



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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January 17, 2019

Kathie Trotter, Rulemaking Coordinator
Commission for the Blind
Sent via email only: Kathie.trotter@dhhs.nc.gov

Re: 10A NCAC 63C .0203 and .0601

Dear Ms. Trotter:

At its meeting yesterday, the Rules Review Commission continued its objection to the above-captioned rules in accordance with G.S. 150B-21.12.

The Commission continued its objection to Rule .0601, Paragraphs (a)(8) ("business consultation"), and (a)(9) ("consultation to support operations"), because the indicated terms are unclear and ambiguous.

The Commission continued its objection to Rule .0203, Paragraph (d)(6), because it effectively incorporates the ambiguous terms in Rule .0601 that are identified above.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

/s/ Jason Thomas
Commission Counsel

Cc: Cynthia Speight (cynthia.speight@dhhs.nc.gov)

Administration	Rules Division	Judges and	Clerk's Office	Rules Review	Civil Rights
919/431-3000	919/431-3000	Assistants	919/431-3000	Commission	Division
fax: 919/431-3100	fax: 919/431-3104	919/431-3000	fax: 919/431-3100	919/431-3000	919/431-3036
		fax: 919/431-3100		fax: 919/431-3104	fax: 919/431-3103

1 10A NCAC 63C .0203 is adopted with changes as published in 32:22 NCAC 2392 as follows:

2
3 **10A NCAC 63C .0203 ~~SUSPEND: TERMINATE LICENSE:~~ SUSPENSION OR TERMINATION OF**
4 **LICENSE AND REMOVAL FROM BUSINESS ENTERPRISES FACILITY**

5 (a) The Division may suspend or terminate the license of an operator, after affording the operator an opportunity ~~for~~
6 ~~to appeal the decision as set forth in Section.0400. a full evidentiary hearing, when it finds that his facility is not being~~
7 ~~operated in accordance with the rules and regulations; with the terms and conditions of the agreement, contract, or~~
8 ~~permit between the Division and the sponsor of the building or site upon which the Business Enterprises facility is~~
9 ~~located; or with the terms of the contract between the operator and the Division relating to the particular assignment.~~

10 (b) ~~An operator may be warned prior to suspension or termination of a license, particularly in situations where lack~~
11 ~~of compliance is not determined by the Division to pose an immediate threat to the general public or to bring discredit~~
12 ~~or irreparable damage to the Business Enterprises Program.~~

13 (b) [The license of a licensee.] Licenses to licensees and operators shall be terminated if the [licensee's vision is
14 improved by conventional means to the point at which the licensee is not legally blind.] licensee or operator:

- 15 (1) no longer meets the definition of legally blind pursuant to Rule .0101 of this Subchapter;
- 16 (2) withdraws from the program upon his or her written notification to the Division;
- 17 (3) is convicted of a misdemeanor involving crimes of dishonesty or any felony;
- 18 (4) provides false information to the Division pertaining to eligibility requirements set forth pursuant
19 to Rule .0202 of this Subchapter;
- 20 (5) unlawfully possesses firearms or lethal weapons on the job;
- 21 (6) uses Business Enterprises equipment purchased with program funds or Business Enterprises facility
22 to operate another business; or
- 23 (7) if an operator's license is suspended 3 times within a consecutive 24-month period, regardless of
24 the reason for suspension.

25 ~~[(c) The license of an operator shall be terminated if the operator's vision is improved by conventional means to the~~
26 ~~point at which the operator is not legally blind.]~~

27 (c) Licenses to operators shall be suspended if the operator:

- 28 (1) fails to operate the Business Enterprises facility in accordance with the operator agreement for three
29 or more consecutive months;
- 30 (2) commits willful acts in the Business Enterprises facility or on the grounds of the facility to create a
31 potential threat to the facility's staff or customers;
- 32 (3) reports to a Business Enterprises facility under the influence of alcohol or any controlled substance
33 or partakes of such on the job; this shall not include unanticipated effects from the ingestion of
34 prescription medications taken in accordance with the directions of a doctor;
- 35 (4) fails to personally operate the awarded facility, as set forth in the operator agreement, unless prior
36 written approval to operate the facility in another manner has been obtained from the Division; this

- requirement shall not mandate the physical presence of the operator at the facility at all times of its operation:
- (5) fails three times during the calendar year to pay set-aside and liability fees and health insurance premiums and phone bills, if applicable, to the Controller's Office by the 15th day of the month following the month in which the business was transacted;
 - (6) fails to preserve financial and other records pertaining to the operation of the Business Enterprises facility as required by Rule .0601 (a)(8) of this Subchapter that may include vending cash sales deposit receipts, cash register tapes, bank and credit card statements, invoices and receipts for purchases and expenses, card reader weekly reports, and payroll records;
 - (7) fails to respond to requests made by an auditing authority conducting audits pursuant to State or federal law, as required by this Subchapter;
 - (8) fails to maintain liability and workers compensation insurance coverage as required by law and by Rule .0607 of this Subchapter;
 - (9) removes Business Enterprises equipment purchased with program funds from the facility without written authorization from the Division;
 - (10) fails to comply with federal or State law prohibiting discrimination in hiring and service to customers;
 - (11) fails to comply with federal or State tax laws for individuals who are self-employed; provided that this violation relates to the Business Enterprises facility and that suspension shall only occur if there has been a final adjudication of the violation by State and federal authorities; or
 - (12) fails to comply with the operator's responsibilities as required by Rule .0601 of this Subchapter.
- (e)(d) Licenses to operators may also be suspended or terminated for any of the following reasons:
- (1) — Vision improves so that the operator is no longer eligible for licensing;
 - (2)(1) Extended illness [extended illness, defined as lasting at least three months;] occurs with medically documented diagnosis of prolonged incapacity of the operator to manage the Business Enterprises facility in a manner consistent with the needs of the location or other available locations in the Business Enterprises Program;
 - (3) (2) Withdrawal [withdrawal of the operator from the program upon his written notification to the Division;]
 - (4) — Gross misconduct or conduct so reprehensible as to bring discredit to the program;
 - (5) (3) Conviction [conviction] of a felony (Class A through E); [misdemeanor involving crimes of dishonesty or any felony;]
 - (6) (4) Falsified [falsified] information pertaining to eligibility requirements;
 - (7) (5) Willful [willful] acts that would endanger the lives and property of others;
 - (8) (6) Possession of firearms or lethal weapons on the job; [site at a Business Enterprises facility;]
 - (9) (7) Reporting [reporting] to Business Enterprises assignment under the influence of alcohol or any controlled substance or partaking of such on the job.;

- 1 ~~[(8)] [failing to personally operate the awarded facility as set forth in the operator agreement and permit~~
2 ~~or contract with the host facility unless prior written approval to operate the facility in another~~
3 ~~manner has been obtained from the Division;]~~
4 ~~[(9)] [failing to pay fees to the Controller's Office by the 15th day of the month following the month in~~
5 ~~which the business was transacted three times during the calendar year;]~~
6 ~~[(10)] [failing to preserve required financial and other records with the Division as required by this~~
7 ~~Subchapter;]~~
8 ~~[(11)] [failing to cooperate with record keeping reviews conducted by the Division;]~~
9 ~~[(12)] [failing to cooperate with audits conducted by state or federal agencies;]~~
10 ~~[(13)] [failing to maintain bonding, liability and workers compensation insurance coverage as required by~~
11 ~~law or policy;]~~
12 ~~[(14)] [using Business Enterprises equipment and or facility to operate another business;]~~
13 ~~[(15)] [failing to maintain facility equipment in a sanitary and operable condition within the scope of the~~
14 ~~operator's level of maintenance authorization;]~~
15 ~~[(16)] [removing facility equipment without written authorization from the Division;]~~
16 ~~[(17)] [failing to comply with federal or state law prohibiting discrimination in hiring and service to~~
17 ~~customers; and]~~
18 ~~[(18)] [failing to comply with the operator's responsibilities in this Subchapter or the operator's~~
19 ~~agreement.]~~

20 (d) ~~Suspension may be used when an apparent action or lack of action by an operator is not serious enough in the~~
21 ~~opinion of the Division to warrant termination of the license. The length of the suspension shall vary with the~~
22 ~~seriousness of the situation, but shall not exceed a maximum of 60 days. Prior to the suspension of an operator's~~
23 ~~license, the Division shall provide the operator with a written corrective action plan. The Division and the operator~~
24 ~~shall both sign the corrective action plan. The corrective action plan shall include:~~

25 ~~(1) the specific paragraph in subsection (c) that the operator has violated, the specific provision contained in~~
26 ~~the operator's agreement that has been violated, or the specific provision otherwise contained in this~~
27 ~~Subchapter that has not been complied with;~~

28 ~~(2) the specific corrective actions that the operator must take to cure the violation identified in Paragraph~~
29 ~~(d)(1) of this Rule, including participation in training or receipt of technical assistance provided by the~~
30 ~~Division, if necessary.~~

31 ~~(3) the time frame in which the operator must cure the violation shall not exceed 90 days. The time frame in~~
32 ~~which to cure the violation may be extended if actions are being taken to resolve the violations pursuant to a~~
33 ~~written agreement between the operator and Division.~~

34 (e) ~~If an operator fails to complete the corrective action plan to cure the violation within the time set forth in the~~
35 ~~corrective action plan, or otherwise refuses to sign a corrective action plan, the Division shall suspend the license of~~
36 ~~the operator. The length of a suspension shall not exceed 60 days.~~

1 (f) During the time period in which an operator's license is suspended, the Division shall identify another operator to
2 assume responsibility for the locations of the suspended operator.

3
4 *History Note:* Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;
5 Eff. October 1, 1978;
6 Amended Eff. August 1, 2002; February 1, ~~1986~~ 1986;
7 Readopted Eff._____.

10A NCAC 63C .0601 is proposed for readoption with substantive changes as follows:

SECTION .0600 - RESPONSIBILITIES OF LICENSED OPERATORS

10A NCAC 63C .0601 GENERAL RESPONSIBILITIES

(a) ~~The~~ **A** Business Enterprises operator ~~must~~ shall:

- (1) ~~perform~~ faithfully and to the best of his ability the necessary **duties** in connection with ~~to~~ ensure the operation of the **a** Business Enterprises facility in accordance with the rules of the Commission for the ~~Blind~~ **Blind**, ~~and standards issued pursuant thereto and~~ the contractual agreement between the Division and the operator, and the terms and conditions of the permit or contract with the building or property on which the host ~~facility;~~ **facility including any amendments if provided to the operator;** ~~facility is located;~~ **this requirement shall not mandate the physical presence of the operator at the facility at all times of its operation;**
- (2) operate the facility in accordance with all applicable **public** health laws and Rules;
- (3) ~~assume such responsibilities as purchasing needed supplies and merchandise, pricing, merchandising the facility, and control of inventory; purchase merchandise, price goods for sale, purchase supplies for the~~ **facility;** ~~facility, rotate stock, and control inventory in the Business Enterprises~~ **facility;** ~~facility, as set forth in rule .0608 of this Subchapter;~~
- (4) ~~devote his full managerial attention to the responsibilities of operating the facility in accordance with the agreement between him and~~ **[with]** ~~the Division and in accordance with the Rules in this Subchapter. The operator is not required to be on site at all times; and~~
- (5) ~~maintain good~~ **[professional relationships with]** ~~customer~~ **[customers;]** ~~relations with his patrons and with the property managing officials at his work site.~~ **[the host facility and the Division;]**
- (6) ~~[maintain a neat, business-like appearance while working at the Business Enterprises facility, and shall conduct the facility in an orderly, business-like manner;]~~
- (7) ~~[must assure that the business to be carried on at the facility shall be limited to that specified and authorized in the operator agreement and permit or contract with the sponsor of the building or property where the facility is located. host facility;]~~
- (8) (4) ~~open and maintain a business~~ **bank** ~~account [in which funds are maintained to operate] for the management of funds derived from~~ **the Business Enterprises facility;**
- (9) (5) ~~submit an electronic profit and loss report (D-sheet) to the Division by the 15th of the month following the reporting~~ **[month;] month. Assistance shall be provided with the electronic submission of the report by the Business Enterprises Representative upon request from the operator;**
- (40) (6) ~~submit payment of all monthly~~ **[fees] fees, including set-aside and liability fees, health insurance premiums, and phone bill payments, if applicable,** ~~to the Controller's Office by the 15th of the month following the month in which the business was transacted;~~

1 ~~[(44)]~~ (7) keep all records supporting the monthly ~~revenue and expense~~ profit and loss report (D-sheet) for
2 three calendar ~~years;~~ years, as required by this Subchapter;

3 ~~[(42)]~~ (8) provide ~~[all]~~ records for the assigned facility to the Division upon request for ~~[the purpose of]~~
4 business ~~[consultation;]~~ consultation and for conducting audits and record keeping ~~[reviews;]~~
5 reviews as required by this Subchapter; that may include vending cash sales deposit receipts, cash
6 register tapes, monthly bank and credit card statements, invoices and receipts for purchases and
7 expenses, card reader weekly reports, and payroll records;

8 ~~[(43)]~~ (9) be available for all appointments with the Division staff members to allow inspection, ~~[advice,]~~
9 record ~~[reviews]~~ reviews, and consultation to support operations, at the convenience of both parties;

10 ~~[(44)]~~ (10) not subcontract management of the Business Enterprises facility except as approved in writing by
11 the ~~[Division,]~~ Division;

12 ~~[(45)]~~ (11) take ~~[appropriate]~~ actions to correct deficiencies noted on Business Enterprises facility audits or
13 reviews within 15 business ~~[days, and]~~ days after receiving notification of the deficiencies and a
14 description of the corrective actions to be taken unless an extension to this time frame has been
15 agreed to by the Division and operator in writing; and

16 ~~[(46)]~~ (12) notify the Division of ~~[any]~~ changes to the following no later than 10 business days after the
17 change occurs:

18 (A) ~~the~~ facility telephone number;

19 (B) ~~the~~ address to which Business Enterprises correspondence ~~[shall be]~~ is delivered; and

20 (C) emergency contact ~~[information]~~ information.

21 (b) The operator shall be accountable to the Division for the proceeds of the Business Enterprises ~~facility,~~ facility
22 and shall handle the ~~proceeds,~~ proceeds including payments to suppliers and deposits of funds, in accordance with
23 Division guidelines developed to facilitate the provision of management, accounting, and technical services to
24 operators, and in accordance with the U. S. Department of Education reporting requirements, as set forth in Section
25 .0700 of the Subchapter.

26 ~~(e) The operator shall maintain a neat, business-like appearance while working at the Business Enterprises facility,~~
27 ~~and shall conduct the facility in an orderly, business-like manner.~~

28 ~~(d) In accordance with Paragraph (b) of this Rule, any rebates, commissions, or bonuses received by the operator~~
29 ~~from supplier shall be considered as income or a refund of purchases and shall be accounted for accordingly.~~

30 ~~(e) The operator must assure that the business to be carried on at the facility shall be limited to that specified and~~
31 ~~authorized in the permit or contract with the sponsor of the building or property where the facility is located.~~

32
33 *History Note:* Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;

34 *Eff. February 1, 1976;*

35 *Readopted Eff. November 16, 1977;*

36 *Amended Eff. August 1, 2002; April 1, 1990; February 1, 1984; October 1, 1978; 1978;*

37 *Readopted Eff. _____.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0203 and .0601

RECOMMENDED ACTION:

X Approve, but determine that the Rules are substantially changed

Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT: The Rules Review Commission objected to these Rules during its September meeting. The Commission for the Blind has rewritten the Rules to meet the RRC's objections. Staff recommends that the Rules Review Commission approve the Rules and determine that they differ substantially from the proposed rules.

The Administrative Procedures Act (APA) describes the RRC's actions after an agency responds to the RRC's objection to a rule:

§ 150B-21.12. Procedure when Commission objects to a permanent rule.

(a) Action. – When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.

(2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

(b) Time Limit. – An agency that is not a board or commission must take one of the actions listed in subsection (a) of this section within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

(c) Changes. – When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection. The Commission must also determine whether the change is substantial. In making this determination, the Commission shall use the standards set forth in G.S. 150B-21.2(g). If the change is substantial, the revised rule shall be published and reviewed in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b).

(d) Return of Rule. – A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it must notify the Codifier of Rules of its action. If the rule that is returned would have increased or decreased expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule.

The Rules as they proposed by the Commission for the Blind stated:

from the ~~state committee of blind vendors~~. Elected Committee of Blind Vendors.

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.11; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.

SECTION .0200 - LICENSING AND PLACEMENT

10A NCAC 63C .0201 ISSUANCE OF LICENSES

The Division, through the Business Enterprises Program, shall license blind ~~persons~~ individuals who meet eligibility requirements for the Business Enterprises Program. The licensee shall signify acceptance of the licensing by placing their signature or mark on the agreement. This license shall be issued for an indefinite ~~period~~ period but subject to suspension or termination if, after affording the operator or licensee an opportunity for a full evidentiary hearing, the Division finds that the Business Enterprises facility is not being operated in accordance with its rules and regulations, the terms and conditions of the permit and the terms and conditions of the agreement with the operator. The licensee shall signify his acceptance of the licensing agreement by affixing his signature or mark thereon.

Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107.

SECTION .0200 - LICENSING AND PLACEMENT

10A NCAC 63C .0202 ELIGIBILITY FOR LICENSING

(a) The Division shall interview prospective licensees as referred by the vocational rehabilitation program and shall make written recommendations to the Chief of Business Enterprises concerning the potential of the referral commensurate with the specific job requirements of the Business Enterprises Program.

(b) ~~To be licensed;~~ considered for training and licensure, the consumer must:

- (1) ~~The consumer must~~ meet the definition of legally blind as outlined in ~~34 CFR 395.1;~~ 34 CFR 395.1(c) and G.S. 111-11;
- (2) ~~The consumer must~~ be at least ~~18~~ 21 years of age;
- (3) ~~The consumer must~~ be physically able to perform all the duties as further detailed in this Chapter;
- (4) ~~All consumers must~~ be evaluated for and demonstrate proficiency of skill in basic mobility, ~~activities of daily living,~~ mathematics, basic computer skills, verbal and written communications, reading comprehension and basic food service practices;
- (5) ~~The consumer must~~ be familiar with the rules and regulations for Business Enterprises ~~facility operators.~~ Program. The consumer must demonstrate the potential to successfully complete the Business Enterprises training program sponsored by the Division and must be certified by the Division as capable of operating a Business Enterprises facility;

- (6) ~~The consumer must~~ be a citizen of the United States; and ~~reside in North Carolina;~~
- (7) ~~The consumer must have no~~ not have previous conviction(s) of ~~any felony class A through E.~~ misdemeanors involving crimes of dishonesty or any felony; and
- (8) submit to and pass a drug and alcohol screening provided by the Division.

Authority G.S. 111-27; 34 C.F.R. 395; 20 U.S.C. sec. 107; 143B-157.

10A NCAC 63C .0203 ~~SUSPEND; TERMINATE;~~ LICENSE; SUSPENSION OR TERMINATION OF LICENSE AND REMOVAL FROM BUSINESS ENTERPRISES FACILITY

(a) The Division may suspend or terminate the license of an operator, after affording the operator an opportunity ~~for to appeal~~ the decision as set forth in Section.0400, ~~a full evidentiary hearing, when it finds that his facility is not being operated in accordance with the rules and regulations; with the terms and conditions of the agreement, contract, or permit between the Division and the sponsor of the building or site upon which the Business Enterprises facility is located; or with the terms of the contract between the operator and the Division relating to the particular assignment.~~

(b) ~~An operator may be warned prior to suspension or termination of a license, particularly in situations where lack of compliance is not determined by the Division to pose an immediate threat to the general public or to bring discredit or irreparable damage to the Business Enterprises Program.~~

(b) The license of a licensee shall be terminated if the licensee's vision is improved by conventional means to the point at which the licensee is not legally blind.

(c) The license of an operator shall be terminated if the operator's vision is improved by conventional means to the point at which the operator is not legally blind.

(e)(d) Licenses to operators may also be suspended or terminated for any of the following reasons:

- (1) ~~Vision improves so that the operator is no longer eligible for licensing;~~
- (2)(1) Extended illness ~~extended illness, defined as lasting at least three months, occurs with medically documented diagnosis of prolonged incapacity of the operator to manage the Business Enterprises facility in a manner consistent with the needs of the location or other available locations in the Business Enterprises Program;~~
- (3)(2) Withdrawal ~~withdrawal~~ of the operator from the program upon his written notification to the Division;
- (4) ~~Gross misconduct or conduct so reprehensible as to bring discredit to the program;~~
- (5)(3) Conviction ~~conviction~~ of a felony ~~(Class A through E); misdemeanor involving crimes of dishonesty or any felony;~~
- (6)(4) Falsified ~~falsified~~ information pertaining to eligibility requirements;

- ~~(7)(5)~~ Willful willful acts that would endanger the lives and property of others;
- ~~(8)(6)~~ Possession of firearms or lethal weapons on the job; site at a Business Enterprises facility;
- ~~(9)(7)~~ Reporting reporting to Business Enterprises assignment under the influence of alcohol or any controlled substance or partaking of such on the ~~job.~~ job;
- ~~(8)~~ failing to personally operate the awarded facility as set forth in the operator agreement and permit or contract with the host facility unless prior written approval to operate the facility in another manner has been obtained from the Division;
- ~~(9)~~ failing to pay fees to the Controller's Office by the 15th day of the month following the month in which the business was transacted three times during the calendar year;
- ~~(10)~~ failing to preserve required financial and other records with the Division as required by this Subchapter;
- ~~(11)~~ failing to cooperate with record keeping reviews conducted by the Division;
- ~~(12)~~ failing to cooperate with audits conducted by state or federal agencies;
- ~~(13)~~ failing to maintain bonding, liability and workers compensation insurance coverage as required by law or policy;
- ~~(14)~~ using Business Enterprises equipment and or facility to operate another business;
- ~~(15)~~ failing to maintain facility equipment in a sanitary and operable condition within the scope of the operator's level of maintenance authorization;
- ~~(16)~~ removing facility equipment without written authorization from the Division;
- ~~(17)~~ failing to comply with federal or state law prohibiting discrimination in hiring and service to customers; and
- ~~(18)~~ failing to comply with the operator's responsibilities in this Subchapter or the operator's agreement.

(d) Suspension may be used when an apparent action or lack of action by an operator is not serious enough in the opinion of the Division to warrant termination of the license. The length of the suspension shall vary with the seriousness of the situation, but shall not exceed a maximum of 60 days.

Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107.

10A NCAC 63C .0204 FILLING OF VACANCIES

- (a) The Division shall make available a listing of available Business Enterprises facilities to all licensees.
- (b) Licensees who wish to apply for any of the locations listed may forward an application to the office of the Chief of Business Enterprises.
- (c) Transfers and promotions shall be based on the following ~~procedures:~~ seniority and performance.

- ~~(1)~~ The Division shall send a notice of available facilities to all operators and licensees on the last 10 working day of the month. The notice shall provide a description of the vacancy and who to contact for more information.
- ~~(2)~~ All applications shall be post marked by the 10th of the month following the notice and mailed to the office of the Chief of Business Enterprises.
- ~~(3)~~ The Interview Committee shall interview all applicants on the second Friday of the month which follows the application deadline.
- ~~(4)~~ At least 10 working days prior to the interview, the Business Enterprises Counselor who works with the applicant shall calculate the applicant's points for sanitation, seniority, Financial Analysis/Operating Standards [Subparagraphs (d), (1), (2), (3) of this Rule] and inform the applicant of his point total. The applicant shall have five working days to review the point total and request any adjustments.
- ~~(5)~~ After adding together the points from the sanitation, seniority, Financial Analysis/Operating Standards, Customer Relations and Oral Exam/Interview Sections [Subparagraphs (d), (1), (2), (3), (4), (5), (6), (7) of this Rule] for each applicant, the applicant with the highest point total (if above 60 points) shall be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it shall be offered to the next highest applicant (if above 60 points) and so on. In the case of an exact tie, the applicant with the most time in the Business Enterprises Program shall be awarded the location.
- ~~(6)~~ Applicants shall be notified as soon as possible after their interview whether or not they have been awarded a location. This notification shall be by telephone and followed up in writing.
- ~~(7)~~ Upon being awarded a location, the applicant shall have 30 days to fill the vacancy. The Division shall agree to a different time frame if adhering to the 30 day time frame would cause a hardship to the applicant awarded the facility. The location shall not be filled for 15 working days following the award to allow time for administrative appeals to be filed. If an appeal is filed, the location shall not be filled until the appeal is resolved. If there is only one applicant for a location, the 15 day waiting period shall not apply.
- ~~(8)~~ If an applicant is awarded a facility and has not had an Operator Agreement with the Agency in the last two years, and the applicant did not meet his financial analysis and operating standards for the last 12 months that his agreement was in effect, the applicant shall repeat the necessary on the job training. The Interview Committee may also recommend

SECTION .0600 - RESPONSIBILITIES OF LICENSED OPERATORS

10A NCAC 63C .0601 GENERAL RESPONSIBILITIES

(a) The Business Enterprises operator ~~must~~ shall:

- (1) ~~perform faithfully and to the best of his ability the necessary duties in connection with to ensure the operation of the Business Enterprises facility in accordance with the rules of the Commission for the Blind and standards issued pursuant thereto and the contractual agreement between the Division and the operator, and the terms and conditions of the permit or contract with the building or property on which the host facility facility is located;~~
- (2) operate the facility in accordance with all applicable health laws and Rules;
- (3) ~~assume such responsibilities as purchasing needed supplies and merchandise, pricing, merchandising the facility, and control of inventory; purchase merchandise, price goods for sale, purchase supplies for the facility and control inventory in the Business Enterprises facility;~~
- (4) devote his full managerial attention to the responsibilities of operating the facility in accordance with the agreement ~~between him and with~~ the Division and in accordance with the Rules in this Subchapter. The operator is not required to be on site at all times; and
- (5) maintain good professional relationships with ~~customer customers, relations with his patrons and with the property managing officials at his work site. the host facility and the Division;~~
- (6) maintain a neat, business-like appearance while working at the Business Enterprises facility, and shall conduct the facility in an orderly, business-like manner;
- (7) must assure that the business to be carried on at the facility shall be limited to that specified and authorized in the operator agreement and permit or contract with the sponsor of the building or property where the facility is located. host facility;
- (8) open a business account in which funds are maintained to operate the Business Enterprises facility;
- (9) submit an electronic profit and loss report (D-sheet) to the Division by the 15th of the month following the reporting month;
- (10) submit payment of all monthly fees to the Controller's Office by the 15th of the month following the month in which the business was transacted;
- (11) keep all records supporting the monthly revenue and expense report (D-sheet) for three calendar years;
- (12) provide all records for the assigned facility to the Division upon request for the purpose of

business consultation, and for conducting audits and record keeping reviews;

(13) be available for all appointments with the Division staff members to allow inspection, advice, record reviews and consultation to support operations, at the convenience of both parties;

(14) not subcontract management of the Business Enterprises facility except as approved in writing by the Division.

(15) take appropriate actions to correct deficiencies noted on Business Enterprises facility audits or reviews within 15 business days, and

(16) notify the Division of any changes to the following no later than 10 business days after the change occurs:

(A) facility telephone number;

(B) address to which Business Enterprises correspondence shall be delivered;

(C) emergency contact information.

(b) The operator shall be accountable to the Division for the proceeds of the Business Enterprises facility, and shall handle the proceeds, including payments to suppliers and deposits of funds, in accordance with Division guidelines developed to facilitate the provision of management, accounting, and technical services to operators, and in accordance with the U. S. Department of Education reporting requirements.

~~(c) The operator shall maintain a neat, business-like appearance while working at the Business Enterprises facility, and shall conduct the facility in an orderly, business-like manner.~~

~~(d) In accordance with Paragraph (b) of this Rule, any rebates, commissions, or bonuses received by the operator from supplier shall be considered as income or a refund of purchases and shall be accounted for accordingly.~~

~~(e) The operator must assure that the business to be carried on at the facility shall be limited to that specified and authorized in the permit or contract with the sponsor of the building or property where the facility is located.~~

Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107.

10A NCAC 63C .0603 SECURITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 63C .0604 REPORTS

Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107.

SECTION .0700 - EARNINGS: FUNDS: AND PROCEEDS

10A NCAC 63C .0701 MINIMUM FAIR RETURN AND DEFINITIONS

Authority G.S. 111-27; 34 C.F.R. 395.8; 34 C.F.R. 395.9; 20 U.S.C. sec. 107.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0203

DEADLINE FOR RECEIPT: Friday, January 11, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 15 – replace “under” with “pursuant to”

Line 18 – replace “under” with “pursuant to”

Line 21 – delete “and”

Line 21 – add “a Business Enterprises” before “facility”

Line 22 – replace “and” with “or”

Line 23 – do not capitalize “if”

Line 33 – replace “does” with “shall”

Line 35 – add a comma after “agreement”

Line 36 – replace “the” with “this”

Page 2, line 1 – replace “does” with “shall”

Page 2, line 7 – replace “section” with “Rule”

Page 2, line 7 – replace “that may include” with “, including”

Page 2, line 9 – add a comma after “reports”

Page 2, line 11 – add a comma after “law”

Page 2, lines 12-13 – delete “as required”

Page 2, line 13 – replace “section” with “Rule”

Jason Thomas
Commission Counsel
Date submitted to agency: Monday, December 31, 2018

Page 2, line 14 – replace “purchases” with “purchased”

Page 2, line 18 – replace “the” with “provided that this”

Page 2, line 19 – replace “must relate” with “relates”

Page 2, line 19 – add “that” before “suspension”

Page 2, line 19 – replace “can only occur” with “shall occur only”

Page 2, line 20 – capitalize “State” if North Carolina is meant

Page 2, line 20 – replace “and” with “or”

Page 3, lines 25, 28, and 30 – do not capitalize “the”

Page 3, line 28 – replace “(d)(1)” with “Paragraph (d)(1) of this Rule”

Page 3, line 31 – replace “under” with “pursuant to a”

Page 3, line 34 – delete the comma after “plan”

Page 3, line 36 – replace “will” with “shall”

Page 3, line 37 – replace “location(s)” with “locations”

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

Jason Thomas
Commission Counsel
Date submitted to agency: Monday, December 31, 2018

1 10A NCAC 63C .0203 is adopted with changes as published in 32:22 NCAC 2392 as follows:

2
3 **10A NCAC 63C .0203 ~~SUSPEND: TERMINATE LICENSE:~~ SUSPENSION OR TERMINATION OF**
4 **LICENSE AND REMOVAL FROM BUSINESS ENTERPRISES FACILITY**

5 (a) The Division may suspend or terminate the license of an operator, after affording the operator an opportunity ~~for~~
6 ~~to appeal the decision as set forth in Section.0400. a full evidentiary hearing, when it finds that his facility is not being~~
7 ~~operated in accordance with the rules and regulations; with the terms and conditions of the agreement, contract, or~~
8 ~~permit between the Division and the sponsor of the building or site upon which the Business Enterprises facility is~~
9 ~~located; or with the terms of the contract between the operator and the Division relating to the particular assignment.~~

10 (b) ~~An operator may be warned prior to suspension or termination of a license, particularly in situations where lack~~
11 ~~of compliance is not determined by the Division to pose an immediate threat to the general public or to bring discredit~~
12 ~~or irreparable damage to the Business Enterprises Program.~~

13 (b) [The license of a licensee.] Licenses to licensees and operators shall be terminated if the [licensee's vision is
14 improved by conventional means to the point at which the licensee is not legally blind.] licensee or operator:

- 15 (1) no longer meets the definition of legally blind under section .0101 of this Subchapter;
- 16 (2) withdraws from the program upon his or her written notification to the Division;
- 17 (3) is convicted of a misdemeanor involving crimes of dishonesty or any felony;
- 18 (4) provides false information to the Division pertaining to eligibility requirements set forth under
19 section .0202 of this Subchapter;
- 20 (5) unlawfully possesses firearms or lethal weapons on the job;
- 21 (6) uses Business Enterprises equipment purchased with program funds and or facility to operate
22 another business; and
- 23 (7) If an operator's license is suspended 3 times within a consecutive 24-month period, regardless of
24 the reason for suspension.

25 ~~[(c) The license of an operator shall be terminated if the operator's vision is improved by conventional means to the~~
26 ~~point at which the operator is not legally blind.]~~

27 (c) Licenses to operators shall be suspended if the operator:

- 28 (1) fails to operate the Business Enterprises facility in accordance with the operator agreement for three
29 or more consecutive months;
- 30 (2) commits willful acts in the Business Enterprises facility or on the grounds of the facility to create a
31 potential threat to the facility's staff or customers;
- 32 (3) reports to a Business Enterprises facility under the influence of alcohol or any controlled substance
33 or partakes of such on the job; this does not include unanticipated effects from the ingestion of
34 prescription medications taken in accordance with the directions of a doctor;
- 35 (4) fails to personally operate the awarded facility, as set forth in the operator agreement unless prior
36 written approval to operate the facility in another manner has been obtained from the Division; the

- requirement does not mandate the physical presence of the operator at the facility at all times of its operation;
- (5) fails three times during the calendar year to pay set-aside and liability fees and health insurance premiums and phone bills, if applicable, to the Controller's Office by the 15th day of the month following the month in which the business was transacted;
 - (6) fails to preserve financial and other records pertaining to the operation of the Business Enterprises facility as required by section .0601 (a)(8) of this Subchapter that may include vending cash sales deposit receipts, cash register tapes, bank and credit card statements, invoices and receipts for purchases and expenses, card reader weekly reports and payroll records;
 - (7) fails to respond to requests made by an auditing authority conducting audits pursuant to State or federal law as required by this Subchapter;
 - (8) fails to maintain liability and workers compensation insurance coverage as required by law and as required by section .0607 of this Subchapter;
 - (9) removes Business Enterprises equipment purchases with program funds from the facility without written authorization from the Division;
 - (10) fails to comply with federal or State law prohibiting discrimination in hiring and service to customers;
 - (11) fails to comply with federal or State tax laws for individuals who are self-employed; the violation must relate to the Business Enterprises facility and suspension can only occur if there has been a final adjudication of the violation by state and federal authorities; and
 - (12) fails to comply with the operator's responsibilities as required by section .0601 of this Subchapter.
- (e)(d) Licenses to operators may also be suspended or terminated for any of the following reasons:
- (1) — Vision improves so that the operator is no longer eligible for licensing;
 - (2)(1) Extended illness [extended illness, defined as lasting at least three months;] occurs with medically documented diagnosis of prolonged incapacity of the operator to manage the Business Enterprises facility in a manner consistent with the needs of the location or other available locations in the Business Enterprises Program;
 - (3) (2) Withdrawal [withdrawal of the operator from the program upon his written notification to the Division;]
 - (4) — Gross misconduct or conduct so reprehensible as to bring discredit to the program;
 - (5) (3) Conviction [conviction] of a felony (Class A through E); [misdemeanor involving crimes of dishonesty or any felony;]
 - (6) (4) Falsified [falsified] information pertaining to eligibility requirements;
 - (7) (5) Willful [willful] acts that would endanger the lives and property of others;
 - (8) (6) Possession of firearms or lethal weapons on the job; [site at a Business Enterprises facility;]
 - (9) (7) Reporting [reporting] to Business Enterprises assignment under the influence of alcohol or any controlled substance or partaking of such on the job;.

- 1 ~~[(8)] [failing to personally operate the awarded facility as set forth in the operator agreement and permit~~
2 ~~or contract with the host facility unless prior written approval to operate the facility in another~~
3 ~~manner has been obtained from the Division;]~~
4 ~~[(9)] [failing to pay fees to the Controller's Office by the 15th day of the month following the month in~~
5 ~~which the business was transacted three times during the calendar year;]~~
6 ~~[(10)] [failing to preserve required financial and other records with the Division as required by this~~
7 ~~Subchapter;]~~
8 ~~[(11)] [failing to cooperate with record keeping reviews conducted by the Division;]~~
9 ~~[(12)] [failing to cooperate with audits conducted by state or federal agencies;]~~
10 ~~[(13)] [failing to maintain bonding, liability and workers compensation insurance coverage as required by~~
11 ~~law or policy;]~~
12 ~~[(14)] [using Business Enterprises equipment and or facility to operate another business;]~~
13 ~~[(15)] [failing to maintain facility equipment in a sanitary and operable condition within the scope of the~~
14 ~~operator's level of maintenance authorization;]~~
15 ~~[(16)] [removing facility equipment without written authorization from the Division;]~~
16 ~~[(17)] [failing to comply with federal or state law prohibiting discrimination in hiring and service to~~
17 ~~customers; and]~~
18 ~~[(18)] [failing to comply with the operator's responsibilities in this Subchapter or the operator's~~
19 ~~agreement.]~~

20 (d) Suspension may be used when an apparent action or lack of action by an operator is not serious enough in the
21 opinion of the Division to warrant termination of the license. The length of the suspension shall vary with the
22 seriousness of the situation, but shall not exceed a maximum of 60 days. Prior to the suspension of an operator's
23 license, the Division shall provide the operator with a written corrective action plan. The Division and the operator
24 shall both sign the corrective action plan. The corrective action plan shall include:

25 (1) The specific paragraph in subsection (c) that the operator has violated, the specific provision contained
26 in the operator's agreement that has been violated, or the specific provision otherwise contained in this
27 Subchapter that has not been complied with;

28 (2) The specific corrective actions that the operator must take to cure the violation identified in (d)(1),
29 including participation in training or receipt of technical assistance provided by the Division, if necessary.

30 (3) The time frame in which the operator must cure the violation shall not exceed 90 days. The time frame
31 in which to cure the violation may be extended if actions are being taken to resolve the violations upon written
32 agreement between the operator and Division.

33 (e) If an operator fails to complete the corrective action plan to cure the violation within the time set forth in the
34 corrective action plan, or otherwise refuses to sign a corrective action plan, the Division shall suspend the license of
35 the operator. The length of a suspension shall not exceed 60 days.

36 (f) During the time period in which an operator's license is suspended, the Division will identify another operator to
37 assume responsibility for the location(s) of the suspended operator.

1 *History Note:* *Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;*
2 *Eff. October 1, 1978;*
3 *Amended Eff. August 1, 2002; February 1, ~~1986~~ 1986;*
4 *Readopted Eff._____.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0601

DEADLINE FOR RECEIPT: Friday, January 11, 2019

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 9 – add a comma after “Blind”

Line 9 – delete “and”

Line 11 – delete the comma

Line 12 – replace “the” with “this”

Line 12 – replace “does” with “shall”

Line 18 – add a comma after “facility”

Line 32 – replace “will” with “shall”

Line 34 – add a comma after “fees”

Page 2, line 2 – add a comma after “years”

Page 2, line 4 – delete the comma

Page 2, line 5 – replace “Subchapter; that may include” with “Subchapter, including”

Page 2, line 7 – add a comma after “reports”

Page 2, line 9 – add a comma after “reviews”

Page 2, line 11 – replace the period with a semicolon

Page 2, line 16 – delete “any”

Page 2, line 19 – replace “shall be” with “is”

Jason Thomas
Commission Counsel
Date submitted to agency: Monday, December 31, 2018

*Page 2, line 20 – end this line with a period and show it as follows: “~~information~~
information.”*

Page 2, line 21 – delete the comma

Page 2, line 22 – show this deleted comma as follows: “~~proceeds,~~ proceeds”

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

Jason Thomas
Commission Counsel
Date submitted to agency: Monday, December 31, 2018

10A NCAC 63C .0601 is proposed for readoption with substantive changes as follows:

SECTION .0600 - RESPONSIBILITIES OF LICENSED OPERATORS

10A NCAC 63C .0601 GENERAL RESPONSIBILITIES

(a) ~~The~~ **A** Business Enterprises operator ~~must~~ shall:

- (1) ~~perform~~ faithfully and to the best of his ability the necessary **duties** in connection with ~~to~~ ensure the operation of the **a** Business Enterprises facility in accordance with the rules of the Commission for the Blind ~~and standards issued pursuant thereto~~ and the contractual agreement between the Division and the operator, and the terms and conditions of the permit or contract with the ~~building~~ or property on which the ~~host facility~~, **including any amendments if provided to the operator**; facility is located; **the requirement does not mandate the physical presence of the operator at the facility at all times of its operation;**
- (2) operate the facility in accordance with all applicable **public** health laws and Rules;
- (3) ~~assume such responsibilities as purchasing needed supplies and merchandise, pricing, merchandising the facility, and control of inventory; purchase merchandise, price goods for sale, purchase supplies for the [facility]~~ **facility, rotate stock, and control inventory in the Business Enterprises [facility]; facility as set forth in rule .0608 of this Subchapter;**
- (4) ~~devote his full managerial attention to the responsibilities of operating the facility in accordance with the agreement between him and [with] the Division and in accordance with the Rules in this Subchapter. The operator is not required to be on site at all times; and~~
- (5) ~~maintain good [professional relationships with] customer [customers,] relations with his patrons and with the property managing officials at his work site. [the host facility and the Division;]~~
- ~~[(6)]~~ **[maintain a neat, business-like appearance while working at the Business Enterprises facility, and shall conduct the facility in an orderly, business-like manner;]**
- ~~[(7)]~~ **[must assure that the business to be carried on at the facility shall be limited to that specified and authorized in the operator agreement and permit or contract with the sponsor of the building or property where the facility is located. host facility;]**
- ~~[(8)]~~ (4) ~~open and maintain a business bank account [in which funds are maintained to operate] for the management of funds derived from the Business Enterprises facility;~~
- ~~[(9)]~~ (5) ~~submit an electronic profit and loss report (D-sheet) to the Division by the 15th of the month following the reporting [month;] month. Assistance will be provided with the electronic submission of the report by the Business Enterprises Representative upon request from the operator;~~
- ~~[(40)]~~ (6) ~~submit payment of all monthly fees including set-aside and liability fees, health insurance premiums, and phone bill payments, if applicable, to the Controller's Office by the 15th of the month following the month in which the business was transacted;~~

1 ~~[(44)]~~ (7) keep all records supporting the monthly ~~revenue and expense~~ profit and loss report (D-sheet) for
2 three calendar ~~years;~~ years as required by this Subchapter;

3 ~~[(42)]~~ (8) provide ~~[all]~~ records for the assigned facility to the Division upon request for ~~[the purpose of]~~
4 business consultation, and for conducting audits and record keeping ~~[reviews;]~~ reviews as required
5 by this Subchapter; that may include vending cash sales deposit receipts, cash register tapes,
6 monthly bank and credit card statements, invoices and receipts for purchases and expenses, card
7 reader weekly reports and payroll records;

8 ~~[(43)]~~ (9) be available for all appointments with the Division staff members to allow inspection, ~~[advice,]~~
9 record reviews and consultation to support operations, at the convenience of both parties;

10 ~~[(44)]~~ (10) not subcontract management of the Business Enterprises facility except as approved in writing by
11 the Division.

12 ~~[(45)]~~ (11) take ~~[appropriate]~~ actions to correct deficiencies noted on Business Enterprises facility audits or
13 reviews within 15 business ~~[days, and]~~ days after receiving notification of the deficiencies and a
14 description of the corrective actions to be taken unless an extension to this time frame has been
15 agreed to by the Division and operator in writing; and

16 ~~[(46)]~~ (12) notify the Division of any changes to the following no later than 10 business days after the change
17 occurs:

18 (A) ~~the~~ facility telephone number;

19 (B) ~~the~~ address to which Business Enterprises correspondence shall be delivered; and

20 (C) emergency contact information

21 (b) The operator shall be accountable to the Division for the proceeds of the Business Enterprises facility, and shall
22 handle the proceeds, ~~including payments to suppliers and deposits of funds, in accordance with~~ Division guidelines
23 developed to facilitate the provision of management, accounting, and technical services to operators, and in accordance
24 with the U. S. Department of Education reporting requirements, as set forth in Section .0700 of the Subchapter.

25 ~~(c) The operator shall maintain a neat, business-like appearance while working at the Business Enterprises facility,~~
26 ~~and shall conduct the facility in an orderly, business-like manner.~~

27 ~~(d) In accordance with Paragraph (b) of this Rule, any rebates, commissions, or bonuses received by the operator~~
28 ~~from supplier shall be considered as income or a refund of purchases and shall be accounted for accordingly.~~

29 ~~(e) The operator must assure that the business to be carried on at the facility shall be limited to that specified and~~
30 ~~authorized in the permit or contract with the sponsor of the building or property where the facility is located.~~

31
32 History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;

33 Eff. February 1, 1976;

34 Readopted Eff. November 16, 1977;

35 Amended Eff. August 1, 2002; April 1, 1990; February 1, 1984; October 1, 1978; 1978;

36 Readopted Eff. _____.



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

September 21, 2018

Kathie Trotter, Rulemaking Coordinator
Commission for the Blind
Sent via email only: Kathie.trotter@dhhs.nc.gov

Re: 10A NCAC 63C .0203, .0204, .0403, and .0601.

Dear Ms. Trotter:

At its meeting yesterday, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule .0203, Paragraph (d)(6), because it lacks statutory authority to require an operator to provide a copy of his or her concealed weapons permit. The Commission also objected to Paragraphs (b) and (c) (“conventional means”), (d)(1) (“may be suspended or terminated”), (d)(4) (“information”), and (d)(11) and (d)(12) (“failing to cooperate”) because the indicated terms are unclear and ambiguous.

The Commission objected to Rule .0204 because the rule as submitted for review by the Commission differs substantially from the rule proposed in the North Carolina Register, in violation of G.S. 150B-21.2(g). The Commission also objected to Rule .0204, Paragraphs (c) (criteria for evaluating “adjustments”) and (d)(7) (tie breaking procedures), because the indicated terms or procedures are unclear and ambiguous.

The Commission objected to Rule .0403 because the rule as submitted for review by the Commission differs substantially from the rule proposed in the North Carolina Register, in violation of G.S. 150B-21.2(g).

The Commission objected to Rule .0601, Paragraphs (a)(4) (“full managerial attention”), (a)(5) (“maintain professional relationships”), (a)(6) (“neat, business-like appearance” and “orderly, business-like manner”), (a)(8) (“in which are maintained to operate”), (a)(12)

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk’s Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

("business consultation"), (a)(13) ("consultation to support operations"), and (a)(15) ("appropriate actions"), because the indicated terms are unclear and ambiguous.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

/s/ Jason Thomas
Commission Counsel

Cc: Cynthia Speight (cynthia.speight@dhhs.nc.gov)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0203

DEADLINE FOR RECEIPT: Friday, September 14, 2018

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 5 – delete the comma

Lines 14 and 16 – replace “at which” with “that”

Line 17 – do you mean “may” or “shall”? If “may,” what standards, factors, or circumstances determine whether or not a license may be suspended or terminated?

Line 17 – replace “for any of the following reasons” with “if the operator”

Line 19 – revise this line as follows: “has an illness that lasts at least three months, with a medically”

Line 23 – replace “withdrawal of the operator” with “withdraws”

Line 26 – replace “conviction” with “is convicted”

Line 27 – add “of” before “felony”

Line 29 – add “commits” before “willful”

Line 30 – replace “Possession of” with “possesses”

Line 34 – replace “reporting to Business” with “reports to a business”

Line 35 – replace “partaking” with “partakes”

Page 2, lines 1, 4, 8, 10, 12, 15, 18, and 20 – replace “failing” with “fails”

Page 2, lines 1 and 2 – add a comma after “facility”

Page 2, lines 4-5 – move “three times during the calendar year” to after “fails” on line 4

Jason Thomas
Commission Counsel
Date submitted to agency: Tuesday, September 4, 2018

Page 2, lines 10 and 18 – capitalize “State”

Page 2, line 12 – add a comma after “liability”

Page 2, line 14 – replace “using” with “uses”

Page 2, line 15 – add “business enterprises” before “facility”

Page 2, line 20 – replace “in” with “required by”

Page 2, lines 21-22 – delete “in the opinion of the Division”

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

Jason Thomas
Commission Counsel
Date submitted to agency: Tuesday, September 4, 2018

10A NCAC 63C .0203 is readopted with changes as published in 32:22 NCR 2392 as follows:

**10A NCAC 63C .0203 ~~SUSPEND; TERMINATE LICENSE;~~ SUSPENSION OR TERMINATION OF
LICENSE AND REMOVAL FROM BUSINESS ENTERPRISES FACILITY**

(a) The Division may suspend or terminate the license of an operator, after affording the operator an opportunity ~~for~~ to appeal the decision as set forth in Section.0400. a full evidentiary hearing, when it finds that his facility is not being operated in accordance with the rules and regulations; with the terms and conditions of the agreement, contract, or permit between the Division and the sponsor of the building or site upon which the Business Enterprises facility is located; or with the terms of the contract between the operator and the Division relating to the particular assignment.

~~(b) An operator may be warned prior to suspension or termination of a license, particularly in situations where lack of compliance is not determined by the Division to pose an immediate threat to the general public or to bring discredit or irreparable damage to the Business Enterprises Program.~~

(b) The license of a licensee shall be terminated if the licensee's vision is improved by conventional means to the point at which the licensee is not legally blind.

(c) The license of an operator shall be terminated if the operator's vision is improved by conventional means to the point at which the operator is not legally blind.

~~(e)~~(d) Licenses to operators may also be suspended or terminated for any of the following reasons:

~~(1) — Vision improves so that the operator is no longer eligible for licensing;~~

~~(2)~~(1) ~~Extended illness~~ extended illness, defined as lasting at least three months, occurs with medically documented diagnosis of prolonged incapacity of the operator to manage the Business Enterprises facility in a manner consistent with the needs of the location or other available locations in the Business Enterprises Program;

~~(3)~~(2) ~~Withdrawal~~ withdrawal of the operator from the program upon his written notification to the Division;

~~(4) — Gross misconduct or conduct so reprehensible as to bring discredit to the program;~~

~~(5)~~(3) ~~Conviction~~ conviction of a ~~felony (Class A through E); misdemeanor involving crimes of dishonesty or any felony;~~

~~(6)~~(4) ~~Falsified~~ falsified information pertaining to eligibility requirements;

~~(7)~~(5) ~~Willful~~ willful acts that would endanger the lives and property of others;

~~(8)~~(6) Possession of firearms or lethal weapons ~~on the job; site at a Business Enterprises facility unless otherwise allowed by law. Operators and licensees who choose to carry concealed weapons as allowed by law on site at a Business Enterprises facility shall provide the Division with a copy of their concealed weapons permit;~~

~~(9)~~(7) ~~Reporting~~ reporting to Business Enterprises assignment under the influence of alcohol or any controlled substance or partaking of such on the job;

- (8) failing to personally operate the awarded facility as set forth in the operator agreement and permit or contract with the host facility unless prior written approval to operate the facility in another manner has been obtained from the Division;
- (9) failing to pay fees to the Controller's Office by the 15th day of the month following the month in which the business was transacted three times during the calendar year;
- (10) failing to preserve required financial and other records with the Division as required by this Subchapter;
- (11) failing to cooperate with record keeping reviews conducted by the Division as required by this Subchapter;
- (12) failing to cooperate with audits conducted by state or federal agencies as required by this Subchapter;
- (13) failing to maintain bonding, liability and workers compensation insurance coverage as required by law or policy;
- (14) using Business Enterprises equipment and or facility to operate another business;
- (15) failing to maintain facility equipment in a sanitary and operable condition within the scope of the operator's level of maintenance authorization;
- (16) removing facility equipment without written authorization from the Division;
- (17) failing to comply with federal or state law prohibiting discrimination in hiring and service to customers; and
- (18) failing to comply with the operator's responsibilities in this Subchapter or the operator's agreement.
- (d) Suspension may be used when an apparent action or lack of action by an operator is not serious enough in the opinion of the Division to warrant termination of the license. The length of the suspension shall vary with the seriousness of the situation, but shall not exceed a maximum of 60 days.

History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;
Eff. October 1, 1978;
Amended Eff. August 1, 2002; February 1, 1986; 1986;
Readopted Eff. _____.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for the Blind

RULE CITATION: 10A NCAC 63C .0601

DEADLINE FOR RECEIPT: Friday, September 14, 2018

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

Line 6 – replace “The” with “A”

Line 7 – delete “perform to”

Line 8 – replace “the business” with “a business”

Line 9 – add a comma after “Blind”

Line 9 – delete “and standards issues pursuant thereto and”

Line 12 – do not capitalize “Rules”

Lines 15 and 20 – add a comma after “facility”

Line 18 – replace “is not” with “shall not be”

Line 21 – delete the comma after “facility”

Line 22 – delete “shall”

Line 23 – delete “must”

Lines 24-25 – delete “sponsor of the building or property where the facility is located.”

Line 28 – replace “month; assistance can be” with “month. Assistance shall be”

Line 33 – add a comma after “years”

Line 35 – delete the comma after “consultation”

Jason Thomas
Commission Counsel
Date submitted to agency: Tuesday, September 4, 2018

Lines 35 and 37 – add a comma after “reviews”

Page 2, line 2 – replace the period with a semicolon

Page 2, line 4 – within 15 days after what?

Page 2, line 4 – replace the comma with a semicolon

Page 2, lines 7 and 8 – begin these lines with “the”

Page 2, line 8 – add “and” after the semicolon

Page 2, line 10 – delete the comma

Page 2, lines 11-12 – delete “in accordance with Division guidelines developed to facilitate the provision of management, accounting, and technical services to operators, and”

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

Jason Thomas
Commission Counsel
Date submitted to agency: Tuesday, September 4, 2018

1 10A NCAC 63C .0601 is readopted with changes as published in 32:22 NCR 2392 as follows:

2
3 **SECTION .0600 - RESPONSIBILITIES OF LICENSED OPERATORS**
4

5 **10A NCAC 63C .0601 GENERAL RESPONSIBILITIES**

6 (a) The Business Enterprises operator ~~must~~ shall:

- 7 (1) ~~perform faithfully and to the best of his ability the necessary duties in connection with to ensure the~~
8 ~~operation of the Business Enterprises facility in accordance with the rules of the Commission for~~
9 ~~the Blind~~ and standards issued pursuant thereto and the contractual agreement between the Division
10 and the operator, and the terms and conditions of the permit or contract with the building or property
11 on which the host facility facility is located;
- 12 (2) operate the facility in accordance with all applicable health laws and Rules;
- 13 (3) ~~assume such responsibilities as purchasing needed supplies and merchandise, pricing,~~
14 ~~merchandising the facility, and control of inventory;~~ purchase merchandise, price goods for sale,
15 purchase supplies for the facility and control inventory in the Business Enterprises facility;
- 16 (4) ~~devote his~~ full managerial attention to the responsibilities of operating the facility in accordance
17 with the agreement between him and with the Division and in accordance with the Rules in this
18 Subchapter. The operator is not required to be on site at all times; and
- 19 (5) ~~maintain good professional relationships with customer customers, relations with his patrons and~~
20 ~~with the property managing officials at his work site. the host facility and the Division;~~
- 21 (6) maintain a neat, business-like appearance while working at the Business Enterprises facility, and
22 shall conduct the facility in an orderly, business-like manner;
- 23 (7) must assure that the business to be carried on at the facility shall be limited to that specified and
24 authorized in the operator agreement and permit or contract with the sponsor of the building or
25 property where the facility is located. host facility;
- 26 (8) open a business account in which funds are maintained to operate the Business Enterprises facility;
- 27 (9) submit an electronic profit and loss report (D-sheet) to the Division by the 15th of the month
28 following the reporting month; assistance can be provided with the electronic submission of the
29 report by the Business Enterprises Representative upon request from the operator;
- 30 (10) submit payment of all monthly fees to the Controller's Office by the 15th of the month following
31 the month in which the business was transacted;
- 32 (11) keep all records supporting the monthly revenue and expense report (D-sheet) for three calendar
33 years as required by this Subchapter;
- 34 (12) provide all records for the assigned facility to the Division upon request for the purpose of business
35 consultation, and for conducting audits and record keeping reviews as required by this Subchapter;
- 36 (13) be available for all appointments with the Division staff members to allow inspection, advice, record
37 reviews and consultation to support operations, at the convenience of both parties;

1 (14) not subcontract management of the Business Enterprises facility except as approved in writing by
2 the Division.

3 (15) take appropriate actions to correct deficiencies noted on Business Enterprises facility audits or
4 reviews within 15 business days, and

5 (16) notify the Division of any changes to the following no later than 10 business days after the change
6 occurs:

7 (A) facility telephone number;

8 (B) address to which Business Enterprises correspondence shall be delivered;

9 (C) emergency contact information

10 (b) The operator shall be accountable to the Division for the proceeds of the Business Enterprises facility, and shall
11 handle the proceeds, including payments to suppliers and deposits of funds, in accordance with Division guidelines
12 developed to facilitate the provision of management, accounting, and technical services to operators, and in accordance
13 with the U. S. Department of Education reporting requirements.

14 ~~(e) The operator shall maintain a neat, business-like appearance while working at the Business Enterprises facility,~~
15 ~~and shall conduct the facility in an orderly, business-like manner.~~

16 ~~(d) In accordance with Paragraph (b) of this Rule, any rebates, commissions, or bonuses received by the operator~~
17 ~~from supplier shall be considered as income or a refund of purchases and shall be accounted for accordingly.~~

18 ~~(e) The operator must assure that the business to be carried on at the facility shall be limited to that specified and~~
19 ~~authorized in the permit or contract with the sponsor of the building or property where the facility is located.~~

20
21 *History Note: Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107;*

22 *Eff. February 1, 1976;*

23 *Readopted Eff. November 16, 1977;*

24 *Amended Eff. August 1, 2002; April 1, 1990; February 1, 1984; October 1, 1978; 1978;*

25 *Readopted Eff. _____.*