



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

September 18, 2020

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

Re: Objection to Rules 16 NCAC 06B .0112, .0113, and .0114

Dear Mr. Ziko:

At its September 17, 2020 meeting, the Rules Review Commission objected to the above-referenced Rules in accordance with G.S. 150B-21.10.

The Commission objected to 16 NCAC 06B .0112 for ambiguity. This 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 what the safety requirements are since they are not specified in the Rule.

The Commission objected to 16 NCAC 06B .0113 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.

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. 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. No authority was provided for the State Board of Education to set licensure requirements for activity bus drivers.

The Commission also objected for lack of clarity because the term “school related activity” in Paragraphs (b) and (c) is not defined.

Julian Mann, III, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
Senior Administrative Law Judge

Linda T. Worth
Deputy Director

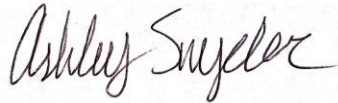
An Equal Employment Opportunity Employer

1711 New Hope Church Road, Raleigh, NC 27609
Telephone: (984) 236-1850 | Facsimile: (984) 236-1871
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Additionally, the Commission objected to 16 NCAC 06B .0114 for lack of clarity and necessity. If the “vehicle inspection training and certification requirements” are “mandated by the Department of Public Instruction” and not the State Board of Education, it is unclear why this Rule is necessary. Further, it is unclear what the “vehicle inspection training and certification requirements” are or where those requirements can be found. It seems the standards are set by DPI, but it is further unclear whether that authority has been delegated by the State Board. The agency did not respond to follow-up technical change requests for this Rule to provide clarity in advance of the Commission meeting.

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 actions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Ashley Snyder". The signature is written in a cursive, flowing style.

Ashley Snyder
Commission Counsel



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

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

Rules Review
Commission
919/431-3000
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Civil Rights
Division
919/431-3036
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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

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.

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

16 NCAC 06B. 0112 PURCHASE OF SCHOOL BUS EQUIPMENT

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

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

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).

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 .0114

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 and necessity. If the "vehicle inspection training and certification requirements" are "mandated by the Department of Public Instruction" and not the State Board of Education, it is unclear to staff why this Rule is necessary.

Staff also recommends objection for lack of clarity because it is unclear what the "vehicle inspection training and certification requirements" are or where those requirements can be found. It is staff's understanding the standards are set by DPI, but it is further unclear whether that authority has been delegated by the State Board.

Staff notes the agency did not respond to follow-up questions after technical changes requests were issued.

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

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

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

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

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

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