



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

July 16, 2020

Thomas J. Ziko, Interim General Counsel  
State Board of Education  
**Sent via email only to: Thomas.Ziko@dpi.nc.gov**

Re: Extension of the Period of Review for All Rules Submitted in 16 NCAC 06B, 06D, 06E, and 06G

Dear Mr. Ziko:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the State Board of Education to extend the period in order to allow the agency to address the requested technical changes and submit the revised rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to the rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Ashley Snyder  
Commission Counsel

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

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

Judges and  
Assistants  
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Commission  
919/431-3000  
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Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

## Burgos, Alexander N

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**Subject:** FW: [External] SBE Request for Extension - 16 NCAC 06B

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**From:** Lou Martin <[lou.martin@dpi.nc.gov](mailto:lou.martin@dpi.nc.gov)>

**Sent:** Monday, July 6, 2020 10:16 AM

**To:** Snyder, Ashley B <[ashley.snyder@oah.nc.gov](mailto:ashley.snyder@oah.nc.gov)>

**Cc:** Thomas Ziko <[Thomas.Ziko@dpi.nc.gov](mailto:Thomas.Ziko@dpi.nc.gov)>; [deanna.townsend-smith@dpi.nc.gov](mailto:deanna.townsend-smith@dpi.nc.gov); Lou Martin <[lou.martin@dpi.nc.gov](mailto:lou.martin@dpi.nc.gov)>

**Subject:** [External] SBE Request for Extension - 16 NCAC 06B

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [report.spam@nc.gov](mailto:report.spam@nc.gov)

Ashley Snyder  
Commission Counsel, Rules Review Commission  
Office of Administrative Hearings

Dear Ms. Snyder:

In accordance with G.S. § 150B-21.13, the State Board of Education respectfully requests that the Rules Review Commission (RRC) grant an extension of time to review the technical changes you have suggested to rules for 16 NCAC 06B and resubmit those rules to the RRC with the appropriate corrections.

Please inform us of the decision on this request as soon as possible so that the State Board can comply with the RRC's deadline for submitting the corrected rules.

Thank you.

Thomas J. Ziko  
Interim General Counsel  
State Board of Education  
6302 Mail Service Center  
Raleigh, NC 27699-6302  
[Thomas.Ziko@dpi.nc.gov](mailto:Thomas.Ziko@dpi.nc.gov)  
Office: 984-236-2249

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**From:** Snyder, Ashley B <[ashley.snyder@oah.nc.gov](mailto:ashley.snyder@oah.nc.gov)>

**Sent:** Wednesday, June 24, 2020 12:49 PM

**To:** Lou Martin <[lou.martin@dpi.nc.gov](mailto:lou.martin@dpi.nc.gov)>; Thomas Ziko <[Thomas.Ziko@dpi.nc.gov](mailto:Thomas.Ziko@dpi.nc.gov)>

**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>

**Subject:** Request for Technical Changes - 16 NCAC 06B

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: All Rules

**DEADLINE FOR RECEIPT: July 9, 2020**

***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 the following technical changes be made:

*Please format your introductory statements for publication in the Code as shown here: <https://files.nc.gov/ncoah/documents/Rules/Examples---Permanent-Adoption-For-Publication-In-The-Ncac.pdf>. For example, your introductory statement for .0111 will read: "16 NCAC 06B .0111 is adopted as published in 34:13 NCR 1211 as follows:" If you make changes in response to technical change requests, it will read "16 NCAC 06B .0111 is adopted with changes as published in 34:13 NCR 1211 as follows:"*

*Please skip one line between the introductory statement and the name of the rule. See 26 NCAC 02C .0108.*

*In your history notes, you reference G.S. 115C-12. Please consider referencing 115C-12(17) if that was your intent.*

*In your history notes, why is it necessary to say "Interim Rule status conferred Eff. June 27, 2018..." Do you still need that language?*

*In your history notes, please add "Emergency Rule Eff. August 20, 2019" as it is currently shown in the Code.*

*In your history notes, please add a proposed effective date. The earliest these rules can be effective is August 1, 2020.*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: June 24, 2020

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06B .0111

**DEADLINE FOR RECEIPT: July 9, 2020**

**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 the following technical changes be made:

*Do portions of this Rule repeat 16 NCAC 06B .0102? Please avoid repeating language in another rule because it is unnecessary.*

*In (a), why is the language in parentheses necessary? If this language is necessary, please consider removing the parentheses.*

*If you keep (a), please delete or define "regularly."*

*At line 4, by "first five days of school" are you referring to the first 5 days of school in each calendar year or the first five days of kindergarten or other enrollment?*

*At line 6, please delete "but not be limited to" because it is unnecessary.*

*In (a)(1), what are the "basic skills and knowledge vital to safety?" Who makes this determination? Is it the LEA or the SBOE?*

*In (a)(2), please delete or define "proper" loading techniques.*

*In (a)(2) and (c), what is the North Carolina crossing signal? I take it this is known to your regulated public, correct?*

*In (a)(3), under what circumstances is this additional instruction needed? Who makes this determination?*

*At line 12, please compare the use of the word "pupil" with "children" at line 3. Please use consistent terms if you intended these to have the same meaning.*

*In (b)(2), please delete or define "completely."*

*Where is your statutory authority for the second sentence in Paragraph (c)? Are you relying on the first paragraph in 115C-12?*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: June 24, 2020

*Does (d) repeat (a)(3) or does (a)(3) only apply to school buses? Please clarify.*

*In (d), under what circumstances is safety instruction "needed?" Who makes this determination?*

*In (d), please delete "but not limited to" because it is unnecessary.*

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

16 NCAC 06B .0111 is proposed for adoption as follows:

**16 NCAC 06B .0111 SCHOOL BUS PASSENGERS**

(a) Local education agencies (LEAs) shall provide instruction in school bus safety to all children (regardless of whether they regularly ride a school bus to and from school) during the first five days of school and at least once during each semester thereafter. LEAs shall document the date on which training was provided to each student. This instruction shall include but not be limited to:

(1) basic skills and knowledge vital to safety in school bus transportation;

(2) proper loading techniques, including street crossing at the bus stop and the North Carolina crossing signal; and

(3) instruction as needed to ensure that passengers are familiar with location and operation of emergency exits for the vehicle on which they are riding for any specific trip.

(b) LEAs shall adhere to the following when assigning pupils to school buses, activity buses, commercial buses, or other contracted vehicles.

(1) LEAs shall not allow the number of passengers being transported to exceed the official rated capacity for the specific vehicle being used.

(2) LEAs shall ensure that all riders are seated completely within the seating compartment, when any bus or other vehicle is in motion.

(3) LEAs shall ensure that no person is standing or sitting in the aisle or stepwell when any bus or other vehicle is in motion.

(c) LEAs shall require school bus drivers to utilize the North Carolina crossing signal to communicate to students when it is safe to cross the street to board the bus and when it is safe to cross the street after exiting the bus. The Department of Public Instruction shall develop and make available training materials describing the crossing signal for students and school bus drivers.

(d) LEAs shall also provide safety instruction to students taking trips on activity buses or commercial buses as needed, including but not limited to instruction and demonstration of emergency exit operation for the vehicle on which they are riding for any specific trip.

*History Note: Authority G.S. 115C-12; 115C-240;*

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

## **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 06B .0112

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 ambiguity. The Rule requires LEAs to purchase school buses "that meet the safety specifications listed in the request for bids for the statewide term contracts." It is unclear to staff what the safety requirements are since they are not specified in the Rule. Therefore, staff recommends objection for ambiguity.*

1 16 NCAC 06B .0112 is proposed for adoption as follows:

2 **16 NCAC 06B. 0112 PURCHASE OF SCHOOL BUS EQUIPMENT**

3 Local education agencies shall purchase school buses, school bus tires, brake pads, brake shoes, brake hardware, and  
4 other related equipment that meet the safety specifications listed in the request for bids for the statewide term contracts  
5 for these items.

6  
7 History Note: Authority G.S. 115C-12; 115C-249; G.S. 115C-249.1; G.S. 115C-522;

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



## **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 06B .0113

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 statutory authority, clarity, and necessity. Licensure requirements for activity bus drivers are set in G.S. 20-218(a), making this Rule unnecessary.*

*As noted above, activity bus licensure requirements are explicitly governed by G.S. 20-218(a) under the authority of the DMV. The statutes provided in the history note allow the State Board of Education to regulate school buses and school bus drivers but make no mention of authority over activity buses. Staff notes activity buses are specifically referred to in other Education statutes. E.g. 115C-247; 115C-248; 115C-255. In DMV's statutes, "school bus" and "school activity bus" are separate defined terms. Staff has found no authority for the State Board of Education to set licensure requirements for activity bus drivers. Therefore, staff recommends objection for lack of statutory authority.*

*Staff also recommends objection for lack of clarity because the term "school related activity" in Paragraphs (b) and (c) is not defined.*

#### **§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(27) **Passenger Vehicles.** -

- m. **School activity bus.** - A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.
- n. **School bus.** - A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, that is painted primarily yellow below the roofline, and that bears the plainly visible words "School Bus" on the front and rear. The term includes a public, private, or parochial vehicle that meets this description.

#### **§ 20-218. Standard qualifications for school bus drivers; speed limit for school buses and school activity buses.**

(a) **Qualifications.** - No person shall drive a school bus over the highways or public vehicular areas of North Carolina while it is occupied by one or more child passengers unless the person furnishes to the superintendent of the schools of the county in which the bus shall be operated a certificate from any representative duly designated by the Commissioner and from the Director of Transportation or a designee of the Director in charge of school buses in the county showing that the person has been examined by them and is fit and competent to drive a school bus over the highways and public vehicular areas of the State. The driver of a school bus must be at least 18 years of age and hold a Class A, B, or C commercial drivers license and a school bus driver's certificate. The driver of a school activity bus must meet the same qualifications as a school bus driver or must have a license appropriate for the class of vehicle being driven.

#### **§ 115C-240. Authority and duties of State Board of Education.**

(a) The State Board of Education shall promulgate rules and regulations for the operation of a public school transportation system.

...

(c) The State Board of Education shall from time to time adopt such rules and regulations with reference to the construction, equipment, color, and maintenance of school buses, the number of pupils who may be permitted to ride at the same time upon any bus, and the age and qualifications of drivers of school buses as it shall deem to be desirable for the purpose of promoting safety in the operation of school buses. Every school bus that is capable of operating on diesel fuel shall be capable of operating on diesel fuel with a minimum biodiesel concentration of B-20, as defined in G.S. 143-58.4. No school bus shall be operated for the transportation of pupils unless such bus is constructed and maintained as prescribed in such regulations and is equipped with adequate heating facilities, a standard signaling device for giving due notice that the bus is about to make a turn, an alternating flashing stoplight on the front of the bus, an alternating flashing stoplight on the rear of

the bus, and such other warning devices, fire protective equipment and first aid supplies as may be prescribed for installation upon such buses by the regulation of the State Board of Education.

**§ 115C-245. School bus drivers; monitors; safety assistants.**

(a) Each local board, which elects to operate a school bus transportation system, shall employ the necessary drivers for such school buses. The drivers shall have all qualifications prescribed by the regulations of the State Board of Education herein provided for and must be at least 18 years old and have at least six months driving experience as a licensed operator of a motor vehicle before employment as a regular or substitute driver, but the selection and employment of each driver shall be made by the local board of education, and the driver shall be the employee of such local school administrative unit. Each local board of education shall assign the bus drivers employed by it to the respective schools within the jurisdiction of such board, and the superintendent or superintendent's designee shall assign the drivers to the school buses to be driven by them. No school bus shall at any time be driven or operated by any person other than the bus driver assigned to such bus except by the express direction of the superintendent or superintendent's designee or in accordance with rules and regulations of the appropriate local board of education.

16 NCAC 06B .0113 is proposed for adoption as follows:

**16 NCAC 06B .0113      ACTIVITY BUS DRIVERS**

**(a) Definitions:**

(1) “CDL” means a Commercial Drivers License, which is a license issued by the state that authorizes an individual to drive a commercial motor vehicle (G.S. 20-4.01).

(2) “CDL Activity Bus” means a school activity bus (G.S. 20-4.01) built to transport 16 or more passengers including the driver. A CDL is required to drive a “CDL Activity Bus” (G.S. 20-4.01).

(3) “School bus driver’s certificate” means a certificate issued by a duly designated representative of the Commissioner of Motor Vehicles and the Director of Transportation, or a designee of the Director in charge of school buses in the county which shows that he or she has been examined and has been certified fit and competent to drive a school bus over the highways and public vehicular areas of the State. (G.S. 20-218)

(b) Local education agencies shall require individuals who transport students to or from a school-related activity in a CDL Activity Bus to hold a valid Commercial Drivers License with a Passenger (P) and School Bus (S) endorsement (CDL-P/S) as required by the Division of Motor Vehicles.

(c) LEAs shall require individuals being initially licensed with a CDL-P/S, who transport students to or from a school-related activity in a CDL Activity Bus, also to hold a school bus driver’s certificate.

(d) LEAs shall not permit any individual to transport students in a CDL Activity Bus unless he or she holds both a CDL-P/S license and valid school bus driver’s certificate.

*History Note: Authority G.S. 115C-12; 115C-240; 115C-245(a);*

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06B .0114

**DEADLINE FOR RECEIPT: July 9, 2020**

**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 the following technical changes be made:

*Are the vehicle training and certification requirements set by the State Board or DPI? If they are set by the State Board, what are the training and certification requirements? Are they in a rule?*

*At lines 4-5, what do you mean by "administered by the Department of Public instruction?" What are you requiring? Is this language necessary given 115C-12: "In accordance with Sections 7 and 8 of Article III of the North Carolina Constitution, the Superintendent of Public Instruction, as an elected officer and Council of State member, shall administer all needed rules and regulations adopted by the State Board of Education through the Department of Public Instruction."*

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

Ashley Snyder  
Commission Counsel  
Date submitted to agency: June 24, 2020

1 16 NCAC 06B .0114 is proposed for adoption as follows:

2 **16 NCAC 06B .0114 SCHOOL BUS AND ACTIVITY BUS INSPECTIONS**

3 Local education agencies shall require each 30-day inspection required under G.S. 115C-248 to be conducted by an  
4 individual who has completed the vehicle inspection training and certification requirements administered by the  
5 Department of Public Instruction.

6  
7 *History Note: Authority G.S. 115C-12; 115C-240; G.S. 115C-248;*

8 *Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b).*  
9