

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: State Board of Education

RULE CITATION: 16 NCAC 06E .0204

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff recommends objection for lack of clarity, necessity, and statutory authority. Staff recommends objection for lack of clarity because this Rule conflicts with requirements in 16 NCAC 06E .0202, a permanent rule last amended in 2000. The existing permanent Rule is attached, and conflicting portions are annotated. This Rule is also unclear because the provisions of the waiver allowed in Paragraph (h) are tied to unclear factors such as "undue hardship."

Staff recommends objection for necessity because this Rule repeats portions 16 NCAC 06E .0202. The repetitive portions of the Rule are noted in the attached annotated version.

Staff also recommends objection for lack of statutory authority because the State Board has not provided authority to regulate the athletics of charter schools unless a provision to do so is included in the school's charter. Generally, charter schools are exempt from statutes and rules applicable to local boards of education. See G.S. 115C-218.10. The State Board's authority to regulate participation in athletics applies to "interscholastic athletic activities conducted by local boards of education." As written, this proposed rule applies to all charter schools. If an exception applies allowing the State Board to regulate charter school athletics, staff has not been able to find it and it was not provided by the agency in the history note. Therefore, staff recommends objection for lack of clarity, necessity, and statutory authority.

Ashley Snyder
Commission Counsel

§ 115C-218.10. Charter school exemptions.

Except as provided in this Article and pursuant to the provisions of its charter, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit.

§ 115C-12. Powers and duties of the Board generally.

- (23) Power to Adopt Eligibility Rules for Interscholastic Athletic Competition. - The State Board of Education shall adopt rules governing interscholastic athletic activities conducted by local boards of education, including eligibility for student participation. With regard to middle schools and high schools, the rules shall provide for the following: ...

Annotated version of existing permanent Rule 16 NCAC 06E .0202. Staff notes in red refer to Paragraphs in the proposed Rule. Highlighted portions conflict with the proposed Rule.

16 NCAC 06E .0202 INTERSCHOLASTIC ATHLETICS

(a) **Only students in grades 7-12 may participate in interscholastic athletic competition.** In order to qualify for public school participation, a student must meet the following requirements: **Paragraph (a) says grades 6-12 may participate; exempts grade 6 for football. The existing Rule does not regulate charter schools.**

- (1) The student must meet the residence criteria of G.S. 115C-366(a). The student may participate only at the school to which the student is assigned by the LEA, or, if over the age requirements, the school to which the student would be assigned at the next higher grade level. **Repeats (a)(1).**
- (2) The student must meet age requirements at each grade level to participate. The principal must have evidence of the legal birth date of the student. A student who is ineligible to participate at one grade level due to age is eligible to participate at the next higher grade level only. However, no student may participate at the high school level for a period lasting more than eight consecutive semesters, beginning with the student's first entry into grade nine or participation on a high school team, whichever occurs first. **Repeats (a)(2).**
 - (A) **A student is eligible to participate in high school athletic contests during a school year if the student does not reach the 19th birthday on or before October 16 of that school year.**
 - (B) **A student shall not participate on a ninth grade junior high school team if the student becomes 16 years of age on or before October 16 of that school year.**
 - (C) **A student shall not participate on a seventh or eighth grade team if the student becomes 15 years of age on or before October 16 of that school year. Proposed rule uses August 31 as the cut-off date instead of October 16.**
- (3) **In grades 9-12, the student must pass at least 75% of the maximum of possible courses each semester and meet promotion standards established by the LEA.** In grades 7 and 8, the student must pass at least one less course than the number of required core courses each semester and meet promotion standards established by the LEA. Regardless of the school organization pattern, a student who is promoted from the eighth grade to the ninth grade automatically meets the courses passed requirement for the first semester of the ninth grade. **Proposed rule requires students in grades 9-12 to pass "at least five courses." Remainder of this Subparagraph repeats Paragraph (c).**
- (4) The student must receive a medical examination each year (365 days) by a duly licensed physician, nurse practitioner, or physician assistant, subject to the provisions of G.S. 90-9, G.S. 90-18.1, and G.S. 90-18.2. **Repeats (d).**
- (5) The student may not participate after any of the following: **Repeats (e).**
 - (A) graduation;
 - (B) becoming eligible to graduate;
 - (C) signing a professional athletic contract;
 - (D) receiving remuneration as a participant in an athletic contest; or

- (E) participating on an all-star team or in an all-star game that is not sanctioned by the association of which the student's school is a member. The student is ineligible only for the specific sport involved.
- (b) Each principal of a school which participates in interscholastic athletics must certify a list of eligible students for each sport. **Repeats (f).**
- (c) Any student-athlete, coach or school official in grades 7-12 who is ejected from any athletic contest shall be penalized as follows: **Repeats (g). Proposed Rule refers to grades 6-12 instead of 7-12.**
- (1) for the first offense, the person shall be reprimanded and suspended for the next game at that level of play (varsity or junior varsity) and for any intervening games at either level;
 - (2) for a second offense, the person shall be placed on probation and suspended for the next two games at that level of play (varsity or junior varsity) and for any intervening games at either level.
 - (3) for a third offense, the person shall be suspended for one calendar year.
 - (4) a coach who is suspended at any level of grades 7-12 (middle school, junior high or high school) may not coach in any other grade level in grades 7-12 during the period of suspension.
 - (5) penalties are cumulative from sport to sport and from sport season to sport season. If no member of the school's coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.
- (d) LEAs may allow their schools to belong to the North Carolina High School Athletic Association (NCHSAA), which has established as a minimum the rules adopted by the SBE. The NCHSAA may waive any eligibility requirement contained in this Rule, except the age requirement, if it finds that the rule fails to accomplish its purpose or it works an undue hardship when applied to a particular student. The NCHSAA may enforce penalties for the violation of this Rule at the high school level. **Repeats (h).**
- (e) The LEA which has jurisdiction over the school may impose additional penalties. LEAs or conferences may adopt and impose penalties at the middle and junior high school levels. **Repeats (i).**

History Note: Filed as a Temporary Amendment Eff. December 27, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Codifier of Rules Objected to the Findings of Need for the Temporary Rule Eff. December 9, 1994;
Authority G.S. 115C-47(4);
Eff. July 1, 1986;
Amended Eff. June 1, 1996; July 1, 1995; July 1, 1994; July 1, 1990;
Amended Eff. August 1, 2000.

16 NCAC 06E .0204 is proposed for adoption as follows:

16 NCAC 06E .0204 INTERSCHOLASTIC ATHLETICS

(a) Local Education Agencies (LEAs) and charter school boards are authorized to determine whether and to what extent students in grades 6-12 may participate in interscholastic athletics; provided, however, that students in sixth grade are not eligible to participate in football.

(b) In order to qualify for participation in public school athletics, a student shall meet the following requirements:

(1) The student shall meet the residence criteria of G.S. 115C-366(a). The student shall participate only at the school to which the student is assigned by the LEA or, if over the age requirements, the school to which the student would be assigned at the next higher grade level.

(2) The student shall meet age requirements at each grade level to participate. The principal shall have evidence of the legal birth date of the student. A student who is ineligible to participate at one grade level due to age is eligible to participate at the next higher grade level only. However, no student shall participate at the high school level for more than eight consecutive semesters, beginning with the student's first entry into grade nine or participation on a high school team, whichever occurs first. No student is eligible to participate at the middle school level for a period lasting longer than six consecutive semesters, beginning with the student's entry into sixth grade.

(A) A student is eligible to participate in high school athletic contests during a school year if the student does not reach the 19th birthday on or before August 31 of that school year.

(B) A student shall not participate on a ninth grade junior high school team if the student becomes 16 years of age on or before August 31 of that school year.

(C) A student shall not participate on a sixth, seventh or eighth grade team if the student becomes 15 years of age on or before August 31 of that school year.

(c) In grades 9-12, the student shall pass at least five courses (or the equivalent for non-traditional school schedules) each semester to be eligible anytime during the present semester and meet promotion standards established by the LEA/Charter School. In grades 6, 7 and 8, the student shall pass at least one less course than the number of required core courses each semester and meet promotion standards established by the LEA/Charter School. Regardless of the school organization pattern, a student who is promoted from the eighth grade to the ninth grade automatically meets the courses passed requirement for the first semester of the ninth grade. Regardless of the school organization pattern, a student who is promoted from the fifth grade to the sixth grade automatically meets the courses passed requirement for the first semester of the sixth grade.

(d) The student shall receive a medical examination each year by a duly licensed physician, nurse practitioner, or physician assistant, subject to the provisions of G.S. 90-9, 90-18.1, and 90-18.2.

(e) The student shall not participate in interscholastic athletics after any of the following:

(1) graduation;

(2) becoming eligible to graduate;

(3) signing a professional athletic contract;

(4) receiving remuneration as a participant in an athletic contest; or

(5) participating on an all-star team or in an all-star game that is not sanctioned by the association of which the student's school is a member. The student is ineligible only for the specific sport involved.

(f) Each principal of a school that participates in interscholastic athletics shall certify a list of eligible students for each sport.

(g) Any student-athlete, coach or school official in grades 6-12 who is ejected from any athletic contest shall at least be penalized as follows:

(1) for the first offense, the person shall be reprimanded and suspended for the next game at that level of play (varsity or junior varsity) and for any intervening games at either level;

(2) for a second offense, the person shall be placed on probation and suspended for the next two games at that level of play (varsity or junior varsity) and for any intervening games at either level;

(3) for a third offense, the person shall be suspended for one calendar year;

(4) a coach who is suspended at any level of grades 6-12 (middle school, junior high or high school) may not coach in any other grade level in grades 6-12 during the period of suspension.

(5) Penalties are cumulative from sport to sport and from sport season to sport season. If no member of the school's coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.

(h) LEAs and charter schools may allow their schools to belong to the North Carolina High School Athletic Association (NCHSAA), which has established as a minimum the rules adopted by the SBE. The NCHSAA may waive any eligibility requirement contained in this Rule, except the age requirement, if it finds that the rule fails to accomplish its purpose, or it works an undue hardship when applied to a particular student. The NCHSAA may enforce penalties for the violation of this Rule at the high school level.

(i) The LEA or Charter School that has jurisdiction over the high school may impose additional penalties. LEAs or charter schools or conferences may adopt and impose penalties at the middle and junior high school levels.

History Note: Authority G.S. 115C-12(12); 115C-12(23);

Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);

Emergency Rule Eff. August 20, 2019.

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AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06E .0205

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- X Object, based on:
 - ☐ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - X Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff recommends objection for lack of necessity for repeating the contents of G.S. 115C-12(23). Paragraph (a) repeats the definition of "concussion" in 115-12(23)(a). Paragraphs (b), (d), and (e) repeat the remaining contents of 115C-12(23)(a). Paragraphs (f) and (g) repeat the contents of 115C-12(23)(b); Paragraphs (h), (i), and (j) repeat 115C-12(23)(c); and Paragraph (k) repeats 115C-12(23)(d). Therefore, staff recommends objection for lack of necessity.

§ 115C-12. Powers and duties of the Board generally.

- (23) Power to Adopt Eligibility Rules for Interscholastic Athletic Competition. - The State Board of Education shall adopt rules governing interscholastic athletic activities conducted by local boards of education, including eligibility for student participation. With regard to middle schools and high schools, the rules shall provide for the following:
 - a. All coaches, school nurses, athletic directors, first responders, volunteers, students who participate in interscholastic athletic activities, and the parents of those students shall receive, on an annual basis, a concussion and head injury information sheet. School employees, first responders, volunteers, and students must sign the sheet and return it to the coach before they can participate in interscholastic athletic activities, including tryouts, practices, or competition. Parents must sign the sheet and return it to the coach before their children can participate in any such

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interscholastic athletic activities. The signed sheets shall be maintained in accordance with sub-subdivision d. of this subdivision.

For the purpose of this subdivision, a concussion is a traumatic brain injury caused by a direct or indirect impact to the head that results in disruption of normal brain function, which may or may not result in loss of consciousness.

- b. If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with concussion, the student shall be removed from the activity at that time and shall not be allowed to return to play or practice that day. The student shall not return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such participation from (i) a physician licensed under Article 1 of Chapter 90 of the General Statutes with training in concussion management, (ii) a neuropsychologist licensed under Article 18A of Chapter 90 of the General Statutes with training in concussion management and working in consultation with a physician licensed under Article 1 of Chapter 90 of the General Statutes, (iii) an athletic trainer licensed under Article 34 of Chapter 90 of the General Statutes, (iv) a physician assistant, consistent with the limitations of G.S. 90-18.1, or (v) a nurse practitioner, consistent with the limitations of G.S. 90-18.2.
- c. Each school shall develop a venue specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan shall include a delineation of roles, methods of communication, available emergency equipment, and access to and plan for emergency transport. This plan must be (i) in writing, (ii) reviewed by an athletic trainer licensed in North Carolina, (iii) approved by the principal of the school, (iv) distributed to all appropriate personnel, (v) posted conspicuously at all venues, and (vi) reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses, athletic directors, and volunteers for interscholastic athletic activities.
- d. Each school shall maintain complete and accurate records of its compliance with the requirements of this subdivision pertaining to head injuries.

The State Board of Education may authorize a designated organization to apply and enforce the Board's rules governing participation in interscholastic athletic activities at the high school level.

16 NCAC 6E .0205 is proposed for adoption as follows:

**16 NCAC 6E .0205 CONCUSSION SAFETY REQUIREMENTS FOR INTERSCHOLASTIC
ATHLETIC COMPETITION**

(a) For purposes of this rule, a concussion is a traumatic brain injury caused by a direct or indirect impact to the head that results in disruption of normal brain function, which may or may not result in loss of consciousness.

(b) All coaches, school nurses, athletic directors, first responders, volunteers, students who participate in middle or high school interscholastic athletic activities, and the parents or guardians of those students shall receive, on an annual basis, a concussion and head injury information sheet.

(c) The information sheet shall include:

(1) The definitions and symptoms of concussions and head injuries;

(2) A description of the physiology and the potential short-term and long-term effects of concussions and other head injuries;

(3) The medical return-to-play protocol for post-concussion participation in interscholastic athletic activities; and

(4) Any other information deemed necessary by the local board of education.

(d) School employees, first responders, volunteers, and students shall sign the sheet and return it to the coach before participating in interscholastic athletic activities, including tryouts, practices, or competition.

(e) Parents shall sign the information sheet and return it to the coach before a child may participate in any such interscholastic athletic activities. The signed sheets shall be maintained in accordance with subsection (f).

(f) If a student participating in a middle or high school interscholastic athletic activity exhibits signs or symptoms consistent with concussion, the student shall be removed from the activity at that time and shall not be allowed to return to play or practice that day.

(g) A student removed from play for exhibiting signs or symptoms consistent with concussion shall not return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such participation from one of the following:

(1) A physician licensed under Article 1 of Chapter 90 of the General Statutes with training in concussion management;

(2) A neuropsychologist licensed under Article 18A of Chapter 90 of the General Statutes with training in concussion management and working in consultation with a physician licensed under Article 1 of Chapter 90 of the General Statutes;

(3) An athletic trainer licensed under Article 34 of Chapter 90 of the General Statutes;

(4) A physician assistant, consistent with the limitations of G.S. 90-18.1; or

(5) A nurse practitioner, consistent with the limitations of G.S. 90-18.2.

(h) Each school shall develop a venue-specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly.

(i) This plan shall be:

(1) In writing;

1 (2) Reviewed by an athletic trainer licensed in North Carolina;

2 (3) Approved by the principal of the school;

3 (4) Distributed to all appropriate personnel;

4 (5) Posted conspicuously for community and parental awareness at all athletic-sponsored venues; and

5 (6) Reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school
6 nurses, athletic directors, and volunteers for interscholastic athletic activities.

7 (j) The plan shall include:

8 (1) A delineation of roles;

9 (2) Methods of communication;

10 (3) Available emergency equipment; and

11 (4) Access to and plan for emergency transport.

12 (k) Each school shall maintain complete and accurate records of its compliance with the requirements of this
13 subdivision pertaining to head injuries.

14 (l) The State Board of Education authorizes the NCHSAA to apply and enforce this rule.

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16 *History Note: Authority G.S. 115C-12(12); 115C-12(23);*

17 *Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);*

18 *Emergency Rule Eff. August 20, 2019.*