

## **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: ...

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**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 .0206

RECOMMENDED ACTION:

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

COMMENT:

*Staff recommends objection for lack of necessity and clarity. Portions of this Rule are unnecessary because they repeat portions of 16 NCAC 06E .0203, a permanent Rule last amended in 2002. Staff recommends objection for lack of clarity because the rule differs from requirements set in Rule .0203.*

*Repetitive and differing provisions are noted in the attached annotated version of .0203.*

Ashley Snyder  
Commission Counsel

**Annotated version of existing permanent Rule 16 NCAC 06E .0203. Staff notes in red refer to Paragraphs in the proposed Rule. Highlighted portions differ from the proposed Rule.**

**16 NCAC 06E .0203      ATHLETIC INJURY MANAGEMENT**

(a) Each LEA must designate for each high school within its jurisdiction either a licensed athletic trainer who is qualified pursuant to G.S. 90, Article 34 or a first responder. These persons may be employed on a full-time or part-time basis or may serve as a volunteer. **Repeats Paragraph (a)**

(b) A first responder must complete and maintain certification or be in the process of completing courses in the following:

- (1) cardio-pulmonary resuscitation as certified by an organization such as the American Red Cross or the American Heart Association; **Repeats (b)(1)**
- (2) first aid as certified by an organization such as the American Red Cross or the American Heart Association; and **Repeats (b)(2)**
- (3) injury prevention and management as certified by an organization such as the National Athletic Trainers Association, the North Carolina Athletic Trainers Association, or the North Carolina High School Athletic Association. **Repeats (b)(4)**

**Note: The contents of (b)(3) are not included in the existing rule.**

In addition, each first responder must complete **20 hours** in staff development each school year. **Compare to (b)(5) which requires 10 hours.**

(c) The licensed athletic trainer or first responder may not have coaching responsibilities during the season in which the person is working as a licensed athletic trainer or first responder. A licensed athletic trainer or first responder must attend all football practices and games, unless excused by the superintendent due to emergency. The LEA may require a licensed athletic trainer or first responder to attend practices or games that involve other sports. **Repeats (c), (d), and (e).**

**The contents of the last sentence are proposed to be deleted in the new Rule.**

*History Note:      Authority G.S. 115C-12(12); N.C. Constitution, Article IX, Sec. 5;  
Eff. July 1, 1986;  
Codifier determined that findings did not meet criteria for temporary rule on December 10, 2001;  
Temporary Amendment Eff. December 31, 2001;  
Amended Eff. September 30, 2002 (Executive Order No. 33).*

1 16 NCAC 06E .0206 is proposed for adoption with changes as published in 34:13 NCR 1235 as follows:

2  
3 **16 NCAC 06E .0206       ATHLETIC TRAINERS**

4 (a) Each Local Education Agency (LEA) ~~shall must~~ designate for each high school within its jurisdiction either a  
5 licensed athletic trainer who is qualified pursuant to Article 34 of Chapter 90 of the General Statutes of North Carolina  
6 or a first responder. These persons may be employed on a full-time or part-time basis or may serve as a volunteer.

7 (b) If not a licensed athletic trainer, a first responder shall:

- 8       (1)     have completed and continue to maintain certification in cardiopulmonary resuscitation as certified  
9               by an organization such as the American Red Cross or the American Heart Association;  
10       (2)    have completed and continue to maintain certification in first aid as certified by an organization  
11               such as the American Red Cross or the American Heart Association;  
12       (3)    have completed and continue to maintain training in concussion management as offered by an  
13               organization such as the National Federation of State High School Associations (NFHS).  
14       (4)    have completed and continue to maintain continuing education in injury prevention and  
15               management as offered by an organization such as the National Federation of State High School  
16               Associations (NFHS); and  
17       (5)    complete 10 hours total of staff development each school year specific to first ~~aid, aid and~~ injury  
18               recognition and prevention. The 10 hours may include hours ~~necessary for~~  
19               ~~recertification/renewal~~ that count toward recertification or renewal of any certificate or license that  
20               satisfies the requirements of this Rule.

21 (c) The licensed athletic trainer or first responder ~~shall may~~ not have concurrent coaching responsibilities during the  
22 time in which the person is working as a licensed athletic trainer or first responder.

23 (d) A licensed athletic trainer or first responder shall attend all football practices and games, unless excused by the  
24 superintendent due to emergency.

25 (e) Each LEA shall monitor school athletic trainer's or the first responder's compliance with this ~~Rule~~ rule.

26 ~~(f) LEAs shall work toward having a licensed athletic trainer or first responder available for all school practices and~~  
27 ~~games of all sports at both the high school and middle school.~~

28  
29 *History Note:     Authority G.S. 115C-12(12); 115C-12(23);*

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

31 ~~*Emergency Rule August 20, 2019. Eff. September 1, 2020*~~