused tardies equal one absence. And we do a no distinction policy for attendance, 12 days--12 missed days--if you exceed 12 absences you automatically fail the class.

...

Ms. Taylor: Have you had to take or pursue any actions against parents for violating the number of absences?

Ms. Franklin: No, because typically it is not those students that are under the--that are under the age of 16. It is the older students that tend to not make it important.

Ms. Taylor: So if they're over 16, they're not held to the policy?

Ms. Franklin: That was to my understanding, and I might be wrong and maybe we were not following the procedure that--I guess the legal age to drop out is 16, at least in Orange County. It's--those under 16 are reported to the magistrate. Like I said---

Ms. Taylor: (interposing) Do you know the answer to that?
(Resp. Ex. 28, pp32, 39-41).

200. The Compulsory Attendance Law is set forth in N.C. Gen. Stat. §115C-378, and requires notification to parents that their student “may be in violation of the Compulsory Attendance Law” and could be subject to prosecution.

201. North Carolina’s Compulsory Attendance Law applies to parents, guardians, or custodians “having charge or control of a child between the ages of seven and 16 years.” N.C. Gen. Stat. §115C-378(a).

202. Ms. Franklin was correct in her answer regarding this matter, but continued to face interrogation with what was at the very least erroneous information as to when notification and action was required by the school.

203. While Dr. Medley's February 20, 2015 letter noticed the Petitioner to be prepared to answer questions regarding enrollment, there was no indication Petitioner's representatives would be interrogated regarding the nuances of the Compulsory Attendance Law.

204. Although there is considerable overlap in the issues of attendance and enrollment, the notification procedures required in N.C. Gen. Stat. §115C-378 are not related to the matters for which Petitioner was noticed.

205. Moreover, Respondent had not alleged Petitioner had violated reporting requirements for the Compulsory Attendance Law or even for the violations alleged against them.

206. Dr. Medley with the Office of Charter Schools had to step in and correct the questioning by CSAB member Maimone when he asked about the school's failure to submit a corrective action plan:

Mr. Maimone: A couple of things: in the settlement stipulations it says if PACE modifies or intends to modify mission, practices, procedures, programs, strategies to address issues that it should submit those to DPI, yet you've not submitted anything.

Can you tell us why, given these issues that are ongoing, you've not submitted any corrective action plan or plan of action to help with some of these issues?

Ms. Franklin: We didn't--I didn't know--I didn't recognize or realize that corrective action plans--I didn't---

Mr. Maimone: Well, it's the second bullet point in your stipulation with the State Board of Education.

Dr. Medley: The--if I may, the charter school did submit the strategic plan that they held--from the retreat that they held in August. As far as modifying its mission, those kinds of things, that information has not come to us because that would require state board approval. So they have submitted a strategic plan on the things they're going to do in order to address some certain pieces.
(Resp. Ex. 28, p 30)

207. Ms. Franklin at one point stated the interrogation she was under was "like a pop quiz" and asked if she could check PowerSchool to assist her in answering questions about enrollment and attendance. (Resp. Ex. 28, p31, 39).

208. Petitioner was running the report during the questioning in an attempt to answer some of these inquiries, but the CSAB voted without this information. (Resp. Ex. 28, p44).

209. CSAB member Mr. Walker then made the following observation and motion to find the Petitioners had failed to comply with the Settlement Agreement:

Mr. Walker: If Ms. Gibbs and Ms. Reeves weren't here, I would think this was Groundhog Day, the movie, because this is the exact same song and dance as it was a year and a half ago. Nobody on this board had any confidence that y'all were going to be able to make it before and to do what was right. That's why everybody voted to not renew you, and the State Board felt the same way.

Through legal maneuvering, which I will applaud you for, you were able to get another three year renewal, but this is just--it's just not acceptable, not for---

...

Mr. Walker: I just--I'm ready to move on.

Chairperson Nance: Okay.

Mr. Walker: We're getting late in the day, and so I would like to make a motion. And I would make a motion that we recommend to the State Board that this school, PACE Academy has materially failed---

Ms. Franklin: (interposing) Oh, my--

Mr. Walker: ---in complying with---

Ms. Franklin: (interposing) What?

Mr. Walker: ---the settlement agreement and therefore is in violation of the settlement agreement, and following the hearings required in the stipulation agreement that they be required to turn in their charter. (Resp. Ex. 28, p48-49).

210. A reading of the transcript of CSAB gives the appearance that some members had their minds made up without objectively looking at the terms of the settlement agreement, or considering the advice and recommendation of OCS staff.

211. Although unclear from the transcript who made the request, someone on PACE's behalf asked that the board attorney be allowed to address the CSAB, which led to the following exchange:

Ms. Franklin: (interposing) I just don't think we're answering the questions correctly. I think there has been a great deal of change and growth at PACE Academy. I just don't feel like we're answering the questions---

Chairperson Nance: (interposing) I will--I will allow you--you're the board chair?

Several Voices: He's the attorney.

Chairperson Nance: Oh, the attorney.

Mr. Walker: I just--I'm ready to move on.
(Resp. Ex. 28, p48).

212. Despite the finding and recommendation from the Office of Charter Schools that Petitioner was adhering to the settlement agreement, the CSAB voted to recommend to the Respondent that PACE had "materially failed in complying with the settlement agreement" and that they be required to turn in their charter.

213. That same day, Petitioner was sent a letter from OCS which summarized what had taken place during the CSAB meeting, and provided notice that the recommendation would be submitted to the Respondent at its April meeting.

Action by the Respondent State Board of Education

214. On April 1, 2015, the Leadership for Innovation Committee, a sub-committee of the Respondent State Board of Education met and discussed the CSAB recommendation.

215. Ms. Becky Taylor, a member of the CSAB who is also a member of the Respondent State Board of Education, chaired that meeting. (Resp. Ex. 22).

216. After hearing from DPI representatives, the committee voted to accept the CSAB recommendation regarding Petitioner's failure to comply with the settlement agreement. (Resp. Ex. 22, p5).

217. On April 2, 2015, Respondent met and voted, consistent with the recommendation of the CSAB and the Leadership for Innovation Committee, that PACE materially failed to comply with the settlement agreement. (Resp. Ex. 22, p39-40)

218. Respondent also voted to appoint a subcommittee "prior to the May State Board of Education meeting to hear from both parties" and make a final recommendation. (Resp. Ex. 22, p40).

219. According to the minutes of the April 2nd meeting, the next regularly scheduled meeting for Respondent was to be May 6, 2015 in Greenville, North Carolina. (Resp. Ex. 22, p47).

220. PACE Academy Chair, Mr. Paul Bedford, was sent a letter by certified mail on April 2, 2015 by OCS notifying Petitioner that Respondent voted and found that PACE had materially failed to comply with the settlement agreement. (Pet. Ex. 19).

221. The letter summarized the Respondent's actions, and provided notice that a subcommittee would be appointed upon a request for hearing. Any request for a hearing by the Petitioner was to be made within ten days of the date of the notice.

222. On April 10, 2015, Petitioner, by and through its attorney, submitted a letter to the Respondent's chairman, which:

- a. Timely requested a hearing pursuant to the settlement agreement;
- b. Expressed concern that the March 9, 2015 notice did not set forth the specific actions which constituted a material breach of the separation agreement;
- c. PACE would be prepared to address issues surrounding student records, consistent with Dr. Medley's March 9, 2015 letter, when Petitioner's representatives appeared before the appointed subcommittee;
- d. Requested an opportunity to question Dr. Schauss, Dr. Medley, Mr. Johnson, and Mr. Douglass;
- e. Requested the opportunity to present evidence "through testimony of some of its administrators" along with relevant documents.
(Pet. Ex. 20)

223. A two-member review panel consisting of Chair, Becky Taylor and Eric Davis was appointed.

224. Ms. Taylor is the same individual who serves on the CSAB, as Chair of the Leadership for Innovation Committee, and as a member of the Respondent State Board of Education.

225. Ms. Taylor was present for and participated in the March 9, 2015 CSAB meeting, the April 1, 2015 Leadership for Innovation Committee meeting, and April 2, 2015 State Board of Education meeting (via conference call).

226. Mr. Davis is a member of the Respondent State Board of Education, and was present for the April 2, 2015 State Board of Education Meeting. In addition, although not a member, Mr. Davis was noted as being present for the April 1, 2015 Leadership for Innovation Committee meeting. (Resp. Ex. 22, p1).

227. On April 20, 2015, DPI conducted another on-site visit, although the results of this visit do not appear to have been considered in decisions made by the Review Panel or the State Board of Education.

Review Panel

228. The Review Panel convened on May 12, 2015, and heard presentations by representatives from DPI as well as representatives from PACE.

229. Both Ms. Taylor and Mr. Davis stated on the record prior to the hearing that they could be fair and impartial in rendering their decision, and then heard information from Petitioner and Respondent.

230. Prior to presentations by the parties, Ms. Taylor emphasized that the subcommittee was not a court of law, not subject to Rules of Evidence, and that the hearing was intended to be informal. (Resp. Ex. 25, p7).

231. Counsel for the Petitioner objected to Ms. Taylor's participation in the hearing. (Resp. Ex. 25, p7-8). There was no objection to participation by Mr. Davis.

232. Ms. Taylor noted the objection, but made no further comments and took no further action on the request.

233. Over the course of a nearly two-and-one-half hour hearing, the majority of the questions and information presented centered around attendance issues and related implications on funding.

234. PACE presented information to the subcommittee which showed:

- a. "PACE does not look like a traditional school."
- b. OFB's counting of students was not correct because they "failed to count or to accept alternative evidence of students who attended half days, were homeless, were engaged in credit recovery programs, or were completing occupational pathway credits."
- c. OFB did not consider work samples, school attendance rosters, and sworn affidavits which PACE contended supported increased student enrollment and class attendance.
- d. Enrollment figures and funding in 2013-2014 and 2014-2015 resulted from compromises between Petitioner and individuals at DPI.
- e. PACE utilized Credit Recovery which allowed at-risk students, teen mothers, working students, homeless students, and students with poor parental support to help potential drop-outs have flexible schedules so they might be better positioned to graduate from high school.
- f. Difficulty PACE representatives had in obtaining information from OFB. Specifically, on August 21, 2014, Petitioner requested certain reports, information, and notes concerning OFB's enrollment findings. That information was not provided until March 19, 2015.
- g. During the schools existence, Petitioner did not have a bad audit, nor had they run a deficit. In fact, PACE presented information from audits performed by Petway, Mills, and Pearson, PA which showed:
 - (1) In 2010, PACE had cash on hand in the amount of \$452,348.00.
 - (2) In, 2011, their cash on hand was \$447,575.00.
 - (3) In 2012, Petitioner had cash on hand of \$345,785.00.
 - (4) In 2013, they had \$100,762.00.
 - (5) In 2014, their cash on hand was \$87,425.00.
- h. The declining cash on hand, although a still a surplus, resulted from leasing and up-fitting a new school facility.
- i. PACE's contention is that financial issues developed with OFB's decision to reduce funding at the end of the 2014 school year. The decision to reduce funding

retroactively had a \$234,000.00 impact on the school's budget, which led to an end of the year deficit of \$9,120.00.

- j. Similarly, PACE contends that OFB's decision to reduce funding in the 2014-2015 school year had a \$234,000.00 impact.

235. The subcommittee adjourned the meeting to discuss and to deliberate before issuing a recommended decision to the SBE.

236. The recommendation from the subcommittee to the Respondent was prepared on May 13, 2015. Their findings included:

- a. Detailed findings regarding student head counts on visits in August and September, 2015, which were initiated because of "past concerns with student counts at PACE Academy."
- b. Petitioner certified 103 students for their ADM and an ADA of 90 students, despite a maximum headcount of 71 students on September 5, 2015.
- c. Generic findings that student attendance records were missing, along with sign in and sign out records.
- d. 23 students had perfect attendance in PowerSchool, but were not seen on at least one of the headcount visits by OFB.
- e. 12 students with perfect attendance in PowerSchool were not seen on any headcount visit by OFB.
- f. 29 students were included in the full ADM, even though they were not present on the first day of school.
- g. The school was funded for 75 students.
- h. PACE was placed on Financial Disciplinary Status on September 25, 2014 because they had depleted "more than 60% of the expected final, annual allotment."
- i. A subsequent headcount was performed on March 26, 2015 found 74 students in class, despite an ADM of 113 students and an ADA of 93 students.
- j. There were students physically present in the school that were counted as absent in PowerSchool.
- k. Other school systems had denied payment to PACE for "some students due to lack of residential proof or other issues."
- l. After April 14, 2015, based upon monthly visits to the school, OCS advised Petitioner to develop solutions to address concerns regarding daily operations, explain attendance issues, the need for a cohesive academic program, which "would require more professional development." In addition, Petitioner was advised "to develop a plan due to the possibly precarious financial position."
- m. Results of December 10, 2014 visit to the school showed that the EC program needed a "full continuum of services", teachers needed more familiarity with IEPs, paperwork was not properly completed, more specifically designed services were necessary for IEPs, and collaboration was necessary between the EC program and the general educational program.
- n. PACE was placed on Governance Probationary Status on February 4, 2014.

- o. 49% of PACE students were EC students.
- p. PACE admitted IDEA violations (although those violations were not set forth).

(Resp. Ex. 26)

237. The final Finding of Fact set forth in the Recommendation of the State Board Review Panel included the following: "These findings do not purport to cover the entirety of the evidence presented to the Review panel or the entirety of the evidence relied upon by the Review Panel to make its determination and recommendation." (Resp. Ex. 26)

238. In addition, the Review Panel indicated that it had considered "the statutes, regulations, and rules applicable to charter schools." (Resp. Ex. 26)

239. The Review Panel supported the decision of the CSAB and recommended that the Respondent vote to revoke Petitioner's charter.

240. At a specially called meeting on May 13, 2015, the SBE met to consider the subcommittee's recommendation.

241. The meeting was a phone conference with ten of the Respondent's members participating by phone. (Resp. Ex. 27).

242. Minutes of that specially called meeting indicate that the only item on the agenda was revocation of Petitioner's charter. (Resp. Ex. 27)

243. After discussion and deliberation, at the conclusion of the meeting, the SBE voted unanimously to revoke PACE Academy's charter. (Resp. Ex. 27)

244. PACE Academy timely filed a Petition for Contested Case Hearing in the Office of Administrative Hearings on May 20, 2015.

Based upon the foregoing findings of fact, the undersigned concludes as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.
2. Both parties received proper notice of hearing in this matter.
3. The Petitioner has the burden of proof by a greater weight or preponderance of the evidence in this matter.
4. It is not for the undersigned to determine whether Respondent's decision to terminate Petitioner's charter was correct or incorrect. The relevant inquiries for the undersigned to determine the applicability of N.C. Gen. Stat. §150B-23 to the facts herein.
5. Further, it is not for the undersigned to determine the remedies available to either party under the terms and conditions of the settlement agreement.

6. Respondent is entitled to a presumption that it acted in good faith in rendering the decision to terminate the charter. In accordance with *Painter v. Wake County Bd of Ed.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will be presumed that "public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intendment will be made in support of the presumption." See also *Huntley v. Potter*, 122 S.E.2d 681, 255 N.C. 619.

7. The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Rusher v. Tomlinson*, 119 N.C. App. 458, 465, 459 S. E. 2d 285, 289 (1995), *aff'd*, 343 N.C. 119, 468 S.E. 2d 57 (1996); *Comm'r of Insurance v. Fire Insurance Rating Bureau*, 292 N.C. 70, 80, 231 S.E.2d 882, 888 (1977). "It is more than a scintilla or a permissible inference." *Lackey v. Dept. of Human Resources*, 306 N.C. 231, 238, 293 S.E.2d 171, 177 (1982).

8. In weighing evidence which detracts from the agency decision, "[i]f, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand" *Little v. Bd. of Dental Examiners*, 64 N.C. App. 67, 69, 306 S.E.2d 534, 536 (1983)(citations omitted).

9. The State Board of Education voted at a specially called meeting on May 13, 2015 to revoke the charter of PACE Academy for violating the terms of the Settlement Agreement. The charter issued to PACE specifically stated in clear and unambiguous terms the procedure to be followed in the event termination became necessary.

10. The Respondent was required to make its final decision regarding revocation of the Petitioner's charter "at its next regularly scheduled meeting" unless the Petitioner and Respondent agreed otherwise. No evidence was presented regarding an agreement that the decision could be made at a specially called meeting.

11. While the Respondent failed to follow the procedure for termination of a charter as set forth in the charter agreement, no evidence was presented that the decision to hold a specially called meeting was made in bad faith, or the reason it the decision was not made at a regularly called meeting.

12. In addition, there was no evidence presented that Petitioner was prejudiced by the Respondent's decision being made at the specially called meeting, and any procedural violation that may have occurred given the evidence against the Petitioner was harmless.

13. Further, substantial evidence exists that Petitioner did not comply with the terms and conditions of the Settlement Agreement.

14. While the Petitioner complied with five of the seven requirements in the Settlement Agreement, PACE Academy did not "comply with all federal and state laws and regulations" relating to the Exceptional Children's program, or with state reporting requirements.

15. In addition, Petitioner's failure to maintain accurate student records and have them accessible for review violated the Settlement Agreement. Multiple site visits to the school revealed a pattern of negligent, inconsistent, and careless student accounting.

16. While many of the alleged financial concerns levied against Petitioner by Respondent were questionable, as stewards of taxpayer dollars, Respondent had a duty to address the root cause for concern. Petitioner was unable to provide adequate answers or reasoning for their inability to maintain accurate and verifiable records for their students.

17. Petitioner has failed to meet its burden that the Respondent acted in bad faith in its decision to revoke Petitioner's charter.

18. Petitioner correctly asserted that it had a property right in the charter issued by Respondent.

19. Individuals may not be deprived of life, liberty, or property without due process of law. The parties do not dispute the existence of a property right in the possession of a charter to operate a public charter school.

20. A deprivation of property must be "preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). The Court reiterated the requirement for prior notice and opportunity to be heard in *Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532 (1985) when it held that "some kind of a hearing" be provided prior to a property deprivation. *Id.* at 542.

21. However, central to the meaning of procedural due process is that parties are entitled to be heard and, in order that they may enjoy that right, they must be notified. *Parham v. Cortese*, 407 U.S. 67, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556. Reasonable notice and opportunity to be heard and present any claim or defense are embodied in the term "procedural due process." *In re Nelson*, 78 N.M. 739, 437 P.2d 1008.

22. Petitioner was notified in February, 2015, to appear before the CSAB at its March 9, 2015, meeting to answer questions about finances, Exceptional Children non-compliance, enrollment, and progress of the Settlement Agreement. The notice also instructed Petitioner to send any materials it wished the CSAB to review by February 26, 2015.

23. Petitioner submitted no materials but did appear at the March 9, 2015, CSAB meeting during which time it was asked questions and provided answers to those questions.

24. While the tone of the meeting may not have been favorable to the Petitioner, they did have the opportunity to respond to questions and present information to the CSAB. That information was not convincing to members of the CSAB.

25. Respondent discussed the recommendation from the CSAB to terminate Petitioner's charter at a public meeting held April 1-2, 2015, first at the Leadership for Innovation Committee, and then before the entire board.

26. Subsequently, upon Petitioner's request, a subcommittee convened on May 12, 2015, to hear presentations from both DPI and Petitioner.

27. Petitioner claims that Becky Taylor's participation on the subcommittee was a violation of due process is without merit.

28. "Whenever a government tribunal, be it a court of law or a school board, considers a case in which it may deprive a person of life, liberty or property, it is fundamental to the concept of due process that the deliberative body give that person's case fair and open-minded consideration. 'A fair trial in a fair tribunal is a basic requirement of due process.'" *Crump v. Bd. of Educ. of Hickory Admin. Sch. Unit*, 326 N.C. 603, 613-14, 392 S.E.2d 579, 584 (1990), quoting *In re Murchinson*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942, 946 (1955).

29. "An unbiased, impartial decision-maker is essential to due process." *Id.* at 585.

30. "It is fundamental that both unfairness and the appearance of unfairness should be avoided." *American Cyanamid Company v. F.T.C.*, 363 F.2d 757, 767 (6th Cir.1966); see *State v. Mettrick*, 305 N.C. 383, 385, 289 S.E.2d 354, 356 (1982)." *Id.* at 590.

31. Taylor heard evidence at the March 9, 2015 CSAB meeting and then voted to recommend that PACE Academy had materially breached the terms and conditions of the Settlement Agreement. Taylor subsequently heard evidence and made decisions regarding these same allegations at the April 1, 2015 Leadership for Innovation Committee and the April 2, 2015 State Board of Education meeting.

32. No evidence was presented that Taylor had made statements or allegations regarding Petitioner outside open and public meetings.

33. Taylor then chaired the May 12, 2015 meeting of the Review Panel and stated on the record that she could be fair and impartial in rendering her decision.

34. Petitioner's attorney requested that Taylor recuse herself from the proceedings, and that request was noted for the record.

35. In *Knight v. Higgs*, 189 N.C. App. 696 (2008), the Court of Appeals found that failure to properly consider a request to recuse a potentially biased member of a board carried the appearance of impropriety. Here, however, even though Taylor addressed the issue of bias prior to Petitioner's request, it was considered and addressed by the Review Panel on the record.

36. Taylor's participation in the specially-called May 13, 2015 meeting was not questioned by the Petitioner.

37. Respondent correctly asserts that this matter is similar to the employment law setting in *Cleveland Board of Education v. Loudermill et. al.*, 470 US 532 (1985). As stated in *Loudermill*, the pre-termination due process requirement depends in large part on whether there exists in state law an opportunity for a full and fair post-termination hearing. *Id.* at 546.

38. The pre-termination procedure Respondent followed were sufficient under state law, especially in light of the terms of the charter granted to Petitioner. The charter allowed for the Review Panel to render a recommendation without a hearing; here, Petitioner was given the opportunity to be heard before the panel and present information it contended supported their position.

39. In addition, under the terms of the Settlement Agreement, Petitioner had a meaningful opportunity to be heard before the Review Panel.

40. Petitioner, contrary to the terms of the Settlement Agreement, did not surrender its charter, but filed a petition with OAH. The undersigned makes no determination about the remedies available under the Settlement Agreement.

41. Over the course of a four-day hearing, Petitioner had a full hearing in which it presented evidence and cross-examined witnesses.

42. Petitioner's property interest was sufficiently protected by the pre-termination opportunity to respond, coupled with post-termination administrative procedures. *Owen v. UNC-G*, 121 N.C. App. 682, 686, 468 S.E. 2d 813,816 (1966).

43. Petitioner has produced insufficient evidence to prove that its right to due process has been denied.

44. Evidence showed that the Respondent collected information and evidence over the course of many months of work with the Petitioner. The decision finding a material breach of the Settlement Agreement and revoke Petitioner's charter was made after careful, open, and deliberate consideration of the facts.

45. While the Respondent failed to follow proper procedure, Petitioner presented insufficient evidence to meet its burden, and any such failure was harmless.

46. With regard to due process, Petitioner had adequate notice and the opportunity to be heard.

47. Petitioner has failed to meet its burden that Respondent exceeded its authority.

48. Petitioner has failed to meet its burden that Respondent acted erroneously.

49. Petitioner has failed to meet its burden that Respondent acted arbitrarily or capriciously.

50. Petitioner failed to overcome the presumption set forth by law that the State Board of Education's revocation of Petitioner's Charter was lawful and correct.

51. Petitioner has failed to carry the burden of proof assigned to it by law, and the Petitioner's claims should be denied.

Based upon the foregoing findings of fact and conclusions of law the the Petitioner's claims are denied.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' rule 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 13 day of August, 2015.



Philip E. Berger, Jr.
Administrative Law Judge