

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 06D .0211, .0212, .0307, .0308, .0309, .0310, and .0311

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 06D .0211 for failure to comply with the APA, ambiguity, and lack of necessity. The Rule refers to an “Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina.” In Item (1), the Rule states the Invitation provides “the required procedures for submission, evaluation, and adoption of textbooks and a schedule for the process.” The Invitation also includes the “criteria used to evaluate textbooks presented for adoption for their conformity to the North Carolina Standard Course of Study.” These contents meet the definition of a “rule” in G.S. 150B-2(8a). Referring to the Invitation rather than stating its contents in rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the Invitation outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide these procedural requirements in Rule also makes the process for submitting and evaluating textbooks unclear. Therefore, the Commission objected for failure to comply with the APA and ambiguity.

The Commission also objected to Item (2) for lack of necessity. Item (2) directs the General Counsel of the State Board to “review and approve” the Invitation. This statement concerns only the internal management of the agency and is therefore unnecessary. G.S. 150B-2(8a)(a).

The Commission objected to 16 NCAC 06D .0212 for failure to comply with the APA, ambiguity, and lack of necessity. The Rule refers to an “Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina.” In Paragraph (b) the Rule states “Publishers are required to follow

the procedures set forth in the invitation. Failure to comply with all procedure, including stated deadlines, may result in disqualification.” Subparagraph (d)(3) states the Invitation includes the “procedure for reconsideration.” These procedures meet the definition of a “rule” in G.S. 150B-2(8a). Referring to the Invitation rather than stating its contents in rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the Invitation outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide these procedural requirements in rule also makes the process for submitting and evaluating textbooks unclear. Therefore, the Commission objected for failure to comply with the APA and ambiguity.

Additionally, the Commission objected to 16 NCAC .0212(a) for lack of necessity because it repeats the requirements of G.S. 115C-94.

The Commission objected to 16 NCAC 06D .0307 for lack of necessity, clarity, and statutory authority. The Rule is unnecessary because it repeats portions of 16 NCAC 06D .0302, an existing permanent rule.

The Commission objected to Paragraph (f) for lack of statutory authority. The proposed Rule requires LEAs to report scores on districtwide and statewide standardized tests “within thirty (30) days from generation of the score at the LEA level or receipt of the score and interpretive documentation from the NCDPI.” However, G.S. 115C-174.15 requires scores for local tests be provided within 30 days of administration.

16 NCAC 06D .0307 also contained unclear or undefined terms including “secure tests,” “improper administration,” and other unclear terms as set forth in the requests for technical changes. As a result, the Commission objected for lack of clarity.

The Commission objected to 16 NCAC 06D .0308 for lack of necessity and clarity. The proposed Rule is unnecessary because it repeats 16 NCAC 06D .0303, an existing permanent rule. The Rule is also unclear due to ambiguous or undefined terms including “accountability measures,” “North Carolina Testing Program,” “proper,” and “appropriate.”

The Commission objected to 16 NCAC 06D .0309 for lack of necessity, clarity, and statutory authority. The proposed Rule is unnecessary and unclear because it repeats or conflicts with 16 NCAC 06D .0305, an existing permanent rule. The Commission further objected for lack of clarity due to unclear terms including “eligible students,” “alternative assessments,” “Occupational Course of Study,” “immediately,” and other unclear or undefined terms as detailed in the requests for technical changes.

Additionally, the Commission objected for lack of statutory authority to Paragraphs (d), (j), and (k). The agency did not provide, and Commission staff was not able to locate statutory authority for these Paragraphs.

The Commission objected to 16 NCAC 06D .0310 for lack of clarity. As written, it is unclear what purposes are “approved by the Division of Accountability Services and the State Board of Education” for use of State tests.

The Commission objected to 16 NCAC 06E .0311 for lack of necessity, clarity, and compliance with the APA. The proposed Rule is unnecessary because it repeats portions of 16 NCAC 06D .0306, an existing permanent rule.

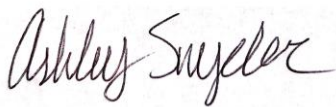
Additionally, the Commission objected to Paragraph (k) for lack of clarity and failure to comply with the APA. The Rule requires teachers to provide instruction that “meets or exceeds the state-adopted curriculum standards.” The curriculum standards appear to be part of the “Standard Course of Study governed by G.S. 115C-81.5. The Commission is not aware of any authority for the Board to adopt curriculum standards outside the rulemaking process. Without the curriculum standards set in rule, the agency can amend the standards outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide these requirements in rule also makes the requirement for teachers to “provide instruction that meets or exceeds the state-adopted curriculum standards” unclear as written. Therefore, the Commission objected to (k) for failure to comply with the APA and lack of clarity.

The Commission further objected to 16 NCAC 06E .0311 for lack of clarity because it is unclear under what circumstances the Rule applies. This Rule sets forth a “testing code of ethics,” but it is unclear whether the requirements of this Rule apply to all standardized tests, final exams, EOCs, or all tests. This Rule also contains unclear terms including “secure,” “immediately,” “proper,” “eligible students,” “fairly,” and other unclear or undefined terms as detailed in the requests for technical changes.

Apart from submission of a revised rule for 16 NCAC 06D .0310, the agency did not respond to technical change requests to clarify terms or questions of statutory authority 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 dark ink, appearing to read "Ashley Snyder", is written over a light blue rectangular background.

Ashley Snyder  
Commission Counsel

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 06E .0107

Dear Mr. Ziko:

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

The Commission objected to 16 NCAC 06E .0107 for failure to comply with the APA and ambiguity. In Paragraph (a), the Rule requires the information listed in this Rule to be reported “in conformity with the State’s Uniform Education Reporting System (UERS).” The Commission is not aware of and the agency has not provided any authority exempting the UERS from the rulemaking process. Referring to requirements outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update the UERS outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. The reporting requirements are also unclear since those requirements are not set in rule. Therefore, the Commission objected for failure to comply with the APA and ambiguity.

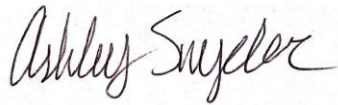
The Commission also objection on clarity grounds because the Rule requires LEAs to report crimes and offenses identified by statute to the State Board of Education, but the statutes listed in (a)(4), (a)(5), and the first statute in (a)(6) have been recodified. Additionally, (a)(21) lists G.S. 14-50.16, but that statute was repealed in 2017. As a result, the reporting requirements tied to these statutes are unclear as written.

Paragraph (b) is also unclear since it states “failure to follow reporting requirements under this provision may justify disciplinary action. . . .” As written, it is unclear when a failure to report will “justify disciplinary action.”

The agency did not respond to technical change requests to clarify terms or statutory references 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

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 06G .0314, .0315, .0316, .0503, .0506, .0507, .0508, .0509, .0514, .0517, .0518, .0519, .0520, .0521, and .0522

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 06G .0314 for lack of statutory authority and clarity. Based on the text of Paragraph (c), alternative schools are allowed to select an accountability model from the list in (c)(1)-(3). Subparagraph (c)(1) says, “Alternative schools can participate in School Performance Grades as defined by G.S. 115C-83.15...” (emphasis added). Subparagraphs (c)(2) and (c)(3) then provide alternative options to the “School Performance Grades” model in G.S. 115C-83.15. However, 115C-12(24) requires the State Board to evaluate alternative learning programs “through the application of the accountability system developed under G.S. 115C-83.15 and G.S. 115C-105.35.” The State Board is granted authority to modify the system in G.S. 115C-83.15, but the Commission has not found authority for the agency to provide different accountability models. Therefore, the Commission objected for lack of statutory authority.

Subparagraph (c)(3) allows an alternative school to propose its own accountability model subject to approval by the State Board of Education. The Rule does not specify under what circumstances the alternative model may be approved or what factors the State Board will consider when evaluating the alternative model. Paragraph (d) is also unclear because it uses undefined terms including “significantly,” “appropriate,” and “eligible students.” Therefore, the Commission objected for lack of clarity.

The Commission objected to 16 NCAC 06G .0315 for lack of clarity because it is unclear whether this Rule applies to charter schools, alternative schools, or all public schools. The Rule is also unclear due to undefined terms including “eligible students,” “state assessment program,” “appropriate,” “alternative assessment,” and other undefined terms as listed in the requests for technical changes.

The agency did not respond to technical change requests for 16 NCAC 06G .0315 to clarify terms in advance of the Commission meeting.

The Commission objected to 16 NCAC 06G .0316 for failure to comply with the APA and ambiguity. Item (3) refers to “procedures stated in SBE Policy ADVS-002 (Appointments to Advisory Committees to the State Board of Education.” Referring to Board policy circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update the policy outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. Since the contents of this policy are not in rule, requiring compliance with procedures in the policy makes the requirements of this rule unclear. Therefore, the Commission objected for failure to comply with the APA and ambiguity.

The Commission also objected on grounds of ambiguity because it is unclear under what circumstances the agency will deem other issues “appropriate” for discussion in (1)(f) and which “field tests(s)/special studies” are being referenced in Item (2).

The Commission objected to 16 NCAC 06G .0503 for failure to comply with the APA and ambiguity. The Rule requires “eligible students” take State-required assessments mandated by law or “State Board of Education policy.” Requiring assessments in policy instead of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the policy outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to either list the required assessments in this Rule or cross-reference another Rule listing the required assessments makes it unclear which assessments are mandated by the State Board of Education.

The Commission also objected for ambiguity because the Rule does not define “eligible student,” making it unclear who is required to take these assessments. It is further unclear which “accountability measures” charter schools are required to follow as part of the “Every Student Succeeds Act Consolidated State Plan.” It is possible these are federal requirements that could be incorporated by reference in accordance with G.S. 150B-21.6, but since the agency has failed to do so here, the Rule is ambiguous as written.

The Commission objected to 16 NCAC 06G .0505 for failure to comply with the APA and ambiguity. The Rule provides that charter schools shall be placed on financial noncompliance status if a financial condition in (b)(1)-(6) occurs. Subparagraph (b)(1) refers to the “Uniform Education Reporting System (UERS)” which appears to set data reporting requirements. The Commission has not found an exemption from the APA for the UERS. Referring to requirements outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update the UERS outside the rulemaking process,

changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. The reporting requirements for charter schools are also unclear since those requirements are not set in rule. As a result, the Commission objected for failure to comply with the APA and ambiguity.

The Commission also objected for ambiguity. Paragraph (c) states, “funds may be frozen...until the exception is corrected.” The Rule does not clarify under what circumstances funds may or may not be frozen. The Rule also does not specify how the agency determines which level of financial noncompliance in Paragraph (e) to assign a charter school. Additionally, the Rule contains undefined terms including “financial insolvency or weakness” in (b)(3) and “immediately” in (c), (e)(3)(A), and (f).

The Commission objected to 16 NCAC 06G .0506 for ambiguity and failure to comply with the APA. In Paragraph (a), the Rule provides that charter schools “may” be placed on governance noncompliance status if a condition in (a)(1)-(3) occurs. The Rule does not clarify under what circumstances a condition in the list results in noncompliance status nor does it specify how the agency determines which level of noncompliance status in Paragraph (b) to assign a charter school.

Part (a)(3)(B) requires compliance with “Health and Safety Standards” and “State Board of Education Policy.” Referring to requirements established outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update policies outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. These requirements are also unclear since those requirements are not set in rule. Therefore, the Commission objected to Part (a)(3)(B) for failure to comply with the APA and ambiguity.

Additionally, the Commission objected to the inclusion of several undefined terms or requirements including “failure to have a functioning board” in (a)(1); “regular meetings” in (a)(1); “inability to show progress” in (a)(2); and “immediately” in (b)(3), making the rule ambiguous.

The Commission objected to 16 NCAC 06G .0507 for lack of clarity. The Rule governs the charter school renewal process, and the review is based upon “whether the charter is meeting expected academic, financial, and governance standards.” The agency’s responses in technical change requests indicate information not included in (b) is considered when reviewing a charter school renewal. Therefore, it is unclear what information is considered by the State Board when reviewing a renewal request.

Additionally, the academic standards referenced in 16 NCAC 06G .0507 are unclear. The financial standards are identified in Rule .0505 of this Section and the governance standards are identified in Rule .0506 of this Section. Based on technical change responses, the academic standards are set as part of the original charter application in G.S. 115C-218.1(b)(2). However, that that is not clear in the Rule as submitted. Therefore, the Commission objects for lack of clarity.

The Commission objected to 16 NCAC 06G .0508 for failure to comply with the APA and numerous instances of ambiguity that make the Rule as a whole difficult to understand.



The Commission objected to Subparagraph (a)(1) for referring to a fee established outside the rulemaking process. The definition of a “rule” in 150B-2(8a) specifically includes the establishment of a fee, meaning setting the dollar amount in the Rule. Additionally, 115C-218.1(c) requires the State Board to adopt the application fee “in accordance with Article 2A of Chapter 150B.” Since the fee amount is established outside of rule, the Commission objects to Subparagraph (a)(1) for failure to comply with the APA and ambiguity since the amount of the fee is unknown.

The Commission also objected to Paragraph (a) for failure to comply with the APA and ambiguity. Subparagraph (a)(1) states, “Prior to each application round, the State Board of Education shall approve the application process, timeline, and non-refundable fee.” Establishing the application and timeline outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to change the application process and timeline before each application round, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. Subparagraphs (a)(2)-(4) refer back to the timeline and “application instructions” established outside the rulemaking process in (a)(1). Since the application process and timeline are established outside of rule, the requirements in Paragraph (a) are unclear and the Commission objected for failure to comply with the APA and ambiguity.

Parts (b)(1)(C) and (D) set application requirements that are ambiguous. It is unclear how applications are evaluated or what factors may be considered to determine whether an application “contains viable governance, business, and education plans.” It is also unclear what “other requirements” are required by the agency. Therefore, the Commission objected to Parts (b)(1)(C) and (D) for ambiguity.

Additionally, the Commission objected to Paragraph (c) for ambiguity for use of the following terms or phrases, which are undefined or unclear as written: “capability to provide comprehensive learning experiences” in (c)(2); “promotes innovation” in (c)(3)(B); “large,” “diverse” and “locally-based” in (c)(3)(D); “accurately” in (c)(3)(F); and “diverse learning environment” in (c)(3)(I). It is further unclear how Paragraph (c) interacts with G.S. 115C-218.5, which governs the State Board’s final approval of applications for charter schools. Therefore, the Commission objected to Paragraph (c) for ambiguity.

The Commission objected to 16 NCAC 06G .0509 for failure to comply with the APA and ambiguity. In (a), the Rule requires completion of “all of the planning program requirements.” Incorporating or referring requirements established outside the rulemaking process set forth in G.S. 150B-21.2 would allow the agency to change the requirements of the planning year outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. Additionally, Paragraph (a) requires a meeting about “policies and procedures.” It is unclear which policies and procedures the Rule is referring to and whether these policies fall within the definition of a “rule.” Therefore, the Commission objected to Paragraph (a) for failure to comply with the APA and ambiguity.

The Commission also objects for lack of clarity due to undefined terms or phrases including: “clear and compelling need” in (b)(1); “exceptional need” in (b)(2); “unique mission” in (c)(1);

“successful” in (b)(4); “obstacles to educational reform efforts” in (c)(5); “successful charter school board” in (c)(6); and “application due date” in (d).

The Commission objected to 16 NCAC 06G .0514 for lack of clarity. It is unclear under what circumstances the State Board of Education “may impose reasonable additional requirements” during review, application, and approval process of fast track replication of high-quality charters. It is also unclear what the additional requirements may be or how the State Board will determine what to require.

The Commission objected to 16 NCAC 06G .0517-.0522 for lack of statutory authority. Rules .0516-.0522 of this Section govern “alternative charter schools.” Alternative schools and charter schools are different types of public schools. Alternative schools are governed by G.S. 115C, Article 8C and Charter Schools are governed by G.S. 115C, Article 14A. Alternative schools primarily serve at-risk students. It is unclear whether the Board has authority to regulate a school as both an alternative school and a charter school. Charter schools can emphasize serving at-risk students as provided in 115C-218(a)(2). It is unclear what statutory authority the agency has to regulate a charter school targeted toward at-risk students as both a charter school and an alternative school.

Statutes governing alternative schools refer to “local school administrative units.” Charter schools are generally exempt from statutes governing local school administrative units pursuant to G.S. 115C-218.10. Therefore, the Commission could not confirm statutory authority exists for Rules .0517-.0522 of this Section.

The Commission objected to 16 NCAC 06G .0517 for lack of necessity and clarity. The Rule begins, “Unless otherwise prohibited by federal or state law...,” without referencing any federal laws or regulations in the body of the Rule or the history note. Therefore, the Commission is unsure which federal laws may apply and objects for lack of clarity.

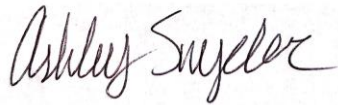
The Rule also states “The purpose of the following rules is to establish the criteria for eligibility and the procedures for applying for this designation [as an Alternative School].” The criteria for eligibility and application requirements are included in Rules 16 NCAC 06G .0518 and .0519. This amounts to a general purpose statement and does not meet the definition of a “rule” in G.S. 150B-2(8a). Therefore, the Commission objected for lack of necessity.

The Commission objected to 16 NCAC 06G .0519 for failure to comply with the APA and ambiguity. Subparagraph (a)(2) refers to accountability options in the “Department of Public Instruction’s School Based Management and Accountability Program under 115C-105.20.” Referring to the “Management and Accountability Program” rather than stating the accountability options in rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the Program outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide the options in rule also make the meaning of this Rule unclear. Therefore, the Commission objected for failure to comply with the APA and ambiguity.

The Commission also objected to Paragraph (b) for ambiguity for use of the undefined term “well-defined.”

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: All Rules; 16 NCAC 06D

**DEADLINE FOR RECEIPT: July 10, 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 06B .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, 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.*

*Throughout these Rules, you refer to the "Department" or "NCDPI." If these have the same meaning, please pick one and use the term consistently. Please also be consistent with how you refer to the State Board of Education.*

*Is "public school" defined for purposes of these rules? Are you using the definition in 115C-5? In .0309(a), you specify that public schools include "traditional, charter, and regional schools." Other rules do not specifically say whether those rules apply to traditional, charter, and regional schools. Please clarify which rules refer to specific types of schools.*

*What is a Local Education Agency? Is it defined in rule or statute? Does it include or exclude charter schools? As written, 06E .0204 refers to "LEAs and charter school boards" but 06D .0307*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: June 26, 2020

*only refers to LEAs. As a result, I read .0307 as applying to traditional schools and not charter schools. Is that correct?*

*For the rules governing testing, which tests are “end-of-course assessments” vs. “standardized artifacts?” Are there other types of tests? Which tests have been adopted by the State Board? Which rules apply to which types of tests? What is the North Carolina Testing Program? Please review and clarify.*

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 26, 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 06D .0211

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 failure to comply with the APA, ambiguity, and lack of necessity. The Rule refers to an "Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina." In Item (1), the Rule states the Invitation provides "the required procedures for submission, evaluation, and adoption of textbooks and a schedule for the process." The Invitation also includes the "criteria used to evaluate textbooks presented for adoption for their conformity to the North Carolina Standard Course of Study." These contents meet the definition of a "rule" in G.S. 150B-2(8a). Referring to the Invitation rather than stating its contents in rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the Invitation outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide these procedural requirements in Rule also makes the process for submitting and evaluating textbooks unclear. Therefore, staff recommends objection for failure to comply with the APA and ambiguity.*

*Staff also recommends objection to Item (2) for lack of necessity. Item (2) directs the General Counsel of the State Board to "review and approve" the Invitation. This statement concerns only the internal management of the agency and is therefore unnecessary. G.S. 150B-2(8a)(a).*

16 NCAC 06D .0211 is proposed for adoption as follows:

**16 NCAC 06D .0211 TEXTBOOK EVALUATION CRITERIA AND INVITATION TO SUBMIT**

The North Carolina Department of Public Instruction shall develop the criteria used to evaluate textbooks presented for adoption for their conformity to the North Carolina Standard Course of Study.

(1) The criteria shall be included in the Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina. The Invitation, also developed by the Department, shall provide the required procedures for submission, evaluation, and adoption of textbooks and a schedule for the process.

(2) General Counsel to the State Board of Education shall review and approve the Invitation prior to its being submitted to the State Board of Education for review and adoption.

(3) The State Board-approved and adopted Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina that includes the criteria shall be sent to the publishers on the NC Publishers Registry requesting the submission of textbooks for evaluation and adoption. Only publishers on the NC Publishers Registry will be sent the invitation and can submit textbooks for evaluation and adoption.

*History Note: Authority G.S. 115C-12; 115C-89;*

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

*Emergency Rule Eff. August 20, 2019.*



## **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 06D .0212

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 failure to comply with the APA, ambiguity, and lack of necessity. The Rule refers to an "Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina." In Paragraph (b) the Rule states "Publishers are required to follow the procedures set forth in the invitation. Failure to comply with all procedure, including stated deadlines, may result in disqualification." Subparagraph (d)(3) states the Invitation includes the "procedure for reconsideration." These procedures meet the definition of a "rule" in G.S. 150B-2(8a). Referring to the Invitation rather than stating its contents in rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the Invitation outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide these procedural requirements in Rule also makes the process for submitting and evaluating textbooks unclear. Therefore, staff recommends objection for failure to comply with the APA and ambiguity.*

*Staff also recommends objection to Paragraph (a) for lack of necessity because it repeats the requirements of G.S. 115C-94.*

### **§ 115C-94. Publishers to register.**

Any publisher who submits books for adoption shall register in the office of the Superintendent of Public Instruction the names of all agents or other employees authorized to represent that company in the State, and this registration list shall be open to the public for inspection.

Ashley Snyder  
Commission Counsel

16 NCAC 06D .0212 is proposed for adoption as follows:

**16 NCAC 06D .0212 TEXTBOOK PUBLISHERS REGISTRY**

(a) In accordance with G.S. 115C-94, the State Superintendent of Public Instruction or designee shall maintain a register of all publishers who submit textbooks for adoption by the State Board of Education. The State Superintendent shall prescribe the information required for registration.

(b) Publishers shall be registered on the NC Publishers Registry in order to receive the State Board of Education-approved Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina, which shall provide the required procedures for submission, evaluation, and adoption of textbooks. Publishers are required to follow the procedures set forth in the invitation. Failure to comply with all procedures, including stated deadlines, may result in disqualification. Only publishers on the NC Publishers Registry will be sent the invitation and can submit textbooks for evaluation and adoption.

(c) Each publishing company piloting textbook materials being submitted for consideration in the current adoption year shall notify the Textbook Commission, in writing, which materials are being piloted and in which local education agencies materials are being piloted. The Textbook Commission shall notify all local superintendents involved in piloting textbook materials prior to the end of the textbook selection process that the materials they are piloting may or may not be accepted by the Commission.

(d) Contact with the State Board of Education, the Textbook Commission, advisors, and the Department must be limited.

(1) The Commission may meet publicly with representatives of publishers to discuss the Commission's plans and procedures for adoption of textbooks.

(2) At no time during the adoption process (from the time the State Board approves the invitation until the State Board adopts the list of textbooks) may the publishers or any of their representatives meet privately with members of the Textbook Commission, the State Board of Education, evaluation advisors, or the Department staff involved in submission, evaluation, or adoption process.

(3) A period of time shall be set aside for the Textbook Commission to meet and deliberate before a list of textbook recommendations is taken to the State Board of Education for adoption. Publishers will have time to present additional information to the Commission if their title(s) have been excluded from the list of recommendations. The procedure for reconsideration shall be described in the Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina.

(e) Publishers may not exercise undue pressure.

(1) For purposes of restrictions, "undue pressure" means personal contact, whether in person, by telephone, or in written form, that attempts to advocate for the selection of a particular book or series of books. "Undue pressure" does not include social contact or presentations to the Textbook Commission as a whole, and does not include written communication with Textbook Commission members or agency officials following acceptance or rejection of a submission in an effort to seek clarification or reconsideration.

(2) The State Superintendent shall remove from the NC Publishers Registry any publisher whose representatives attempt to exercise undue pressure of any kind to adopt its books upon a member of the Textbook Commission, the advisors, or the Department.

(3) The State Board of Education shall direct the State Superintendent of Public Instruction to remove from the NC Publishers Registry any publisher whose representatives attempt to exercise undue pressure of any form upon a member of the State Board of Education to adopt its books.

History Note: Authority G.S. 115C-12; 115C-89;

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

Emergency Rule Eff. August 20, 2019.

## **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 06D .0307

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 to this Rule for lack of necessity, clarity, and statutory authority. The proposed Rule is unnecessary because it repeats portions of 16 NCAC 06D .0302, an existing permanent rule last amended in 2001. The existing permanent Rule is attached with annotations detailing repetitive provisions.*

*Staff recommends objection to (f) for lack of statutory authority. The proposed Rule requires LEAs to report scores on districtwide and statewide standardized tests "within thirty (30) days from generation of the score at the LEA level or receipt of the score and interpretive documentation from the NCDPI." However, G.S. 115C-174.15 requires scores for local tests be provided within 30 days of administration.*

**§ 115C-174.15. (For applicability, see editor's note) Report student performance on local standardized tests.**

(a) A local board of education shall provide a student's results on standardized tests required by the local board, as reported pursuant to G.S. 115C-174.12(d), to the following persons and according to the following time lines:

- (1) To the student's teachers no later than one week after the standardized test is administered.
- (2) To the student's parents no later than 30 days after the standardized test is administered.

Ashley Snyder  
Commission Counsel

(b) If the superintendent of the local school administrative unit determines in writing that extenuating circumstances exist and reports those circumstances to the local board of education, the local board may extend the above time lines in the discretion of the local board of education. (2017-57, s. 7.28A(c).)

*Staff also recommends objection for lack of clarity due to unclear or undefined terms including "secure tests," "improper administration," and other unclear terms as set forth in the requests for technical changes.*

*Staff notes the agency did not provide a revised rule or responses to the requests for technical changes.*

**Annotated version of existing permanent Rule 16 NCAC 06D .0306. Staff notes in red refer to paragraphs in the proposed Rule.**

**16 NCAC 06D .0302 TEST ADMINISTRATION**

- (a) Employees of the LEA shall administer tests to students who are required or permitted to participate.
- (b) The department shall supply the tests to the LEAs. *Repeats (a)(1).*
- (c) LEAs shall: *Repeats (a)(2).*
  - (1) account to the department for all tests received;
  - (2) provide a locked storage area for all tests received;
  - (3) prohibit the reproduction of all or any part of the test; and
  - (4) prohibit their employees from disclosing the content of, or specific items contained in, the test to persons other than authorized employees of the LEA.
- (d) LEAs must monitor test administration procedures. If school officials discover any instance of improper administration and determine that the validity of the test results has been affected, they must notify the local board of education and order the affected students to be retested. *Repeats part of (b).*
- (e) The Superintendent of Public Instruction may conduct audits of LEAs if he receives written complaints which allege improper test administration, and he may require the retesting of students. *Repeats (c).*
- (f) The department shall provide the mechanism for the scoring of all North Carolina mandated tests. In addition the department shall provide score interpretation services to the LEA. *Compare to (d).*
- (g) LEAs shall, at the beginning of each school year, provide information to students and parents or guardians advising them of the district-wide and state-mandated tests that students will be required to take during that school year. In addition, LEAs shall provide information to the students and parents or guardians to advise them of the dates the tests will be administered and how the results from the tests will be used and the consequences thereof. Also, information provided to parents about tests shall include whether the SBE or the local board of education requires the test. *Repeats (e).*
- (h) LEAs shall report scores resulting from the administration of district-wide and state-mandated tests to students and parents or guardians along with available score interpretation information within 30 days from generation of the score at the LEA level or from the receipt of the score and interpretive documentation from the department. *Repeats (f).*
- (i) At the time the scores are reported for tests required for graduation such as the high school competency tests, the computer skills tests, and the high school exit exam, the LEA shall provide the information to students and parents or guardians to advise whether or not the student has met the standard for the test. If a student fails to meet the standard for the test, the student and parents or guardians shall be informed at the time of reporting, the date(s) when focused remedial instruction will be available and the date of the next testing opportunity. *Not contained in proposed Rule.*
- (j) In order to ensure adequate representation and the generalizability of the data used to develop tests and to conduct evaluation studies, selected LEAs and schools, determined by the department through random stratified samples, shall participate in field testing and other sample testing such as the National Assessment of Educational Progress (NAEP) and other national or international assessments as designated by the department or the SBE. *Repeats (g).*

*History Note:* Authority G.S. 115C-12(9)c.;  
Eff. July 1, 1986;  
Amended Eff. May 1, 2001; August 1, 1999; June 1, 1996.

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06D .0307

**DEADLINE FOR RECEIPT: July 10, 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 compare this Rule to Rule .0302 of this Section. Are parts of this Rule unnecessary? Please avoid repeating language already in the Code.*

*In (a), what is the purpose of "Test Administration –?"*

*In (a), is "school system" defined?*

*In (a), is it necessary to say "either permanently or contractually?" If you keep this language, please define "permanently" and "contractually." Are these terms defined elsewhere in rule?*

*At line 4, what "professional training" is required?*

*At line 4, please capitalize "State" if you are referring to North Carolina. Please do not capitalize "state" if you are referring to any state.*

*At line 4, please define "secure tests."*

*In (2)(B), please define "secure."*

*In (2)(D), who are the "authorized employees?" Does the LEA decide?*

*At line 13, please change "must" to "shall."*

*At lines 13-14, please define "improper administration."*

*At line 14, how do school officials determine whether the validity of the test results were affected? What factors are considered?*

*At line 14, please change "must" to "shall."*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: June 26, 2020

*At lines 15-16, the Rule states “only the superintendent and the LEA test coordinator have the authority to declare a test misadministration at the local level.” However, lines 13-15 requires school officials who discover improper administration to “declare a misadministration.” Please clarify.*

*In (c), do you mean “may” or “shall?” If you mean “may,” under what circumstances does the Superintendent conduct audits? Is this in the Superintendent’s discretion?*

*At line 17, please use “he or she” instead of “he/she.”*

*In (d), which tests are in the North Carolina Testing Program? Is this explained in rule or statute? Why is this capitalized?*

*At line 19, please capitalize “Department.”*

*At line 20, what are “score interpretive services?” Does your regulated public understand what this requires?*

*At line 22, please capitalize “State” if you are referring to North Carolina. Do not capitalize “state” if you are referring to any state.*

*At lines 24-25, are any of the tests required by federal law? Does that information have to be provided?*

*At line 26, please capitalize “State” if you are referring to North Carolina. Do not capitalize “state” if you are referring to any state.*

*In (f), you refer to “generation of the score at the LEA level” but (d) says “NCDPI shall score or have scored all tests...” Who scores tests and how is that determined? Does NCDPI ask LEAs to score tests? Please clarify.*

*At line 27, when this was published in the Register it read “30 days,” but was changed to “thirty” post-publication. Please use figures for numbers greater than nine as required by 26 NCAC 02C .0108. Since this was published in the Register, you do not need to show the change, simply do it.*

*In (f), where is your authority to require LEAs to report scores within 30 days of generation for districtwide testing? How does this comply with G.S. 115C-174.15(a)(2)?*

*Also, does the requirement to provide scores “within 30 days of generation” meet the requirements of 115C-174.16 for statewide standardized tests?*

*Why is the language “In order to ensure adequate representation and the generalizability of the data used to develop tests and to conduct evaluations studies” necessary? What are you requiring? If this is just informative, it does not meet the definition of a “rule” in 150B-2(8a).*

*At line 32, which assessments are “designated by the department or the SBE?”*

*At line 21, please capitalize “Department.”*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: June 26, 2020



*In your history note, why is 115C-12(9) listed?*

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 26, 2020

16 NCAC 06D .0307 is proposed for adoption as follows:

**16 NCAC 06D .0307 TEST ADMINISTRATION IN PUBLIC SCHOOLS**

(a) Test Administration -- Only persons who are employed by the school system, either permanently or contractually, and have professional training in education and the state testing program shall administer secure tests to students.

(1) The North Carolina Department of Public Instruction (NCDPI) shall supply the tests to the local education agencies (LEAs).

(2) LEAs shall:

(A) account to the NCDPI for all tests received;

(B) provide a secure, locked storage facility for all tests received;

(C) prohibit the reproduction of any or all parts of the test; and

(D) prohibit its employees from disclosing the content of the tests or specific items contained in the tests to persons other than authorized employees of the LEA.

(b) LEAs must monitor test administration procedures. If school officials discover any instance of improper administration and determine that the validity of the test results has been affected, they must notify the local board of education, declare a misadministration, and order the affected students to be re-tested. Only the superintendent and the LEA test coordinator have the authority to declare a test misadministration at the local level.

(c) The Superintendent of Public Instruction may conduct audits of LEAs if he/she receives written complaints that allege improper test administration, and he/she may require the re-testing of students.

(d) The NCDPI shall score or have scored all tests in the North Carolina Testing Program. In addition, the department shall provide score interpretative services to the LEAs.

(e) LEAs shall, at the beginning of each school year, provide information to students and parents or guardians advising them of the districtwide and state-mandated tests that students will be required to take during that school year. In addition, LEAs shall advise students and parents or guardians of the dates the tests will be administered and how the results from the tests will be used. Information LEAs provide to parents shall include whether the State Board of Education or the local board of education requires the test(s).

(f) LEAs shall report scores resulting from the administration of districtwide and state-mandated tests to students and parents or guardians along with available score interpretation information within thirty (30) days from generation of the score at the LEA level or receipt of the score and interpretive documentation from the NCDPI.

(g) In order to ensure adequate representation and the generalizability of the data used to develop tests and to conduct evaluation studies, selected LEAs and schools, determined through stratified random samples, shall participate in field testing and other sample testing such as the National Assessment of Educational Progress (NAEP) and other national or international assessments as designated by the department or the SBE.

History Note: Authority G.S. 115C-12(9); 115C-174.11; 115C-174.12;

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

Emergency Rule Eff. August 20, 2019.

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06D .0308

**DEADLINE FOR RECEIPT: July 10, 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 compare this Rule to Rule .0303 of this Section. Are parts of this Rule unnecessary?*

*At line 5, what other accountability measures are you referring to? Are these included in the North Carolina Testing Program? If so, what are they and are they in rule?*

*What is the "North Carolina Testing Program?" Why is it capitalized?*

*At line 6, are specific training sessions required?*

*At line 7, please delete or define "proper."*

*At line 7, please delete or define "appropriate."*

*Please compare lines 9 and 6. Is an "LEA testing and accountability coordinator" the same as a "LEA test coordinator?" If so, please be consistent.*

*At lines 9-10, are school test coordinators the test administrators and proctors? Or is the training also provided to the administrators and proctors? Please clarify.*

*Why is 115C-12(9) listed in your history note?*

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 26, 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 06D .0308

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 to this Rule for lack of necessity and clarity. The proposed Rule is unnecessary because it repeats 16 NCAC 06D .0303, an existing permanent rule last amended in 1999. An annotated version of .0303 is attached.*

*The proposed rule is also unclear due to ambiguous or undefined terms including "accountability measures," "North Carolina Testing Program," "proper," and "appropriate."*

*Staff notes the agency did not provide a revised rule or responses to the requests for technical changes.*

Ashley Snyder  
Commission Counsel

**Annotated version of existing permanent Rule 16 NCAC 06D .0303. Staff notes in red refer to paragraphs in the proposed Rule.**

**16 NCAC 06D .0303 ACCOUNTABILITY COORDINATOR**

- (a) The local superintendent shall designate one or more persons to serve as the local testing coordinator and accountability coordinator to assist in the local administration, reporting, and interpretation of tests and other accountability measures. *Repeats (a), but without reference to a local LEA or the NC Testing Program.*
- (b) Coordinators must attend training sessions provided by the Department on the subject of proper test administration, scanning and scoring answer sheets and required processing of test materials. They must then conduct similar sessions within the LEA to provide this instruction to school-based test administrators and proctors. Coordinators shall arrange for the scanning, scoring, and reporting of results from tests adopted by the SBE. *Repeats (b). Proposed Rule adds test security and “appropriate” use of accommodations to list of training requirements. Proposed Rule also adds requirement that training be conducted in-person.*

*History Note: Authority G.S. 115C-12(9)c.;*  
*Eff. July 1, 1986;*  
*Amended Eff. August 1, 1999; November 1, 1997.*

16 NCAC 06D .0308 is proposed for adoption as follows:

**16 NCAC 06D .0308      ROLE OF THE TESTING COORDINATOR**

(a) The local superintendent in a local education agency (LEA) shall act as or appoint a school system testing and accountability coordinator to assist in the local administration, reporting, and interpretation of test results and other accountability measures in the North Carolina Testing Program.

(b) LEA testing and accountability coordinators shall attend training sessions provided by the North Carolina Department of Public Instruction regarding proper test administration, test security, appropriate use of accommodations, scanning and scoring answer sheets, and preparation of test materials for scoring at a central site. LEA test coordinators shall conduct in-person training for the school test coordinators in their LEAs for the purpose of providing instruction to local test administrators and proctors. LEA testing and accountability coordinators shall arrange for the scanning, scoring, and reporting of results from tests adopted by the State Board of Education.

*History Note: Authority G.S. 115C-12(9); 115C-174.11; 115C-174.12;*

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

*Emergency Rule Eff. August 20, 2019.*

## **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 06D .0309

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 to this Rule for lack of necessity, clarity, and statutory authority. The proposed Rule is unnecessary and unclear because it repeats or conflicts with 16 NCAC 06D .0303, an existing permanent rule last amended in 1999. The existing permanent Rule is attached with annotations detailing repetitive and conflicting provisions.*

*Staff further recommends objection for lack of clarity due to unclear terms including "eligible students," "alternative assessments," "Occupational Course of Study," "immediately," and other unclear or undefined terms as detailed in the requests for technical changes.*

*In requests for technical changes, staff asked the agency to provide statutory authority for Paragraphs (d), (j), and (k). The agency has not provided, and staff has not been able to locate statutory authority for these Paragraphs. Therefore, staff recommends objection to Paragraphs (d), (j), and (k) for lack of statutory authority.*

*Staff notes the agency did not provide a revised rule or responses to the requests for technical changes.*

**Annotated version of existing permanent Rule 16 NCAC 06D .0303. Staff notes in red refer to paragraphs in the proposed Rule. Highlighted portions Conflict with the proposed Rule.**

**16 NCAC 06D .0305      END-OF-COURSE ASSESSMENTS**

- (a) The LEA shall include each student's end-of-course assessment results in the student's permanent records and high school transcript. **Repeats (b).**
- (b) The LEA shall give each end-of-course assessment within the final five days of the course on a block schedule and the final 10 days of the course on a traditional schedule. **Repeats first sentence of (d).**
- (c) LEAs shall use results from all operational end-of-course assessments as at least 25% of the student's final grade for each respective course. LEAs shall adopt policies regarding the use of end-of-course assessment results in assigning final grades. **Paragraph (d) sets minimum at 20%.**
- (d) Students who are enrolled for credit in courses in which end-of-course assessments are required shall take the appropriate end-of-course assessment. **Repeats (e).**
- (e) Students who are exempt from final exams by local board of education policy shall not be exempt from end-of-course assessments. **Repeats (f).**
- (f) Each student shall take the appropriate end-of-course assessment the first time the student takes the course even if the course is an honors or advanced placement course. **Repeats (g).**
- (g) Students shall take the appropriate end-of-course assessment at the end of the course or an alternate assessment regardless of the grade level in which the course is offered. **Repeats (h), but (h) removes mention of "alternate assessments."**
- (h) Students who are identified as failing a course for which an end-of-course assessment is required shall take the appropriate end-of-course assessment. **Repeats (i).**
- (i) Students may drop a course with an end-of-course assessment within the first 10 days of a block schedule or within the first 20 days of a traditional schedule. **Repeats first sentence of (j).**
- (j) Students who are enrolled in the Integrated Math sequence shall take the Algebra I, Geometry, and Algebra II end-of-course assessments. The LEA shall administer these assessments as follows: **Contents of this Paragraph not contained in proposed Rule.**
- (1) The Algebra I end-of-course assessment shall be administered during the final five days of the Integrated Math II course if taken on a block schedule or the final 10 days if taken on a traditional schedule.
  - (2) The Geometry end-of-course assessment shall be administered during the Integrated Math III course on a locally established test date.
  - (3) The Algebra II end-of-course assessment shall be administered during the final five days of the Integrated Math III course if taken on a block schedule or the final 10 days if taken on a traditional schedule.

*History Note:* Authority G.S. 115C-12(9)c.; 115C-81(b)(4);  
Eff. November 1, 1997;  
Amended Eff. October 1, 2006; January 2, 2006; April 1, 2002; September 1, 2001; August 1, 2000;  
August 1, 1999.



## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06D .0309

**DEADLINE FOR RECEIPT: July 10, 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 compare this Rule to Rule .0305 of this Section. Are parts of this Rule unnecessary?*

*Throughout this Rule, please consider removing the use of explanatory parentheticals and incorporate any needed language into the text of the sentences.*

*At line 3, define "eligible students." Which students are eligible and how is this determination made?*

*At line 3, what are "end-of-course assessments?" Please be specific. Based on the list in .0313, are you only referring to the exams listed in (a)(4)-(7)?*

*At line 4, what "accommodations" or "alternative assessments" are you referring to?*

*At line 4, please capitalize "Rule."*

*At line 9, what is the "designated testing window?" Is it the timeline established in 115C-174.12(a)(4)?*

*In (d), what are "operational" EOC assessments?*

*Where is your statutory authority for the 20% requirement in (d)?*

*Please compare Paragraph (d) and .0305(c).*

*In (d)(1), what is the "Occupational Course of Study Pathway?"*

*In (d)(1), do you need an "and" before "English Learner?"*

*Why is there an "and" at the end of (d)(1)? Should (d)(2) be part of (d)(1)?*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: June 26, 2020

*Please review the list in (d)(1)-(3). Are (d)(2) and (3) part of the list? Please review and consider making this a list of exceptions as introduced at line 11 and incorporating the text of (d)(3) into (d).*

*At line 14, is it necessary to say "and beyond?" Also, is it still necessary to say "effective with the 2018-19 school year?"*

*At line 15, please delete or define "immediately."*

*At line 16, what do you mean by "due to standard setting?"*

*In (e), which courses require EOC assessments? At line 20, define "appropriate."*

*In (f), what is considered a "final exam" vs. an "EOC assessment?" Is this difference explained in statute or rule?*

*In (g)-(k) please delete or define "appropriate" when referring to the "appropriate EOC assessment."*

*Where is your statutory authority for (j)?*

*Where is your statutory authority for (k)?*

*In (k), I take it this means some courses share the same EOC assessment?*

*Why is 115C-12(9) listed in your history note?*

*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 26, 2020

16 NCAC 06D .0309 is proposed for adoption as follows:

**16 NCAC 06D .0309 REQUIREMENTS REGARDING END-OF-COURSE ASSESSMENTS**

(a) All eligible students shall participate in the administration of end-of-course assessments (standard administrations with or without accommodations or an alternate assessment). This rule shall apply to all public schools, including traditional, charter, and regional schools.

(b) Public schools shall include each student's end-of-course (EOC) assessment results in the student's permanent records and high school transcript.

(c) Public schools shall administer EOC assessments within the North Carolina Department of Public Instruction's designated testing window.

(d) Public schools shall use results from all operational EOC assessments as a minimum of twenty percent (20%) of the student's final grade for each respective course with the exception of:

(1) students following the Occupational Course of Study Pathway; English Learner (EL) students in their first year in a U.S. school; and

(2) effective with the 2018–19 school year and beyond, all students enrolled in a course during the initial implementation year of the new assessment for that course where scores are not immediately available due to standard setting.

(3) For these exceptions, public schools shall adopt policies regarding the use of EOC assessment results in assigning final grades.

(e) Public school students who are enrolled for credit in courses in which EOC assessments are required shall take the appropriate EOC assessment at the completion of the course.

(f) Public school students who are exempt from final exams by local board of education policy shall not be exempt from EOC assessments.

(g) Public school students shall take the appropriate EOC assessment the first time the student takes the course requiring the assessment.

(h) Public school students shall take the appropriate EOC assessment at the end of the course regardless of the grade level in which the course is offered.

(i) Public school students who are identified as failing a course for which an EOC assessment is required shall take the appropriate EOC assessment.

(j) Public school students may drop a course with a required EOC assessment within the first 10 days of enrollment in a semester block schedule or within the first 20 days of enrollment in a yearlong traditional schedule. Students who are enrolled for credit after the 10/20 days, regardless of course delivery (e.g., traditional classroom, NC Virtual Public School, vendor-based online) shall not drop a course with a required EOC assessment and shall participate in the appropriate EOC assessment at the completion of the course.

(k) Public school students enrolled in courses requiring the administration of the EOC assessment who previously obtained a proficient score on the appropriate EOC assessment may use the proficient score as a minimum of 20% of their final course grade or they may elect to retake the appropriate EOC assessment at the completion of the course and use the most recent score for the final grade calculation.

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History Note: Authority G.S. 115C-12(9); 115C-174.11; 115C-174.12;  
Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);  
Emergency Rule Eff. August 20, 2019.

## **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 06D .0310

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. As written, it is unclear what purposes are "approved by the Division of Accountability Services and the State Board of Education" for use of State tests.*

*Ashley Snyder  
Commission Counsel*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06D .0310

**DEADLINE FOR RECEIPT: July 10, 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:

*At line 3, please define "secure tests." Which types of tests are considered "secure tests?" EOCs?*

*At line 3, do you mean "shall not" instead of "may not?"*

*At lines 3-4, what purposes are approved by the Division of Accountability Services and the State Board of Education?*

*Why is 115C-12(9) listed in your history note?*

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 26, 2020

16 NCAC 06D.0310 is proposed for adoption as follows:

**16 NCAC 06D .0310      APPROPRIATE USE OF STATE TESTS**

Secure tests developed by the State of North Carolina may not be used for purposes other than those approved by the Division of Accountability Services and the State Board of Education.

History Note: Authority G.S. 115C-12(9); 115C-174.11; 115C-174.12;

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

Emergency Rule Eff. August 20, 2019.

## **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 06D .0311

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 to this Rule for lack of necessity, clarity, and compliance with the APA. The proposed Rule is unnecessary because it repeats portions of 16 NCAC 06D .0306, an existing permanent rule last amended in 2000. The existing permanent Rule is attached with annotations detailing repetitive provisions.*

*Staff recommends objection to Paragraph (k) for lack of clarity and failure to comply with the APA. The Rule requires teachers to provide instruction that "meets or exceeds the state-adopted curriculum standards." Staff notes the curriculum standards appear to be part of the "Standard Course of Study governed by G.S. 115C-81.5:*

### **§ 115C-81.5. Standard course of study.**

(a) All children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as its guide, the State Board of Education shall adopt a plan of education and a standard course of study as provided in G.S. 115C-12(9c) for the public schools of the State. It is the intent of the General Assembly that the focus of State educational funding shall be to ensure that each student receives a sound basic education. It is further a goal of the General Assembly to provide supplemental funds to low-wealth counties to allow those counties to enhance the instructional program and student achievement. Instruction shall be offered in the areas of arts, communication skills, physical education and personal health and safety, mathematics, media and computer skills, science, second languages, social studies, and career and technical education. In addition, instruction shall be offered in all of the areas provided in this Part.

(b) The standard course of study shall provide all of the following:

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Commission Counsel



- (1) A core curriculum for all students that takes into account the special needs of children.
- (2) A set of competencies, by grade level, for each curriculum area.
- (3) A list of textbooks for use in providing the curriculum.
- (4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation, that take into account children with disabilities and, in particular, include appropriate modifications.
- (5) A program of remedial education.
- (6) Required support programs.
- (7) A definition of the instructional day.
- (8) Class size recommendations and requirements.
- (9) Prescribed staffing allotment ratios.
- (10) Material and equipment allotment ratios.
- (11) Facilities guidelines that reflect educational program appropriateness, long-term cost efficiency, and safety considerations.
- (12) Any other information the Board considers appropriate and necessary.

*Staff is not aware of any authority for the Board to adopt curriculum standards outside the rulemaking process. Without the curriculum standards set in rule, the agency can amend the standards outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide these requirements in Rule also makes the requirement for teachers to “provide instruction that meets or exceeds the state-adopted curriculum standards” unclear as written. Therefore, staff recommends objection to (k) for failure to comply with the APA and lack of clarity.*

*Staff also recommends objection for lack of clarity because it is unclear to staff under what circumstances this Rule applies. This Rule sets forth a “testing code of ethics,” but it is unclear whether the requirements of this Rule apply to all standardized tests, final exams, EOCs, or all tests. Staff further recommends objection for lack of clarity due to unclear terms including “secure,” “immediately,” “proper,” “eligible students,” “fairly,” and other unclear or undefined terms as detailed in the requests for technical changes.*

**Annotated version of existing permanent Rule 16 NCAC 06D .0306. Staff notes in red refer to paragraphs in the proposed Rule.**

**16 NCAC 06D .0306      TESTING CODE OF ETHICS**

(a) This Rule shall apply to all public school employees who are involved in the state testing program. **Repeats (a), but does not specifically mention charter and regional school employees.**

(b) The superintendent or superintendent's designee shall develop local policies and procedures to ensure maximum test security in coordination with the policies and procedures developed by the test publisher. The principal shall ensure test security within the school building. **Repeats (b).**

- (1) The principal shall store test materials in a secure, locked area. The principal shall allow test materials to be distributed immediately prior to the test administration. Before each test administration, the building level test coordinator shall accurately count and distribute test materials. Immediately after each test administration, the building level test coordinator shall collect, count, and return all test materials to the secure, locked storage area. **Repeats (c), (i)(1), and (i)(2).**
- (2) "Access" to test materials by school personnel means handling the materials but does not include reviewing tests or analyzing test items. The superintendent or superintendent's designee shall designate the personnel who are authorized to have access to test materials. **Repeats (d).**
- (3) Persons who have access to secure test materials shall not use those materials for personal gain. **Repeats (d)(1).**
- (4) No person may copy, reproduce, or paraphrase in any manner or for any reason the test materials without the express written consent of the test publisher. **Repeats (d)(2).**
- (5) The superintendent or superintendent's designee shall instruct personnel who are responsible for the testing program in testing administration procedures. This instruction shall include test administrations that require procedural modifications and shall emphasize the need to follow the directions outlined by the test publisher. **Repeats (c).**
- (6) Any person who learns of any breach of security, loss of materials, failure to account for materials, or any other deviation from required security procedures shall immediately report that information to the principal, building level test coordinator, school system test coordinator, and state level test coordinator. **Repeats (f).**

(c) Preparation for testing.

- (1) The superintendent shall ensure that school system test coordinators: **Repeats (g)(1)-(4).**
  - (A) secure necessary materials;
  - (B) plan and implement training for building level test coordinators, test administrators, and proctors;
  - (C) ensure that each building level test coordinator and test administrator is trained in the implementation of procedural modifications used during test administrations; and
  - (D) in conjunction with program administrators, ensure that the need for test modifications is documented and that modifications are limited to the specific need.
- (2) The principal shall ensure that building level test coordinators: **Repeats (i)(1), (3), and (4).**
  - (A) maintain test material security and accountability of test materials;
  - (B) identify and train personnel, proctors, and backup personnel for test administrations; and
  - (C) encourage a positive atmosphere for testing.
- (3) Test administrators shall be school personnel who have professional training in education and the state testing program. **Repeats (j).**
- (4) Teachers shall provide instruction that meets or exceeds the standard course of study to meet the needs of the specific students in the class. Teachers may help students improve test-taking skills by: **Repeats (k).**
  - (A) helping students become familiar with test formats using curricular content;
  - (B) teaching students test-taking strategies and providing practice sessions;
  - (C) helping students learn ways of preparing to take tests; and
  - (D) using resource materials such as test questions from test item banks, testlets and linking documents in instruction and test preparation.

(d) Test administration.

- (1) The superintendent or superintendent's designee shall: **Repeats (l).**
  - (A) assure that each school establishes procedures to ensure that all test administrators comply with test publisher guidelines;

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Commission Counsel

- (B) inform the local board of education of any breach of this code of ethics; and
  - (C) inform building level administrators of their responsibilities.
- (2) The principal shall: **Repeats duties of “school test coordinator” in (m). It is unclear to staff whether the “school test coordinator” role is assigned to a school principal.**
  - (A) assure that school personnel know the content of state and local testing policies;
  - (B) implement the school system's testing policies and procedures and establish any needed school policies and procedures to assure that all eligible students are tested fairly;
  - (C) assign trained proctors to test administrations; and
  - (D) report all testing irregularities to the school system test coordinator.
- (3) Test administrators and proctors shall: **Repeats (n).**
  - (A) administer tests according to the directions in the administration manual and any subsequent updates developed by the test publisher;
  - (B) administer tests to all eligible students;
  - (C) report all testing irregularities to the school system test coordinator; and
  - (D) provide a positive test-taking climate.
- (4) Proctors shall serve as additional monitors to help the test administrator assure that testing occurs fairly. **Repeats (o).**
- (e) Scoring. The school system test coordinator shall: **Repeats (p).**
  - (1) ensure that each test is scored according to the procedures and guidelines defined for the test by the test publisher;
  - (2) maintain quality control during the entire scoring process, which consists of handling and editing documents, scanning answer documents, and producing electronic files and reports. Quality control shall address at a minimum accuracy and scoring consistency;
  - (3) maintain security of tests and data files at all times, including:
    - (A) protecting the confidentiality of students at all times when publicizing test results; and
    - (B) maintaining test security of answer keys and item-specific scoring rubrics.
- (f) Analysis and reporting. Educators shall use test scores appropriately. This means that the educator recognizes that a test score is only one piece of information and must be interpreted together with other scores and indicators. Test data help educators understand educational patterns and practices. The superintendent shall ensure that school personnel analyze and report test data ethically and within the limitations described in this Paragraph. **Repeats (q).**
  - (1) Educators shall release test scores to students, parents, legal guardians, teachers, and the media with interpretive materials as needed.
  - (2) Staff development relating to testing must enable personnel to respond knowledgeably to questions related to testing, including the tests, scores, scoring procedures, and other interpretive materials.
  - (3) Items and associated materials on a secure test shall not be in the public domain. Only items that are within the public domain may be used for item analysis.
  - (4) Educators shall maintain the confidentiality of individual students. Publicizing test scores that contain the names of individual students is unethical. **Compare to (q)(1). Proposed Rule adds additional language.**
  - (5) Data analysis of test scores for decision-making purposes shall be based upon:
    - (A) disaggregation of data based upon student demographics and other collected variables;
    - (B) examination of grading practices in relation to test scores; and
    - (C) examination of growth trends and goal summary reports for state-mandated tests.
- (g) Unethical testing practices include, but are not limited to, the following practices: **Repeats (r).**
  - (1) encouraging students to be absent the day of testing;
  - (2) encouraging students not to do their best because of the purpose of the test;
  - (3) using secure test items or modified secure test items for instruction;
  - (4) changing student responses at any time;
  - (5) interpreting, explaining, or paraphrasing the test directions or the test items;
  - (6) reclassifying students solely for the purpose of avoiding state testing;
  - (7) not testing all eligible students;
  - (8) failing to provide needed modifications during testing, if available;
  - (9) modifying scoring programs including answer keys, equating files, and lookup tables;
  - (10) modifying student records solely for the purpose of raising test scores;
  - (11) using a single test score to make individual decisions; and
  - (12) misleading the public concerning the results and interpretations of test data.

(h) In the event of a violation of this Rule, the SBE may, in accordance with the contested case provisions of G.S. 150B, impose any one or more of the following sanctions: **Repeats (s).**

- (1) withhold ABCs incentive awards from individuals or from all eligible staff in a school;
- (2) file a civil action against the person or persons responsible for the violation for copyright infringement or for any other available cause of action;
- (3) seek criminal prosecution of the person or persons responsible for the violation; and
- (4) in accordance with the provisions of 16 NCAC 6C .0312, suspend or revoke the professional license of the person or persons responsible for the violation.

*History Note:* Authority G.S. 115C-12(9)c.; 115C-81(b)(4);  
Eff. November 1, 1997;  
Amended Eff. July 1, 2000.

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06D .0311

**DEADLINE FOR RECEIPT: July 10, 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 compare this Rule to Rule .0306 of this Section. Are parts of this Rule unnecessary?*

*Throughout this Rule, please capitalize "State" if you are referring to North Carolina and do not capitalize "state" if you are referring to any state.*

*Throughout this Rule, please replace "superintendent/charter school director" with either "superintendent or charter school director" or "superintendent and charter school director."*

*At lines 4-5, what is the "state testing program" and which employees are "involved" such that this Rule applies to them?*

*At line 10, which "testing administration procedures" are you referring to?*

*At line 11-12, are testing accommodations outlined by the test publisher?*

*In (d)(1), define "personal gain."*

*In (d)(2), do you mean "may" or "shall?"*

*In (d)(2), is it necessary to say "for any manner or for any reason?"*

*In (e), how does a principal "ensure test security?" What is required? Are these requirements set by the State Board or the test publisher?*

*At line 20, please define "secure."*

*At line 19, please delete or define "immediately."*

*In (f), define "breach of security."*

*In (f), are "loss of materials" and "failure to account for materials" the same?*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: June 26, 2020

*At line 23, what are the “required security procedures?”*

*At line 23, please delete or define “immediately.”*

*In (g)(1), what materials are considered “necessary?” And how are they required to be secured?*

*In (g)(3), are the “policies and procedures” for administering a test set by the State Board or the test publisher? If the State Board, are these in rule?*

*At line 30, please delete or define “proper.”*

*At line 33, how do you determine if the accommodation is limited to the specific need? Is this in the discretion of the superintendent or charter school director?*

*In (i)(1), please consider deleting “accurately.”*

*In (i)(2), please delete or define “immediately.”*

*In (i)(2), please delete or define “secure.”*

*Please review (i)(2). Is this supposed to be two separate items in the list?*

*In (i)(2), which school policies are “needed?” Is this in the discretion of the principal?*

*In (i)(4), what does it mean to “encourage a positive atmosphere for testing?” What are you requiring here?*

*In (j), what “professional training” is required?*

*In (j), what is the “state testing program?”*

*In (k), what are the “state-adopted curriculum standards?”*

*Please review the list in (k). Is (1) supposed to be part of (k) with (2)-(5) renumbered as (1)-(4)?*

*In (m)(1), what are the state testing policies? Are you referring to the “Rules of this Section?”*

*In (m)(2), define “eligible students.”*

*In (m)(2), please delete or define “fairly.”*

*In (m)(4), please define “testing irregularities.”*

*In (n)(2), define “eligible students.”*

*In (n)(3), please define “testing irregularities.”*

*In (n)(4), define “a positive test-taking environment.” Specifically, what are you requiring test administrators to do?*

*In (o), what is required for testing to occur “fairly?”*

*In (p)(2), is it necessary to say “at a minimum?” Rules always set minimum requirements.*

*In (q), line 9, please define “appropriately.” What are you requiring? Consider: “Educators shall use test scores as one piece of information to be interpreted together with other scores and indicators.”*

*Why is the third sentence in (q) necessary? If it is informational, it does not meet the definition of a “rule” in 150B-2(8a).*

*On page 3, line 12, please delete or define “ethically.”*

*At line 12, please capitalize “Paragraph.”*

*At line 16, is this prohibition as applied to the State Board of Education or any employee of the State Board of Education internal agency management? See 150B-2(8a)(a).*

*Is (q)(2) necessary? Does it repeat the requirements of 115C-174.15 and 174.16?*

*Is (q)(4) necessary given 115C-174.13?*

*In (q)(5), whose decision-making are you regulating? Educators?*

*In (r), please delete “but are not limited to” because it is unnecessary.*

*In (r)(6), please delete or define “solely.”*

*In (r)(7), please define “eligible students.”*

*In (r)(8), what are “required accommodations” and how are they determined?*

*In (r)(10), please delete or define “solely.”*

*In (r)(11), decisions about what?*

*In (r)(12), what is considered “misleading the public?” What are you prohibiting?*

*In (s), specifically which statute or statutes are you referring to in 150B? Why is this reference to 150B necessary? Please clarify your intent here.*

*In (s)(1), please delete or define “applicable.”*

*In your history note, why is 115C-12(9) listed?*

*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 26, 2020

1 16 NCAC 06D.0311 is proposed for adoption as follows:

2 **16 NCAC 06D .0311 TESTING CODE OF ETHICS**

3 (a) This Rule sets out the administrative testing procedures and testing code of ethics and shall apply to all public  
4 school employees, including charter school and regional school employees, who are involved in the state testing  
5 program.

6 (b) The superintendent/charter school director or superintendent's/charter school director's designee shall develop  
7 local policies and procedures to ensure maximum test security in coordination with the policies and procedures  
8 developed by the test publisher.

9 (c) The superintendent/charter school director or superintendent's/charter school director's designee shall instruct  
10 personnel who are responsible for the testing program in testing administration procedures. This instruction shall  
11 include test administrations that require testing accommodations and shall emphasize the need to follow the directions  
12 outlined by the test publisher.

13 (d) The superintendent/charter school director or superintendent's/charter school director's designee shall designate  
14 the personnel who are authorized to have access to secure test materials. "Access" to test materials by school personnel  
15 means handling the materials but does not include reviewing tests or analyzing test items.

16 (1) Persons who have access to secure test materials shall not use those materials for personal gain.

17 (2) No person may copy, reproduce, or paraphrase in any manner or for any reason the test materials  
18 without the express written consent of the test publisher.

19 (e) The principal shall ensure test security within the school building. The principal shall store test materials in a  
20 secure, locked facility. The principal shall allow test materials to be distributed immediately before the test  
21 administration.

22 (f) Any breach of security, loss of materials, failure to account for materials, or any other deviation from required  
23 security procedures shall be reported immediately to the principal, school test coordinator, school system (LEA) test  
24 coordinator, superintendent/charter school director, and regional accountability coordinator.

25 (g) Preparation for testing. The superintendent/charter school director shall ensure that school system (LEA) test  
26 coordinators:

27 (1) secure necessary materials;

28 (2) plan and implement training for school test coordinators, test administrators, and proctors;

29 (3) ensure each school test coordinator and test administrator is trained before each test administration  
30 on the policies and procedures for conducting a proper test administration and for processing and  
31 returning test materials; and

32 (4) in conjunction with program administrators, ensure the need for test accommodations is documented  
33 and that accommodations are limited to the specific need.

34 (h) The principal or the principal's designee shall serve as school test coordinator.

35 (i) The principal shall ensure the school test coordinator maintains test security and accountability of test materials,  
36 including taking the following actions:



- (1) before each test administration, the school test coordinator shall accurately count and distribute test materials, and
- (2) immediately after each test administration, the school test coordinator shall collect, count, and return all test materials to the secure, locked storage facility establishes any needed school policies and procedures to assure all eligible students are tested fairly;
- (3) identifies and trains personnel, proctors, and backup personnel for test administrations; and
- (4) encourages a positive atmosphere for testing.
- (j) Test administrators shall be school personnel who have professional training in education and the state-testing program.
- (k) Teachers shall provide instruction that meets or exceeds the state-adopted curriculum standards to meet the needs of the specific students in the class.
- (l) Teachers may help students improve test-taking skills by:
- (1) helping students become familiar with test formats using curricular content;
- (2) teaching students test-taking strategies and providing practice sessions;
- (3) helping students learn ways of preparing to take tests; and
- (4) using resource materials such as test questions from test item banks and linking documents in instruction and test preparation.
- (l) With respect to test administration, the superintendent/charter school director or superintendent's/charter school director's designee shall:
- (1) assure each school establishes procedures to ensure all test administrators comply with test publisher guidelines;
- (2) inform the local board of education of any breach of this code of ethics; and
- (3) inform school system (LEA) test coordinators and principals of their responsibilities.
- (m) The school test coordinator shall:
- (1) assure school personnel know the content of state and local testing policies;
- (2) implement the school system and local testing policies and procedures to assure all eligible students are tested fairly;
- (3) ensure trained proctors are assigned to test administrations by the principal; and
- (4) ensure all testing irregularities are reported to the school system (LEA) test coordinator.
- (n) Test administrators shall:
- (1) administer tests according to the directions in the assessment guide and any subsequent updates developed by the test publisher;
- (2) administer tests to all eligible students;
- (3) report all testing irregularities to the school test coordinator; and
- (4) provide a positive test-taking environment.
- (o) Proctors shall serve as additional monitors to help the test administrator assure that testing occurs fairly.
- (p) Scoring. The school system test coordinator shall:

- (1) ensure each test is scored according to the procedures and guidelines defined for the test by the test publisher;
  - (2) maintain quality control during the entire scoring process, which consists of handling and editing documents, scanning answer documents, and producing electronic files and reports. Quality control shall address at a minimum accuracy and scoring consistency.
  - (3) maintain security of tests and data files at all times, including:
    - (A) protecting the confidentiality of students at all times when publicizing test results; and
    - (B) maintaining test security of answer keys and item-specific scoring rubrics.
- (q) Analysis and reporting. Educators shall use test scores appropriately. This means that the educator recognizes that a test score is only one piece of information and must be interpreted together with other scores and indicators. Test data help educators understand educational patterns and practices. The superintendent shall ensure that school personnel analyze and report test data ethically and within the limitations described in this paragraph.
- (1) Educators shall maintain the confidentiality of individual students. Publicizing test scores or any written material containing personally identifiable information from the student's educational records shall not be disseminated or otherwise made available to the public by a member of the State Board of Education, any employee of the State Board of Education, the State Superintendent of Public Instruction, any employee of the North Carolina Department of Public Instruction, any member of a local board of education, any employee of a local board of education, or any other person, except as permitted under the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g.
  - (2) Educators shall release test scores to students, parents, legal guardians, teachers, and the media with interpretive materials as needed.
  - (3) Staff development relating to testing must enable school personnel to respond knowledgeably to questions related to testing, including the tests, scores, scoring procedures, and other interpretive materials.
  - (4) Items and associated materials on a secure test shall not be in the public domain. Only items that are within the public domain may be used for item analysis.
  - (5) Data analysis of test scores for decision-making purposes shall be based upon:
    - (A) disaggregation of data based upon student demographics and other collected variables;
    - (B) examination of grading practices in relation to test scores; and
    - (C) examination of growth trends and goal summary reports for state-mandated tests.
- (r) Unethical testing practices include, but are not limited to, the following practices:
- (1) encouraging students to be absent the day of testing;
  - (2) encouraging students not to do their best;
  - (3) using secure test items or modified secure test items for instruction;
  - (4) changing student responses at any time;
  - (5) interpreting, explaining, or paraphrasing the test directions or the test items;

1       (6) classifying students solely for the purpose of avoiding state testing;

2       (7) not testing all eligible students;

3       (8) failing to provide required accommodations during testing;

4       (9) modifying scoring programs including answer keys, equating files, and lookup tables;

5       (10) modifying student records solely for the purpose of raising test scores;

6       (11) using a single test score to make individual decisions; and

7       (12) misleading the public concerning the results and interpretations of test data.

8       (s) In the event of a violation of this Rule, the State Board of Education may, in accordance with the contested case  
9       provisions of Chapter 150B of the General Statutes, impose any one or more of the following sanctions:

10       (1) withhold any applicable monetary incentive awards;

11       (2) file a civil action against the person or persons responsible for the violation for copyright  
12       infringement or for any other available cause of action;

13       (3) seek criminal prosecution of the person or persons responsible for the violation; and

14       (4) in accordance with the provisions of 16 NCAC 6C .0312, suspend or revoke the professional license  
15       of the person or persons responsible for the violation.

16       History Note: Authority G.S. 115C-12(9); 115C-174.11; 115C-174.12;

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.

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: All Rules; 16 NCAC 06E

**DEADLINE FOR RECEIPT: July 10, 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 06B .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, why is it necessary to say "Interim rule status conferred..."*

*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 29, 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 06E .0107

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 failure to comply with the APA and ambiguity. In Paragraph (a), the Rule requires the information listed in this Rule to be reported "in conformity with the State's Uniform Education Reporting System (UERS)." Staff is not aware of and the agency has not provided any authority exempting the UERS from the rulemaking process. Referring to requirements outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update the UERS outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. The reporting requirements are also unclear since those requirements are not set in rule. Therefore, staff recommends objection for failure to comply with the APA and ambiguity.*

*Staff recommends objection for lack of clarity because the Rule requires LEAs to report crimes and offenses identified by statute to the State Board of Education, but the statutes listed in (a)(4), (a)(5), and the first statute in (a)(6) have been recodified. Additionally, (a)(21) lists G.S. 14-50.16, but that statute was repealed in 2017. As a result, the reporting requirements tied to these statutes are unclear as written.*

*Staff also recommends objection to Paragraph (b) for lack of clarity since it states "failure to follow reporting requirements under this provision may justify disciplinary action. . . ." As written, it is unclear when a failure to report will "justify disciplinary action."*

*Staff notes the agency did not provide a revised rule or responses to the requests for technical changes.*

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

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish all needed rules and regulations for the system of free public schools, subject to laws enacted by the General Assembly. 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. The powers and duties of the State Board of Education are defined as follows:

...

- (18) **Duty to Develop and Implement a Uniform Education Reporting System, Which Shall Include Standards and Procedures for Collecting Fiscal and Personnel Information. -**
- a. The State Board of Education shall adopt standards and procedures for local school administrative units to provide timely, accurate, and complete fiscal and personnel information, including payroll information, on all school personnel.
  - b. The State Board of Education shall develop and implement a Uniform Education Reporting System that shall include requirements for collecting, processing, and reporting fiscal, personnel, and student data, by means of electronic transfer of data files from local computers to the State Computer Center through the State Communications Network.
  - c. The State Board of Education shall comply with the provisions of G.S. 116-11(10a) to plan and implement an exchange of information between the public schools and the institutions of higher education in the State. The State Board of Education shall require local boards of education to provide to the parents of children at a school all information except for confidential information received about that school from institutions of higher education pursuant to G.S. 116-11(10a) and to make that information available to the general public.
  - d. The State Board of Education shall modify the Uniform Education Reporting System to provide clear, accurate, and standard information on the use of funds at the unit and school level. The plan shall provide information that will enable the General Assembly to determine State, local, and federal expenditures for personnel at the unit and school level. The plan also shall allow the tracking of expenditures for textbooks, educational supplies and equipment, capital outlay, at-risk students, and other purposes.
  - e. When practicable, reporting requirements developed by the State Board of Education as part of the Uniform Education Reporting System under this subdivision shall be incorporated into the PowerSchool application or any other component of the Instructional Improvement System to minimize duplicative reporting by local school administrative units.
  - f. The State Board of Education shall develop a process for local school administrative units to annually identify enrolled military-connected students using the Uniform Education Reporting System. The identification of military-connected students shall not be used for the purposes of determining school achievement, growth, and performance scores as required by G.S. 115C-12(9)c1. The identification of military-connected students is not a public record within the meaning of G.S. 132-1 and shall not be made public by any person, except as permitted under the provisions of the Family Educational and Privacy Rights Act of 1974, 20 U.S.C. § 1232g. For purposes of this section, a "military-connected student" means a student enrolled in a local school administrative

unit who has a parent, step-parent, sibling, or any other person who resides in the same household serving in the active or reserve components of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Guard. Beginning in the 2016-2017 school year, and annually thereafter, the identification of military-connected students for all local school administrative units shall be completed by January 31 of each school year.

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06E .0107

**DEADLINE FOR RECEIPT: July 10, 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 compare the formatting of this Rule to what was published in the Register. For example, "1." should be "(1)." Please change this Rule back to how it was formatted for publication. You do not need to show the formatting change; simply do it.*

*At line 5, what is the "Department of Public Instructions-approved discipline reporting system?" I take it your regulated public knows?*

*At line 6, what is the "State's Uniform Education Reporting System?"*

*In (a)(1), please refer to "14-18."*

*The statutes referenced in (a)(4), (a)(5), and the first statute in (a)(6) have been recodified.*

*In (a)(10), please refer to "14-49."*

*Is (a)(16) necessary given (a)(17)? Or are you asking these be treated differently for purposes of reporting?*

*In (a)(21), 14-50.16 has been repealed. Did you intend to refer to 14-50.16A?*

*In (a)(21), do you need an "and" or "or" before 15-50.20?*

*Are (a)(24)-(a)(27) all necessary since they refer to the same statute?*

*Are (a)(30) and (a)(32) both necessary?*

*In (a)(33), please refrain from using "et. seq." and cite the specific provisions you are referring to.*

*Are (a)(34)-(a)(38), all necessary since they refer to the same statute? Or are these different categories for the report?*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: June 29, 2020



*In (a)(38), please refrain from using “et. seq.”*

*In (b), do you mean “may” or “shall?” If you mean “may,” under what circumstances would failure to report justify disciplinary action? What factors are considered?*

*In (b), did you intend to cite 16 NCAC 06C .0372 as well?*

*In (b), please only refer to rules by their citation. Please delete the rule name.*

*Please revise (c) to a list as it was formatted in the Register.*

*At line 19, please put “school property” in quotations since you are defining the term.*

*In your history note, why is 115C-288(g) listed?*

*In your history note, why is 115C-397(a) listed? Are you saying these are the acts of violence teachers have to report to the principal? Or that the report also contains whether a student was suspended or expelled as a result of committing one of the acts on this list? Please clarify.*

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

16 NCAC 06E .0107 is proposed for adoption as follows:

**16 NCAC 06E .0107 SCHOOL VIOLENCE ACTS DEFINED AND THE ANNUAL REPORT OF THESE  
CRIMES**

a) Local Education Agencies (LEAs) shall report the following crimes and offenses within five school days to the State Board of Education via the Department of Public Instruction-approved discipline reporting system in conformity with the State's Uniform Education Reporting System:

1. Homicide as defined in G.S. §14-17 and 14.18;
2. Assault resulting in serious personal injury as defined in G.S. §14-32.4;
3. Assault involving the use of a weapon as defined in G.S. §14-32 through 14-34.10;
4. Rape as defined in G.S. §14-27.2, 14-27.3 and 14-27.7A;
5. Sexual offense as defined in G.S. §14-27.4, 14-27.5 and 14-27.7A;
6. Sexual assault as defined in G.S. §14-27.5A and 14-33(c)(2);
7. Kidnapping as defined in G.S. §14-39;
8. Robbery with a dangerous weapon as defined in G.S. §14-87;
9. Indecent liberties with a minor as defined in G.S. §14-202.1, 14-202.2 and 14-202.4;
10. Assault with a firearm or powerful explosive as defined in G.S. §14-34 through 14-34.10 and §14.49 through 14-50.1;
11. Robbery with a firearm or dangerous explosive as defined in G.S. §14-87;
12. Willfully burning a school building as defined in G.S. §14-60;
13. Making bomb threats or engaging in bomb hoaxes as defined in G.S. §14-69.2;
14. Assault on school officials, employees, and volunteers as defined in G.S. §14-33(c)(6);
15. Possession of a controlled substance in violation of the law as defined in G.S. §90-86 through 90-113.8;
16. Possession of a firearm in violation of the law as defined in G.S. §14-269.2;
17. Possession of a weapon in violation of the law as defined in G.S. §14-269.2;
18. Unlawful, underage sales, purchase, provision, possession, or consumption of alcoholic beverages as defined in G.S. §18B-302;
19. Assault as defined in G.S. §14-33 but not resulting in an injury as severe as defined in G.S. §14-32.4;
20. Fighting, or affray as defined in G.S. §14-33;
21. Gang activity as defined in G.S. §14-50.16 14-50.20;
22. Robbery as defined in G.S. §14-87, but without the use of a dangerous weapon;
23. Extortion as defined in G.S. §14-118.4;
24. Communicating threats as defined in G.S. §14-277.1;
25. Threat of assault with a firearm or powerful explosive as defined in G.S. §14-277.1;
26. Threat of assault with a weapon as defined in G.S. §14-277.1;
27. Threat of assault without a weapon as defined in G.S. §14-277.1;

- 1           28. Possession or use of tobacco products as defined in G.S. §14-313;  
2           29. Property damage as defined in G.S. §115C-398;  
3           30. Bullying as defined in G.S. §115C-407.15;  
4           31. Cyberbullying as defined in G.S. §14-458.1 and 14-458.2;  
5           32. Verbal harassment as defined in G.S. §115C-407.15;  
6           33. Sexual harassment as defined in G.S. §115C-335.5; Title VII of the Civil Rights Act of 1964, 42  
7           U.S.C. §2000e et seq.;  
8           34. Harassment - Race/Ethnicity as defined in §115C-407.15;  
9           35. Harassment – Disability as defined in § 115C-407.15;  
10          36. Harassment – Sexual orientation as defined in §115C-407.15;  
11          37. Harassment – Religious affiliation as defined in §115C-407.15; and  
12          38. Discrimination as defined in Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq.;  
13           Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq.; Title IX of the Education  
14           Amendments of 1972, 20 U.S.C. §§1681-1688; Americans with Disabilities Act, 42 U.S.C. 12101  
15           et seq.  
16          b) Failure to follow reporting requirements under this provision may justify disciplinary action pursuant to 16  
17           NCAC 6C.0312 (License Suspension and Revocation).  
18          c) These offenses shall be reported when they occur under the following conditions and circumstances: (1) on  
19           school property, defined as any public school building, bus, public school campus, grounds, recreational area,  
20           or athletic field in the charge of the principal or (2) off school property on a school-sponsored field trip.

21  
22 *History Note:*    Authority G.S. 115C-12(18), (21); G.S. 115C-288(g); G.S. 115C-307(a);  
23                   Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);  
24                   Emergency Rule Eff. August 20, 2019.  
25

## **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

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

24  
25 *History Note: Authority G.S. 115C-12(12); 115C-12(23);*

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

27 *Emergency Rule Eff. August 20, 2019.*  
28



## **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 .0206

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 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.*

**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).*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06E .0206

**DEADLINE FOR RECEIPT: July 10, 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 compare this Rule with Rule .0203 of this Section. Please avoid repetition.*

*In (a), please change "must" to "shall."*

*At line 5, is "first responder" defined?*

*In (b)(5), are you requiring 10 hours total or 10 hours in each type of training listed?*

*In (b)(5), please add a comma after "recognition" or replace the comma with an "and" after "first aid" if "injury recognition and prevention" is one topic.*

*In (c), line 18, do you mean "may" or "shall?"*

*At line 21, please define "emergency." Or, is the definition of "emergency" up to each local superintendent?*

*In (e), please capitalize "Rule."*

*Why is (f) necessary? Specifically, what are you requiring LEAs to do?*

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 29, 2020

16 NCAC 06E .0206 is proposed for adoption as follows:

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

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

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

(1) have completed and continue to maintain certification in cardiopulmonary resuscitation as certified by an organization such as the American Red Cross or the American Heart Association;

(2) have completed and continue to maintain certification in first aid as certified by an organization such as the American Red Cross or the American Heart Association;

(3) have completed and continue to maintain training in concussion management as offered by an organization such as the National Federation of State High School Associations (NFHS).

(4) have completed and continue to maintain continuing education in injury prevention and management as offered by an organization such as the National Federation of State High School Associations (NFHS); and

(5) complete 10 hours of staff development each school year specific to first aid, injury recognition and prevention. The 10 hours may include hours necessary for recertification/renewals.

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

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

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

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

*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.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: All Rules; 16 NCAC 06G

**DEADLINE FOR RECEIPT: July 10, 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 06B .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, why is it necessary to say "Interim rule status conferred..."*

*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 29, 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 06G .0314

RECOMMENDED ACTION:

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

COMMENT:

*Staff recommends objection for lack of statutory authority and clarity. As staff reads Paragraph (c), alternative schools are allowed to select an accountability model from the list in (c)(1)-(3). Subparagraph (c)(1) says, "Alternative schools can participate in School Performance Grades as defined by G.S. 115C-83.15..." (emphasis added). Subparagraphs (c)(2) and (c)(3) then provide alternative options to the "School Performance Grades" model in G.S. 115C-83.15. However, 115C-12(24) requires the State Board to evaluate alternative learning programs "through the application of the accountability system developed under G.S. 115C-83.15 and G.S. 115C-105.35." The State Board is granted authority to modify the system in G.S. 115C-83.15, but staff has not found authority for the agency to provide different accountability models. Therefore, staff recommends objection for lack of statutory authority.*

*Staff recommends objection to Subparagraph (c)(3) for lack of clarity. Subparagraph (c)(3) allows an alternative school to propose its own accountability model subject to approval by the State Board of Education. The Rule does not specify under what circumstances the alternative model may be approved or what factors the State Board will consider when evaluating the alternative model. Therefore, staff recommends objection for lack of clarity.*

*Paragraph (d) is also unclear because it uses undefined terms including "significantly," "appropriate," and "eligible students."*

Ashley Snyder  
Commission Counsel

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

(24) Duty to Develop Standards for Alternative Learning Programs, ...

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. As part of its evaluation of the effectiveness of these programs, the State Board shall, through the application of the accountability system developed under G.S. 115C-83.15 and G.S. 115C-105.35, measure the educational performance and growth of students placed in alternative schools and alternative programs. If appropriate, the Board may modify this system to adapt to the specific characteristics of these schools. Also as part of its evaluation, the State Board shall evaluate its standards adopted under this subdivision and make any necessary changes to those standards based on strategies that have been proven successful in improving student achievement and shall report to the Joint Legislative Education Oversight Committee by April 15, 2006 to determine if any changes are necessary to improve the implementation of successful alternative learning programs and alternative schools.

**§ 115C-83.15. School achievement, growth, performance scores, and grades.**

(a) School Scores and Grades. - The State Board of Education shall award school achievement, growth, and performance scores and an associated performance grade as required by G.S. 115C-12(9)c1., and calculated as provided in this section.

(b) Calculation of the School Achievement Score. - In calculating the overall school achievement score earned by schools, the State Board of Education shall total the sum of points earned by a school as follows:

- (1) For schools serving any students in kindergarten through eighth grade, the State Board shall assign points on the following measures available for that school:
  - a. One point for each percent of students who score at or above proficient on annual assessments for mathematics in grades three through eight. For the purposes of this Part, an annual assessment for mathematics shall include any mathematics course with an end-of-course test.
  - b. One point for each percent of students who score at or above proficient on annual assessments for reading in grades three through eight.
  - c. One point for each percent of students who score at or above proficient on annual assessments for science in grades five and eight.
  - d. One point for each percent of students who progress in achieving English language proficiency on annual assessments in grades three through eight.
- (2) For schools serving any students in ninth through twelfth grade, the State Board shall assign points on the following measures available for that school:
  - a. One point for each percent of students who score at or above proficient on either the Algebra I or Integrated Math I end-of-course test or, for

- students who completed Algebra I or Integrated Math I before ninth grade, another mathematics course with an end-of-course test.
- b. One point for each percent of students who score at or above proficient on the English II end-of-course test.
- c. One point for each percent of students who score at or above proficient on the Biology end-of-course test.
- d. One point for each percent of students who complete Algebra II or Integrated Math III with a passing grade.
- e. One point for each percent of students who either (i) achieve the minimum score required for admission into a constituent institution of The University of North Carolina on a nationally normed test of college readiness or (ii) are enrolled in Career and Technical Education courses and score at Silver, Gold, or Platinum levels on a nationally normed test of workplace readiness.
- f. Repealed by Session Laws 2019-142, s. 1, effective July 19, 2019, and applicable to measures based on data from the 2018-2019 school year and each school year thereafter.
- g. One point for each percent of students who graduate within four years of entering high school.
- h. One point for each percent of students who progress in achieving English language proficiency.

In calculating the overall school achievement score earned by schools, the State Board of Education shall (i) use a composite approach to weigh the achievement elements based on the number of students measured by any given achievement element and (ii) proportionally adjust the scale to account for the absence of a school achievement element for award of scores to a school that does not have a measure of one of the school achievement elements annually assessed for the grades taught at that school. The overall school achievement score shall be translated to a 100-point scale and used for school reporting purposes as provided in G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8.

(c) Calculation of the School Growth Score. - Using the Education Value-Added Assessment System (EVAAS), the State Board shall calculate the overall growth score earned by schools. In calculating the total growth score earned by schools, the State Board of Education shall weight student growth on the achievement measures as provided in subsection (b) of this section that have available growth values; provided that for schools serving students in grades nine through 12, the growth score shall only include growth values for measures calculated under sub-subdivisions a. and b. of subdivision (2) of subsection (b) of this section. The numerical values used to determine whether a school has met, exceeded, or has not met expected growth shall be translated to a 100-point scale and used for school reporting purposes as provided in G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8.

(d) Calculation of the Overall School Performance Scores and Grades. - The State Board of Education shall calculate the overall school performance score by adding the school achievement score, as provided in subsection (b) of this section, and the school growth score, as determined using EVAAS as provided in subsection (c) of this section, earned by a school. The school achievement score shall account for eighty percent (80%), and the school growth score shall account for twenty percent (20%) of the total sum. For all schools, the total school performance score shall be converted to a 100-point scale and used to determine an overall school performance grade. The overall school



performance grade shall be based on the following scale and shall not be modified to add any other designation related to other performance measures, such as a "plus" or "minus":

- (1) A school performance score of at least 85 is equivalent to an overall school performance grade of A.
- (2) A school performance score of at least 70 is equivalent to an overall school performance grade of B.
- (3) A school performance score of at least 55 is equivalent to an overall school performance grade of C.
- (4) A school performance score of at least 40 is equivalent to an overall school performance grade of D.
- (5) A school performance score of less than 40 is equivalent to an overall school performance grade of F.

(d1) Establishment of Subgroups of Students. - The State Board shall establish the minimum number of students in a subgroup served by a school that is necessary to disaggregate information on student performance and to determine a subgroup performance score and grade for the following subgroups of students:

- (1) Economically disadvantaged students.
- (2) Students from major racial and ethnic groups.
- (3) Children with disabilities.
- (4) English learners.

(d2) Calculation of the School Performance Scores and Grades for Certain Subgroups of Students Served by a School. - In addition to the overall school performance scores and grades awarded under this section, for each school that serves a minimum number of students in a subgroup of students listed in subsection (d1) of this section, the State Board of Education shall calculate school performance scores and shall determine a corresponding school performance grade for each subgroup using the same method as set forth in subsection (d) of this section. School performance scores for subgroups of students shall not be included in the calculation of the overall school performance scores and grades under subsection (d) of this section.

(d3) Report of Subgroup Performance Scores and Grades. - The subgroup performance scores and grades shall be reported separately on the annual school report card provided under G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8 in a way that provides the following information:

- (1) For the current year and the previous two years, the achievement score for each subgroup of students defined in subsection (d1) of this section for the school.
- (2) The statewide average achievement score for each subgroup defined in subsection (d1) of this section.
- (3) The difference between the achievement score for all students in the school and the achievement score for each subgroup that meets the minimum number of students defined in subsection (d1) of this section.
- (4) Based on the information reported in subdivision (3) of this subsection, the State Board shall determine and identify schools that are closing achievement gaps, experiencing a widening of gaps, or seeing no significant gap changes.

(e) Elementary and Middle School Reading and Math Achievement Scores. - For schools serving students in kindergarten through eighth grade, the school achievement scores in reading and mathematics, respectively, shall be reported separately on the annual school report card provided under G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8.

(e1) Career and College Readiness Scores. - For schools serving any students in ninth through twelfth grade, the percentage of students who either (i) achieve the minimum score required for admission into a constituent institution of The University of North Carolina on a nationally normed test of college readiness or (ii) are enrolled in Career and Technical Education courses and score at Silver, Gold, or Platinum levels on a nationally normed test of workplace readiness shall be reported on the annual school report card provided under G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8.

(f) Indication of Growth. - In addition to awarding the overall school scores for achievement, growth, and performance and the performance grade, using EVAAS, the State Board shall designate that a school has met, exceeded, or has not met expected growth. The designation of student growth shall be clearly displayed in the annual school report card provided under G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8.

(g) Access to Annual Report Card Information on the Department's Web Site. - Beginning with data collected in the 2017-2018 school year, the State Board of Education shall provide user-friendly access to the public on the annual report cards issued for local school administrative units and individual schools provided under G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8 through the Department of Public Instruction's Web site. The annual report card shall be designed and organized to display the following information more prominently than any other information:

- (1) A summary for each local school administrative unit and for each individual school of the school performance grades, whether the school has met, exceeded, or has not met expected growth, and any other information required to be provided as part of the annual report card.
- (2) The percentage of schools receiving an overall school performance letter grade of A, B, C, D, or F earned by each school located within a local school administrative unit and statewide.
- (3) The number of schools that have met, exceeded, or have not met expected growth by each school located within a local school administrative unit and statewide.
- (4) A Web page for each individual school that prominently displays the school's performance grades, whether the school has met, exceeded, or has not met expected growth, and the school's performance and growth scores in a way that is easy for the user to read.
- (5) The ability to easily compare annual report card information, including school performance grades and whether schools have met, exceeded, or have not met expected growth, for local school administrative units and for individual schools for a time span of at least three years.

16 NCAC 06G .0314 is proposed for adoption as follows:

**16 NCAC 06G .0314 ALTERNATIVE SCHOOLS' ACCOUNTABILITY MODELS**

(a) This rule establishes the North Carolina Department of Public Instruction's (NCDPI) procedures for alternative schools' participation in the State's Alternative Schools' Accountability Model and shall apply to all alternative schools, including charter schools approved to use the alternative accountability model, that have an NCDPI-assigned local education agency (LEA) school code. Accountability indicators and results for students who attend programs or classes in a facility that does not have an LEA school code shall be reported to and included in the students' base school's accountability results.

(b) At the beginning of each school year, local public school and charter school boards shall determine the option that each alternative school under their jurisdiction will follow for participation in the Alternative Schools' Accountability Model. The local board's participation decision shall be reported to the NCDPI's Director of Accountability Services by August 1 of each school year.

(c) Local public school and charter school boards shall select from the following Alternative Schools' Accountability Model options:

(1) Option A. Alternative schools can participate in School Performance Grades as defined by G.S. §115C-83.15 or

(2) Option B. Alternative schools can participate in the Alternative Schools' Progress Model.

(A) Schools electing to participate in the Alternative Schools' Progress Model will be evaluated as follows, with Components used in the overall school score: (i) 20% Student Persistence, which is defined as the percent of alternative students who remain enrolled in any North Carolina; (ii) 20% School Achievement, which is comprised of: three years of data using the following indicators: End-of-Grade (EOG) English Language Arts/Reading and Mathematics Assessments at Grades 3–8; EOG Science Assessments at Grades 5 and 8; End-of-Course (EOC) Assessments in Biology, NC Math 1, NC Math 3, and English II; ACT®; ACT WorkKeys; 4-year graduation rate; 5-year graduation rate; and math course rigor; (iii) 60% Growth, which will be calculated using the Education Value-Added Assessment System (EVAAS).

(B) A change rating will be assigned to schools comparing their previous year to the current year. All schools will receive a rating of: "Progressing," which indicates a change in the school from the previous year by at least +3 points; "Maintaining," which indicates a change in the school from the previous year by -2.9 to +2.9 points; or, "Declining," which indicates a change in the school from the previous year by at least -3 points.

(3) Option C. The alternative school may propose its own alternative accountability model for approval by the State Board of Education (SBE). The proposed model must include criteria for achievement and growth. A request for Option C must be submitted annually to the SBE for approval at its October meeting.

1 (d) Schools that are identified as Developmental Day Centers (as determined by the Department of Health and Human  
2 Services) and schools which are providing special education and related services in public separate settings to students  
3 with disabilities who are significantly cognitively delayed, have multiple handicapping conditions, and may also have  
4 significant behavioral or sensory integration needs shall participate in accountability by administering the appropriate  
5 assessment to all eligible students, and participating in either Option B or Option C as defined herein. . To participate  
6 in this model, schools who meet the criteria in this section will be reviewed and approved by the Exceptional  
7 Children’s Division and the Accountability Services Division.

8  
9 *History Note: Authority G.S. 115C-12(24); 115C-105.35; G.S. 115C-83.15*

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

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

## **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 06G .0315

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 because it is unclear whether this Rule applies to charter schools, alternative schools, or all public schools.*

*Staff also recommends objection for lack of clarity due to undefined terms including "eligible students," "state assessment program," "appropriate," "alternative assessment," and other undefined terms as listed in the requests for technical changes.*

*Staff notes the agency did not provide a revised rule or responses to the requests for technical changes.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0315

**DEADLINE FOR RECEIPT: July 10, 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:

*Which schools does this Rule apply to? All schools? Or just alternative schools? Does this apply to Alternative Charters? Please clarify. As a reminder, rule titles are not considered when interpreting rules.*

*Throughout this Rule, please replace "must" and "will" with "shall."*

*Throughout this Rule, please consider removing the explanatory parentheticals and incorporating any needed information into the text of the sentence. Regardless of whether you remove the parentheses, please refrain from using "i.e." and "e.g."*

*Throughout this Rule, please capitalize "State" if you are referring to North Carolina and do not capitalize "state" if you are referring to any state.*

*Throughout this Rule, please define "eligible students."*

*At line 3, do you mean "and" or "or?"*

*At line 3, what do you mean by "in membership."*

*At line 4, what is the "state assessment program?"*

*At line 5, consider replacing "is" with "shall be."*

*In (b), is it still necessary to say "effective 2017-18 and beyond?"*

*In (b), does this Rule repeat the requirement for grade 8 students to take the EOC? Compare lines 13 and 14.*

*At line 14, what do you mean by "for federal accountability?"*

*At line 16, what do you mean by "for the accountability model?"*

Ashley Snyder  
Commission Counsel

Date submitted to agency: June 29, 2020

*At line 16, what is the “expected test population?”*

*At line 17, please define “subgroup of students.” What is considered a subgroup?*

*At line 17, what significance is not meeting the participation requirement? Does the language at lines 24-25 also apply in (c)? If so, please make that clear.*

*At line 21, define “publicly?” For example, are you requiring it be posted on a school’s website?*

*At line 23, is this reported to the State Board? Or DPI?*

*At line 23, what are “missed participation rates?”*

*In (e), how are students identified as “English learners?”*

*In (e), what is the statewide testing program? Are those the tests listed in (a)?*

*In (e)(1), is it necessary to say “effective 2017-18 and beyond?”*

*In (e)(1)(A), what “requirement” are you referring to? Or, did you intend to say “ELs test scores shall be used for...”*

*In (e)(1)(A), for which reporting is this included?*

*In (e)(1)(C), what are the growth and achievement indicators? What is the “accountability model?”*

*On page 2, line 1, define “appropriate.” Under what circumstances is an assessment appropriate and who makes this determination?*

*In (f)(2), what is an “alternative assessment” and under what circumstances is a student eligible for this assessment? Please delete “as defined below in letter F” since alternative assessment is not defined in this Rule.*

*In (g), how do you determine which students have the “most significant cognitive disabilities?” Is this identified as part of their IEP?*

*At line 6, what are “alternative academic achievement standards?”*

*In (g)(1), what is the accountability performance composite?*

*In (g)(2), please provide a citation to this Act.*

*Throughout (g), if you are restating requirements from the Every Students Succeeds Act, please provide a cross-reference instead of repeating federal law.*

*In (g)(3)(C), what follow-up actions may be required? Under what circumstances is an action required? How is this determination made?*

*In (g)(3)(D), please use “superintendent or charter school director” or “superintendent and charter school director,” whichever is appropriate.*

*In (g)(3)(D), please use “LEA and charter school” or “LEA or charter school” whichever is appropriate.*

*In (g)(3)(E), please delete or define “actually.”*

*In (g)(3)(E), please define “publicly.”*

*In your history note, are you referring to any specific subsection of 115C-12?*

*In your history note, please provide a citation instead of the title for the “Every Student Succeeds Act.” Please do not reference the entire Act, only the portion that grants rulemaking authority for this Rule.*

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 29, 2020



16 NCAC 06G .0315 is proposed for adoption as follows:

**16 NCAC 06G .0315 ACCOUNTABILITY ANNUAL PERFORMANCE STANDARDS**

(a) All eligible students in membership (i.e., enrolled in a school) at grades 3 through 8 and in high school courses in which an end-of-course (EOC) assessment is administered shall participate in the state assessment program adopted by the State Board of Education (SBE). Participation is reported for:

(1) grades 3 through 8 end-of-grade (EOG) English language arts/reading and mathematics;

(2) grades 5 and 8 EOG science;

(3) grade 10 EOC English II,

(4) grade 11 EOC assessments in NC Math, NC Math 3, and EOC Biology;

(5) grade 11 ACT; and

(6) grade 12 Career and Technical Education Concentrators and ACDT WorkKeys.

(b) Effective 2017–18 and beyond, all eligible students in membership at grade 8 enrolled for credit in NC Math 1 shall take the EOC assessment at the completion of the course. Schools shall not assess these students on the grade 8 mathematics EOG assessment. These students shall take the NC Math 3 EOC assessment for federal accountability in high school.

(c) For the accountability model, a school that does not assess at least 95 percent of its expected test population for the all students group and each subgroup of students shall be deemed not to have met participation rate requirements. For the ELA/reading and mathematics assessment (i.e., EOG ELA/reading, EOG Mathematics, EOC English, and EOCs NC Math 1/NC Math 3) academic indicator, the greater of all students tested, or 95 percent of students expected to test, shall be the denominator for proficiency calculations used in reporting, long-term goals, and the accountability model. Participation rates shall be publicly reported annually.

(d) For the science (i.e., EOG Science and EOC Biology), ACT, and ACT WorkKeys assessments, participation rates shall be reported for all students and each subgroup of students. Missed participation rates will be highlighted in public reporting. Schools shall submit to the North Carolina Department of Public Instruction (NCDPI) justification for not meeting participation rates and a plan of action to improve participation rates.

(e) Students identified as English Learners (ELs) shall participate in the statewide testing program using either the standard test administration or the standard test administration with accommodations.

(1) Effective 2017–18 and beyond, ELs shall participate in state assessments beginning with their first year in a U.S. school; however,

(A) For the first year, the requirement is for participation and for reporting (e.g., NC School Report Card), not the accountability model.

(B) For year two, ELs' test scores shall be included in the growth analysis for the accountability model.

(C) For year three and beyond, ELs' test scores shall be included in growth and the achievement indicator of the accountability model.

(f) All students with disabilities who are included in membership, including those with Individualized Education Programs (IEPs) and those identified under Section 504 of the Rehabilitation Act of 1973, shall participate in the state

1 assessment program using one of the following assessments as appropriate and as determined by the student's IEP or  
2 Section 504 Plan:

3 (1) The standard test administration with or without accommodations, or

4 (2) An alternate assessment (as defined below in letter F) with or without accommodations, if eligible.

5 (g) Only students with the most significant cognitive disabilities who have IEPs may participate in a state-designated  
6 alternate assessment based on alternate academic achievement standards.

7 (1) These students shall be evaluated and included in the accountability performance composite.

8 (2) The Every Students Succeeds Act (ESSA) requires the total number of students assessed in each  
9 subject using the alternate assessment based on alternate academic achievement standards statewide  
10 does not exceed 1.0 percent of the total number of all students assessed in each subject.

11 (3) As required by ESSA, the NCDPI must notify districts and charter schools that have been identified  
12 (based on the previous school year's participation data) as being likely to exceed 1.0 percent of  
13 students assessed in a subject area on the alternate assessment for the current school year.

14 (A) These identified districts and charter schools must provide the NCDPI a justification of the  
15 need to assess more than 1.0 percent of its students on the alternate assessment in any  
16 subject.

17 (B) Districts and charter schools that did not exceed 1.0 percent in the previous school year but  
18 anticipate exceeding in the current school year, must also submit a justification.

19 (C) Justifications from each district and charter school will be reviewed by the NCDPI, and  
20 follow up actions will be determined based on the information in the justification  
21 document.

22 (D) The completed justification must be signed by the superintendent/charter school director,  
23 exceptional children's director, and LEA/charter school test coordinator.

24 (E) The justification documents for districts and charter schools that actually exceed the 1.0  
25 percent participation on the alternate assessment will be publicly posted.

26  
27 History Note: Authority G.S. 115C-12; 115C-105.35; Every Student Succeeds Act ESSA);

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

29 Emergency Rule Eff. August 20, 2019.

## **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: 12 NCAC 06G .0316

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 failure to comply with the APA and ambiguity. Item (3) refers to "procedures stated in SBE Policy ADVS-002 (Appointments to Advisory Committees to the State Board of Education." Referring to Board policy circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update the policy outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. Since the contents of this policy are not in rule, requiring compliance with procedures in the policy makes the requirements of this rule unclear. Therefore, staff recommends objection for failure to comply with the APA and ambiguity.*

*Staff also recommends objection for ambiguity because it is unclear under what circumstances the agency will deem other issues "appropriate" for discussion in (1)(f) and which "field tests(s)/special studies" are being referenced in Item (2).*

1 16 NCAC 06G .0316 is proposed for adoption as follows:

2  
3 **16 NCAC 06G .0316 PURPOSE AND COMPOSITION OF THE STATE BOARD OF EDUCATION'S**  
4 **COMPLIANCE COMMISSION FOR ACCOUNTABILITY**

5 The purpose of the Compliance Commission for Accountability (Commission) shall be to advise and to make  
6 recommendations to the State Board of Education (SBE) through the North Carolina Department of Public Instruction  
7 (NCDPI) on testing issues and other issues related to school accountability and improvement.

8 (1) The SBE, after discussing issues related to testing and accountability as presented by the NCDPI,  
9 may request that the Commission further discuss such issues and make recommendations to the  
10 SBE. Issues the Commission may discuss include the following:

11 (a) proposed changes to the State's accountability program;

12 (b) the testing code of ethics;

13 (c) test security and administration;

14 (d) auditing procedures to ensure integrity of the testing and accountability programs;

15 (e) the relationship of testing to other aspects of schooling; and

16 (f) other issues related to testing and accountability as deemed appropriate by the SBE.

17 (2) The Commission shall consider requests from schools that desire to be exempt from participating in  
18 field test(s)/special studies and shall make a recommendation to the SBE on such requests.

19 (3) Upon recommendation by the State Superintendent of Public Instruction, the SBE shall approve  
20 appointments to the Compliance Commission consisting of twenty-two members in accordance with  
21 the procedures stated in SBE Policy ADVS-002 (Appointments to Advisory Committees to the State  
22 Board of Education), who shall represent the following categories:

23 (a) Four shall be teachers;

24 (b) Five shall be principals representing elementary, middle, and high schools;

25 (c) Four shall be from central office staffs, (at least one must represent Exceptional Children);

26 (d) Two shall represent local boards of education;

27 (e) One shall represent NC charter schools;

28 (f) Two shall be members of the business community;

29 (g) One shall be a parent representative;

30 (h) One shall represent higher education; and

31 (i) Two shall be at-large.

32 (4) Terms of membership shall be for four years, be staggered, and shall run through December 31.  
33 Members may be reappointed by the SBE for one additional term.

34 (a) To the extent possible, members will be appointed from the eight education districts (as  
35 defined in G.S. §115C-65) to keep the Commission balanced geographically and  
36 professionally.

1           (b) As Commission members are replaced, the SBE shall, to the extent possible, recommend  
2           and approve replacements to keep the Commission balanced geographically and  
3           professionally.

4           (c) A member of the SBE as designated by the State Board membership shall sit on the  
5           Commission as a non-voting ex-officio member.

6       (5) The SBE shall appoint a chair from the membership of the Commission. The Chair shall serve for  
7       two years.

8       (6) The Commission shall elect a Vice-Chair from its membership.

9       (7) The Commission shall meet at least annually. The SBE may call a special meeting of the  
10       Commission to discuss an issue.

11       (8) The Department of Public Instruction, Division of Accountability Services, shall staff the  
12       Commission and shall develop the agendas for the scheduled meetings in conjunction with the  
13       Commission's Chair. Draft minutes of the Commission meetings shall be provided to the SBE  
14       within one month following each meeting, with official approved minutes being shared with the  
15       SBE following approval by the Commission.

16  
17 History Note: Authority G.S. 115C-12; 115C-105.35;

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

19 Emergency Rule Eff. August 20, 2019.  
20

## **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 06G .0503

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 failure to comply with the APA and ambiguity. The Rule requires "eligible students" take State-required assessments mandated by law or "State Board of Education policy." Requiring assessments in policy instead of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the policy outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to either list the required assessments in this Rule or cross-reference another Rule listing the required assessments makes it unclear which assessments are mandated by the State Board of Education. Therefore, staff recommends objection for failure to comply with the APA and ambiguity.*

*Staff also recommends objection for ambiguity because the Rule does not define "eligible student," making it unclear who is required to take these assessments. It is also unclear which "accountability measures" charter schools are required to follow as part of the "Every Student Succeeds Act Consolidated State Plan." It is possible these are federal requirements that could be incorporated by reference in accordance with G.S. 150B-21.6, but since the agency has failed to do so here, the Rule is ambiguous as written.*

Ashley Snyder  
Commission Counsel

16 NCAC 06G .0503 is proposed for adoption as follows:

**16 NCAC 06G .0503 CHARTER SCHOOL ACCOUNTABILITY REQUIREMENTS**

Each year all eligible students shall take state-required assessments mandated by law or State Board of Education policy. All charter schools shall comply with N.C. Gen. Stat. § 115C-83.15 and § 115C-83.16 and accountability measures identified in the State’s federally-approved Every Student Succeeds Act Consolidated State Plan, unless granted a waiver by the State Board of Education pursuant to 16 NCAC 06G .0517 - .0522.

*History Note: Authority G.S. 115C-12; 115C-83.15, 115C-83.16, 115C-105.20, 115C-218(a), 115C-218.85(a)(3); Every Student Succeeds Act of 2015 (P.L. 114-95); Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b); Emergency Rule Eff. August 20, 2019.*

## **RRC STAFF OPINION**

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AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0505

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 failure to comply with the APA and ambiguity. The Rule provides that charter schools shall be placed on financial noncompliance status if a financial condition in (b)(1)-(6) occurs. Subparagraph (b)(1) refers to the "Uniform Education Reporting System (UERS)" which appears to set data reporting requirements. Staff has not found an exemption from the APA for the UERS. Referring to requirements outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update the UERS outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. The reporting requirements for charter schools are also unclear since those requirements are not set in rule. Therefore, staff recommends objection failure to comply with the APA and ambiguity.*

*Staff also recommends objection for ambiguity. Paragraph (c) states, "funds may be frozen...until the exception is corrected." The Rule does not clarify under what circumstances funds may or may not be frozen. The Rule also does not specify how the agency determines which level of financial noncompliance in Paragraph (e) to assign a charter school. Additionally, the Rule contains undefined terms including "financial insolvency or weakness" in (b)(3) and "immediately" in (c), (e)(3)(A), and (f). Therefore, staff recommends objection for ambiguity.*

Ashley Snyder  
Commission Counsel



16 NCAC 06G .0505 is proposed for adoption as follows:

**16 NCAC 06G .0505 CHARTER SCHOOLS FINANCIAL NONCOMPLIANCE – IMPACT OF FINANCIAL NONCOMPLIANCE**

(a) There are three stages of financial noncompliance under which a charter school may be placed: cautionary, probationary, and disciplinary.

(b) The presence of any one of the following financial conditions shall result in a charter school being assigned a noncompliance status:

(1) If the charter school fails to report required Uniform Education Reporting System (UERS) data within 10 days of the required or agreed-upon reporting date or does not submit accurate data due to incorrectly utilizing UERS approved materials or software within the next reporting cycle;

(2) If the charter school fails to respond to a specific financial, personnel, or student information request for information or data from the Department of Public Instruction by the required reporting date;

(3) If the charter school fails to submit the required audited financial statements to the North Carolina Department of State Treasurer's Local Government Commission, as prescribed by G.S. 115C-218.30 and G.S. 115C-447.

(4) If the charter school shows signs of financial insolvency or weakness, including a decline in student membership;

(5) If the Office of State Treasurer receives a "non-sufficient funds (NSF)" notification during the course of cash certification processing;

(6) If the charter school receives a material audit finding in its annual independent financial statement audit which indicates a violation of State law, a violation of any of the conditions or procedures set forth in its Charter, a failure to meet generally accepted accounting practices and principles, including sound fiscal management in accordance with G.S.115C-218.95 and remains unresolved; and/or

(7) If the charter school's staff fails to attend required financial training.

(c) For these warning conditions, funds may be frozen (i.e. the school's access to the cash management system is revoked) until the exception is corrected. Any combination of the above violations may immediately move the charter school to Financial Disciplinary Status without first being held in either the Cautionary or Probationary status. Should a charter school have repeated violations of the same or similar non-compliance condition, the charter school may be moved to Financial Disciplinary Status.

(d) This policy does not preclude the State Board of Education from taking any action with regards to a charter school if so warranted, regardless of the charter school's financial noncompliance status.

(e) The stages of financial noncompliance are as follows:

(1) Level 1: Financial Cautionary Status

(A) A charter school may receive a notification of Financial Cautionary Status for any of the above conditions. The school shall remain in cautionary status for a minimum of 30 calendar days from the date of notification, and during that time must correct the

exception(s) that caused the financial warning(s) if applicable. When the exception(s) is corrected as prescribed in the notification of noncompliance by NCDPI, the school will be notified of removal from cautionary status.

(2) Level 2: Financial Probationary Status

(A) A charter school may receive a notification of Financial Probationary Status for any of the above conditions. The school will be placed in Financial Probationary Status, if the school fails to correct the exception(s) during the 30 calendar days cautionary period, unless otherwise stated in the initial notification of noncompliance. The school remains in probationary status for a minimum of 30 calendar days from the date of notification, and during that time must correct the exceptions that caused the financial warnings if applicable. When all of the exceptions have been corrected, the school will be notified of removal from probationary status. While in probationary status, state funds for the school may be allotted on a monthly basis until the exceptions that caused the financial warnings are corrected. Failure to resolve the exceptions may result in the school being placed on Financial Disciplinary Status, referred to the Charter School Advisory Board and/or to the State Board of Education for further action.

(3) Level 3: Financial Disciplinary Status

(A) The school will be placed in Financial Disciplinary Status, if the school fails to correct all of the exceptions during the established timeframe. Any of the financial conditions noted in this policy, or combination thereof, may immediately result in the charter school being placed on Financial Noncompliance Disciplinary status without the benefit of being first held in either the Cautionary or Probationary status. Also, should a charter school have repeat violations of the same or similar non-compliance condition, the charter school may be moved to Financial Disciplinary Status without the benefit of completing either the Cautionary or Probationary status periods.

(f) When in Disciplinary status, the school is expected to immediately address all of the exceptions that caused the financial noncompliance within ten (10) business days from the date of notification or otherwise stated. State funds for the school may be allotted on a monthly basis until the exceptions causing the noncompliance are corrected. When all of the exceptions have been corrected, the school will be notified of removal from disciplinary status. Failure to resolve the exceptions will result in the school being referred to the Charter School Advisory Board and/or to the State Board of Education for further action.

*History Note: Authority G.S. 115C-12(5); 115C-218, 115C-218.15, 115C-218.30, 115C-218.95; 115C-408; Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b); Emergency Rule Eff. August 20, 2019.*

## **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 06G .0506

RECOMMENDED ACTION:

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

COMMENT:

*Staff recommends objection for ambiguity and failure to comply with the APA. In Paragraph (a), the Rule provides that charter schools "may" be placed on governance noncompliance status if a condition in (a)(1)-(3) occurs. The Rule does not clarify under what circumstances a condition in the list results in noncompliance status nor does it specify how the agency determines which level of noncompliance status in Paragraph (b) to assign a charter school.*

*Part (a)(3)(B) requires compliance with "Health and Safety Standards" and "State Board of Education Policy." Referring to requirements established outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update policies outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. These requirements are also unclear since those requirements are not set in rule. Therefore, staff recommends objection to Part (a)(3)(B) for failure to comply with the APA and ambiguity.*

*Additionally, staff recommends objection for ambiguity for the inclusion of several undefined terms or requirements including "failure to have a functioning board" in (a)(1); "regular meetings" in (a)(1); "inability to show progress" in (a)(2); and "immediately" in (b)(3).*

16 NCAC 06G .0506 is proposed for adoption as follows:

**16 NCAC 06G .0506 CHARTER SCHOOLS GOVERNANCE NONCOMPLIANCE**

(a) There are three (3) stages of Governance Noncompliance: Governance Cautionary Status, Governance Probationary Status, and Governance Disciplinary Status. A charter school may be placed within a governance non-compliance status based on any one of the following governance warning conditions:

(1) Failure to have a functioning board in place, including failure to conduct regular meetings of the board and failure to adopt policies regarding the operation of the charter school. Such policies would include a minimum of Personnel, Disciplinary, and Parental Grievance policies.

(2) Inability to show progress towards the educational and organizational goals described in the charter school application.

(3) Failure to maintain student enrollment. (i.e., Required minimum of 80 students, or as otherwise stated in the charter application or approved waiver to operate under the minimum of 80 students.)

(A) Bylaws violations including, but not limited to, failure to follow the Open Meetings Law, failure to maintain Public Records, failure to implement a Conflict of Interest Policy, failure to adhere to basic rules of Parliamentary Procedure.

(B) Charter Agreement violations including, but not limited to, following State/Federal Regulations, ensuring Health & Safety Standards, making adequate academic progress, meeting Testing and Reporting requirements, and supplying all reports and documentation as requested by the Office of Charter Schools to ensure legal compliance with General Statute, State Board of Education Policy, and the Charter Agreement.

(C) Substantiated complaints indicating that the Board is not acting as a representative of the school community to ensure that the needs of all students, parents, and teachers will be addressed.

(D) Failure to maintain certification of at least fifty percent (50%) of teachers in all grades pursuant to G.S.115C-218.90. Charter schools shall maintain compliance with this law from December 31 of each year through the end of the school calendar year. Failure to do so will be seen as noncompliance with the statutory requirement.

(b) The stages of noncompliance are as follows:

(1) Level 1: Governance Cautionary Status: Upon receiving a Governance Warning for any of the above conditions, the charter school will be placed on Governance Cautionary Status. The school remains in cautionary status for 30 calendar days and during that time must correct the exception that caused the warning. When the 30 calendar days have ended and the exception is corrected, the governance warning will be removed and the school will be removed from cautionary status. Failure to correct the exception during the 30 calendar days cautionary period constitutes a second warning and the school will be placed on Governance Probationary Status.

(2) Level 2: Governance Probationary Status: The school remains on Governance Probationary Status for 30 calendar days and during that time must correct the exceptions that caused all of the

1 governance warnings. When the 30 calendar days have ended and the exception is corrected, the  
2 governance warning will be removed and the school will be removed from probationary status.  
3 Failure to correct the exception during the 30 calendar days probationary period constitutes a third  
4 warning and the school will be placed on Governance Noncompliance Status.

5 (3) Level 3: Governance Noncompliance Status: The school remains on Governance Noncompliance  
6 Status for 10 calendar days. When in Noncompliance Status, the school is expected to immediately  
7 address all of the exceptions that caused the governance warnings. State funds for the school may  
8 be allotted on a monthly basis until the exceptions that caused all of the governance warnings are  
9 corrected. A School placed in Governance Noncompliance Status may be referred to the Charter  
10 Schools Advisory Board for appropriate inquiry and action as determined by the State Board of  
11 Education.

12  
13 History Note: Authority G.S. 115C-12; 115C-218, 115C-218.15, 115C-218.30, 115C-218.95;  
14 Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);  
15 Emergency Rule Eff. August 20, 2019.  
16

## **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 06G .0507

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. The Rule governs the charter school renewal process, and the review is based upon "whether the charter is meeting expected academic, financial, and governance standards." From the technical change requests, staff notes the following exchange:*

*Staff Question: Does the list in (b) contain the contents or substantive requirements of the Self-Study? I am asking because I do not see information related to the academic, financial, and governance standards mentioned in (a).*

*Agency Response: The Self-Study is just one part of the renewal review required under G.S. 115C-218.6. The SBE has access to other information about the academic, financial and governance standards that it uses to ensure that a charter school is meeting its obligations. For example, charter schools are subject to the Public Records Act, G.S. 115C-218.25.*

*The agency's response indicates information not included in (b) is considered when reviewing a charter school renewal. To staff, it is unclear what information is considered by the State Board when reviewing a renewal request.*

*Additionally, the academic standards required to be met are unclear. The financial standards are identified in Rule .0505 of this Section and the governance standards are identified in Rule .0506 of this Section. Based on technical change responses, staff understands the academic standards are*

*Ashley Snyder*

*Commission Counsel*

*set as part of the original charter application in G.S. 115C-218.1(b)(2). However, that that is not clear in the Rule as submitted. Therefore, staff recommends objection for lack of clarity.*

**§ 115C-218.1. Eligible applicants; contents of applications; submission of applications for approval.**

(a) Any nonprofit corporation seeking to establish a charter school may apply to establish a charter school. If the applicant seeks to convert a public school to a charter school, the application shall include a statement signed by a majority of the teachers and instructional support personnel currently employed at the school indicating that they favor the conversion and evidence that a significant number of parents of children enrolled in the school favor conversion.

(b) The application shall contain at least the following information:

...

- (2) A description of student achievement goals for the school's educational program and the method of demonstrating that students have attained the skills and knowledge specified for those student achievement goals.

...

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0507

**DEADLINE FOR RECEIPT: July 10, 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 ensure your Rule name matches Box 2 on your filing form.*

*At line 4, what are the academic standards? I take it the financial standards are in .0505 and the governance standards are in .0506. What academic standards are you referring to?*

*In (a), please consider using active voice by saying who shall do what. For example, consider the following if it is what you intended: "To request renewal of a charter, a charter school shall submit a Self-Study form. The State Board of Education shall review the Self-Study form to determine whether the charter school is meeting..."*

*Does the list in (b) contain the contents or substantive requirements of the Self-Study? I am asking because I do not see information related to the academic, financial, and governance standards mentioned in (a).*

*In (b), how does a charter school access the form? For example, is it on your website?*

*In (b)(1)-(13), please do not capitalize the first word in each line. Please also add an "and" at the end of line 24.*

*In (b)(6), are you referring to the original charter school application?*

*In (b)(7), consider adding a cross-reference to "Rule .0510 of this Section."*

*In (b)(10), please delete or define "presently."*

*In (b)(12), please capitalize "State" if you are referring to North Carolina and do not capitalize "state" if you are referring to any state.*

*Please compare (c) and (d). Please avoid repetition.*

*In (e), is "computer prepared" different than "typed?"*

Ashley Snyder  
Commission Counsel

Date submitted to agency: June 29, 2020



*In your history note, are you referring to any specific subsection of 115C-12?*

*In your history note, why is 115C-218(a)(6) listed?*

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

16 NCAC 06G .0507 is proposed for adoption as follows:

**16 NCAC 06G .0507 CHARTER SCHOOLS RENEWAL PROCESS**

(a) In order for the State Board of Education to assess whether a charter school seeking a renewal of its charter is meeting expected academic, financial, and governance standards, a charter school seeking renewal shall submit to the Office of Charter Schools a Self-Study.

(b) The charter holder shall provide the following information in the Self-Study on the form made available by the Office of Charter Schools:

(1) School name;

(2) School mailing address;

(3) Primary contact person, including name, title, phone number, fax number, email address, and dated signature;

(4) Contact information for the board of directors' chairperson, including name, term of office, mailing address, phone number, fax number, email address, and dated signature;

(5) A letter signed by the Board Chairperson stating the charter holder's intent to seek charter renewal;

(6) School mission statement as stated in the charter application;

(7) If applicable, revised school mission statement approved by the State Board of Education;

(8) A narrative statement not to exceed two pages explaining how the school is fulfilling the State Board approved mission statement;

(9) Five goals the charter holder has for the school during the next five years, including at least one academic goal, one financial goal, and one operational goal;

(10) The name of or a description of the curriculum design presently used by the school;

(11) A summary of instructional methodology or instructional techniques utilized used at the school;

(12) The names of evaluation instruments, other than state-mandated tests, used to assess student performance, including descriptions of those assessments;

(13) A narrative statement explaining how the school uses student data to improve student learning and to raise the academic performance of all students;

(c) All pages of the Self-Study shall be numbered consecutively.

(d) The Self-Study shall include a table of contents and all pages shall be numbered consecutively.

(e) No font smaller than 12 point shall be used and all reports shall be typed, or computer prepared.

(f) The charter school seeking to renew its charter may utilize assistance from outside the school to complete the Self-Study.

*History Note: Authority G.S. 115C-12; 115C-218(a)(6), 115C-218.6;*

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

*Emergency Rule Eff. August 20, 2019.*

## **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 06G .0508

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 failure to comply with the APA and numerous instances of ambiguity that make the Rule as a whole difficult to understand.*

*Staff recommends objection to Subparagraph (a)(1) for referring to a fee established outside the rulemaking process. The definition of a "rule" in 150B-2(8a) specifically includes the establishment of a fee, meaning setting the dollar amount in the Rule. Additionally, 115C-218.1(c) requires the State Board to adopt the application fee "in accordance with Article 2A of Chapter 150B." Since the fee amount is established outside of rule, staff recommends objection to Subparagraph (a)(1) for failure to comply with the APA and ambiguity since the amount of the fee is unknown.*

*Staff recommends objection to Paragraph (a) for failure to comply with the APA and ambiguity. Subparagraph (a)(1) states, "Prior to each application round, the State Board of Education shall approve the application process, timeline, and non-refundable fee." Establishing the application and timeline outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to change the application process and timeline before each application round, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. Subparagraphs (a)(2)-(4) refer back to the timeline and "application instructions" established outside the rulemaking process in (a)(1). Since the application process and timeline are established outside of rule, the requirements in Paragraph (a) are unclear and staff recommends objection for failure to comply with the APA and ambiguity.*

*Parts (b)(1)(C) and (D) set application requirements that are ambiguous. It is unclear how applications are evaluated or what factors may be considered to determine whether an application “contains viable governance, business, and education plans.” It is also unclear what “other requirements” are required by the agency. Therefore, staff recommends objection to Parts (b)(1)(C) and (D) for ambiguity.*

*Staff also recommends objection to Paragraph (c) for ambiguity for use of the following terms or phrases, which are undefined or unclear as written: “capability to provide comprehensive learning experiences” in (c)(2); “promotes innovation” in (c)(3)(B); “large,” “diverse” and “locally-based” in (c)(3)(D); “accurately” in (c)(3)(F); and “diverse learning environment” in (c)(3)(I). Staff is also unsure how Paragraph (c) interacts with G.S. 115C-218.5, which governs the State Board’s final approval of applications for charter schools. Therefore, staff recommends objection to Paragraph (c) for ambiguity.*

## **§ 150B-2. Definitions.**

As used in this Chapter,

- (8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. **The term includes the establishment of a fee and the amendment or repeal of a prior rule.** The term does not include the following:

### **§ 115C-218.1. Eligible applicants; contents of applications; submission of applications for approval.**

(c) The State Board shall establish reasonable fees of no less than five hundred dollars (\$500.00) and no more than one thousand dollars (\$1,000) for initial and renewal charter applications, in accordance with Article 2A of Chapter 150B of the General Statutes. No application fee shall be refunded in the event the application is rejected or the charter is revoked.

### **§ 115C-218.5. Final approval of applications for charter schools.**

- (a) The State Board may grant final approval of an application if it finds the following:
- (1) The application meets the requirements set out in this Article and such other requirements as may be adopted by the State Board of Education.
  - (2) The applicant has the ability to operate the school and would be likely to operate the school in an educationally and economically sound manner.
  - (3) Granting the application would achieve one or more of the purposes set out in G.S. 115C-218.

In reviewing applications for the establishment of charter schools within a local school administrative unit, the State Board is encouraged to give preference to applications that demonstrate the capability to provide comprehensive learning experiences to students identified by the applicants as at risk of academic failure.

(b) The State Board shall make final decisions on the approval or denial of applications by August 15 of a calendar year on all applications it receives prior to a date established by the Office of Charter Schools for receipt of applications in that application cycle. The State Board may make the final decision for approval contingent upon the successful completion of a planning period prior to enrollment of students.

(c) The State Board of Education may authorize a school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates the authority is necessary for it to raise working capital. The State Board shall not allocate any funds to the school until the school has obtained space.

(d) The State Board of Education may grant the initial charter for a period not to exceed 10 years.

(e), (f) Repealed by Session Laws 2016-79, s. 1.1, effective June 30, 2016, and applicable beginning with the 2016-2017 school year.

16 NCAC 06G .0508 is proposed for adoption as follows:

**16 NCAC 06G .0508 CHARTER SCHOOLS APPLICATION AND REVIEW PROCESS**

**(a) Deadline for Filing Charter School Applications.**

- (1) Prior to each application round, the State Board of Education shall approve the application process, timeline, and non-refundable fee.
- (2) Applications for charters, and the nonrefundable fee, must be received by the Office of Charter Schools no later than the date and time specified for the charter application round that year.
- (3) Applications and fees received after the deadline specified by the Office of Charter Schools will not be considered, and any affected applicant groups will be notified in writing.
- (4) Rejection of Incomplete Applications. The Charter School Advisory Board and Office of Charter Schools shall review all timely applications and shall reject all incomplete applications. In order to be deemed complete, all sections of the application must be completed as prescribed in the "Application Instructions" and G.S. 115C-218.2.

**(b) Charter School Advisory Board Responsibilities**

- (1) The Charter School Advisory Board, with the assistance of the Office of Charter Schools, shall review each complete application and determine whether the application meets the requirements of General Statute 115C-218.1
  - (A) Meets all the requirements of the Charter School Act, G.S. 115C-218 et seq.;
  - (B) Would achieve one or more of the purposes set forth in G.S. 115C-218(a);
  - (C) Contains viable governance, business, and education plans; and
  - (D) Satisfies any other requirements adopted by the SBE.
- (2) The Charter Schools Advisory Board will present its recommendation on each charter school application to the SBE by the May SBE meeting for discussion.

**(c) SBE Review of Applications and Award of Charters**

- (1) The SBE may request information from applicants, their officers, agents or employees or other persons having information regarding the charter application reviewed by the Charter School Advisory Board when the SBE seeks clarification or greater detail regarding an application
- (2) When awarding charters, the SBE may give priority consideration to applications that demonstrate the capability to provide comprehensive learning experiences to students identified as at risk of academic failure.
- (3) When determining whether to award a charter, the SBE may consider any factors including the extent to which the application:
  - (A) Reflects the applicant's commitment to the purposes of the charter school law stated in G. S. 115C-218(a);
  - (B) Promotes innovation through charter schools;
  - (C) Reflects the applicant's planning, research and understanding of educational issues, including budgeting, financing and accounting;

- 1           (D)     Demonstrates the applicant’s commitment to governance by participation of a large,  
2                     diverse and locally-based board;  
3           (E)     Contains articles of incorporation and by-laws;  
4           (F)     Contains a budget that accurately reflects anticipated revenues and costs; including costs  
5                     associated with maintenance of the school facilities and projected growth;  
6           (G)     Describes student admission requirements and lottery system that comply with G.S. 115C;  
7           (H)     Describes a plan for acquisition and utilization of a facility;  
8           (I)     Describes a five (5) year marketing plan that promotes a diverse learning environment; and  
9           (J)     Any other factor that it determines will promote the purposes of the Charter School Act,  
10                    G.S. 115C-218 et seq.

11  
12    History Note:     Authority G.S. 115C-12; 115C-218, 115C-218.1; 115C-218.5;

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

14                     Emergency Rule Eff. August 20, 2019.  
15

## **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 06G .0509

RECOMMENDED ACTION:

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

COMMENT:

*Staff recommends objection for failure to comply with the APA and ambiguity. In (a), the Rule requires completion of "all of the planning program requirements." Incorporating or referring requirements established outside the rulemaking process set forth in G.S. 150B-21.2 would allow the agency to change the requirements of the planning year outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. Additionally, Paragraph (a) requires a meeting about "policies and procedures." Staff is unsure which policies and procedures the Rule is referring to and whether these policies would fall within the definition of a "rule." Therefore, staff recommends objection to Paragraph (a) for failure to comply with the APA and ambiguity.*

*Staff also recommends objection for lack of clarity due to undefined terms or phrases including: "clear and compelling need" in (b)(1); "exceptional need" in (b)(2); "unique mission" in (c)(1); "successful" in (b)(4); "obstacles to educational reform efforts" in (c)(5); "successful charter school board" in (c)(6); and "application due date" in (d).*

Ashley Snyder  
Commission Counsel



16 NCAC 06G .0509 is proposed for adoption as follows:

**16 NCAC 06G .0509 PLANNING YEAR FOR NEW PRELIMINARY CHARTER SCHOOLS**

(a) All nonprofit boards eligible to receive a charter for the first time shall participate in a year-long planning program prior to the charter school's opening for students. During this planning year, n directors from nonprofit boards holding charters shall attend meetings conducted by consultants from the Office of Charter Schools regarding the following topics: school opening plans, staff development, finance, governance, board training, marketing, policies and procedures, securing a school site, and hiring a school administrator. Final approval of the charter shall be contingent upon the nonprofit board completing all of the planning program requirements.

(b) The State Board of Education may accelerate the mandatory planning year for a charter applicant that meets the following requirements:

(1) Demonstrates a clear and compelling need for the accelerated planning year;

(2) Demonstrate an exceptional need for the charter school in the proposed location;

(3) Agrees to participate in the planning year while the charter application is being reviewed without any guarantee of charter award; and

(4) Demonstrates that there is a facility identified by the applicant that is feasible for opening on an accelerated schedule.

(c) The State Board shall also consider the presence or absence of the following factors in making its determination of whether to accelerate a planning year:

(1) Unique mission and educational program outlined in the nonprofit board's application;

(2) Local, state, and national nonprofit partnerships committed to assisting the school;

(3) Potential for economic and educational development of the region;

(4) Mentoring by a successful organization that has experience in creating public schools;

(5) Obstacles to educational reform efforts that leave chartering as an available option;

(6) Commitment to work with a successful charter school board as a guiding mentor;

(7) The length of time the nonprofit corporation has existed; and

(8) Whether the proposed board has previously or currently operates a public charter school.

(d) An applicant requesting acceleration shall submit the request to the State Board of Education prior to the application due date for consideration.

*History Note: Authority G.S. 115C-12; 115C-218, 115C-218.1, 115C-218.5(b);*

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

*Emergency Rule Eff. August 20, 2019.*

## **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 06G .0514

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 to Paragraph (a) for lack of clarity. It is unclear under what circumstances the State Board of Education "may impose reasonable additional requirements" during review, application, and approval process of fast track replication of high-quality charters. It is also unclear what the additional requirements may be or how the State Board will determine what to require.*

*Ashley Snyder*

*Commission Counsel*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0514

**DEADLINE FOR RECEIPT: July 10, 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:

*At line 4, please refer to specific rules or "the rules of this Section" instead of "these Rules."*

*In (a), do you mean "may" or "shall?" If you mean "may," under what circumstances are these requirements imposed?*

*In (a), what other "reasonable requirements" may the State Board impose? Please be specific.*

*In (b), consider "In addition to the requirements in Rule .0513 of this Section..."*

*At line 6, do you mean "may" or "shall?"*

*In (b), what are the other relevant factors?*

*At line 7, please delete "but not limited to" because it is unnecessary."*

*In (b)(1), how are these needs evaluated? What criteria do you consider?*

*In (b)(2), how does the State Board evaluate whether a non-profit has the ability to manage additional schools? What factors are considered when making this determination?*

*In (b)(4), how do you measure the community support? What factors do you consider?*

*In your history note, are you referring to any specific subsection of 115C-12?*

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 29, 2020

16 NCAC 06G .0514 is proposed for adoption as follows:

**16 NCAC 06G .0514 FAST TRACK REPLICATION OF HIGH QUALITY CHARTER SCHOOLS –  
GENERAL REQUIREMENTS**

(a) In addition to the specific requirements set forth in these Rules, the State Board of Education (“SBE”) may impose reasonable requirements both in the review and application stages as well as in the approval process.

(b) In addition to considering growth and proficiency and financial audits, the SBE may consider any other relevant factors in determining whether to grant a fast-track replication request, including but not limited to the following:

(1) The needs of the particular geographical area proposed to be served by the replicated model;

(2) The ability of the non-profit corporation board to manage additional schools;

(3) The abilities and strengths of the non-profit corporation board that seeks to employ the EMO or CMO; and

(4) The community support for the replicated model.

*History Note: Authority G.S. 115C-12; 115C-218.3;*

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

*Emergency Rule Eff. August 20, 2019.*

## **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 06G .0517-.0522

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 Rules 16 NCAC 06G .0516-.0522 for lack of statutory authority. Rules .0516-.0522 of this Section govern "alternative charter schools." Alternative schools and charter schools are different types of public schools. Alternative schools are governed by [G.S. 115C, Article 8C](#) and Charter Schools are governed by [G.S. 115C, Article 14A](#). Alternative schools primarily serve at-risk students. It is unclear to staff whether the Board has authority to regulate a school as both an alternative school and a charter school. The agency provided the following response to staff's questions regarding statutory authority:*

*Agency Response: The authority in 115C-218(a)(2) is for a charter school that serves at-risk students. The SBE authorizes them as alternative schools to provide for different standards of accountability. Alternative charter schools are not subject to the performance standards in 115C-218.94. If alternative charter schools were not relieved on the accountability standards in 115C-218.94 and subject to different standards of accountability, they would in all likelihood be low performing and no one would choose to operate one.*

*Staff understands charter schools can emphasize serving at-risk students as provided in 115C-218(a)(2). It is unclear to staff what statutory authority the agency has to regulate a charter school targeted toward at-risk students as both a charter school and an alternative school. It is also unclear what statute the Board relies upon for authority to waive the requirements of 115C-218.94.*

Ashley Snyder

Commission Counsel

Staff further notes statutes governing alternative schools refer to “local school administrative units.” Charter schools are generally exempt from statutes governing local school administrative units pursuant to G.S. 115C-218.10. Therefore, staff is not able to confirm statutory authority exists for Rules .0517-.0522 of this Section.

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Link to Charter School Statutes: [G.S. 115C, Article 14A](#).

**§ 115C-218. Purpose of charter schools; establishment of North Carolina Charter Schools Advisory Board and North Carolina Office of Charter Schools.**

(a) Purpose of Charter Schools. - The purpose of this Article is to authorize a system of charter schools to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently of existing schools, as a method to accomplish all of the following:

- (1) Improve student learning;
- (2) Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as at risk of academic failure or academically gifted;
- (3) Encourage the use of different and innovative teaching methods;
- (4) Create new professional opportunities for teachers, including the opportunities to be responsible for the learning program at the school site;
- (5) Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and
- (6) Hold the schools established under this Article accountable for meeting measurable student achievement results, and provide the schools with a method to change from rule-based to performance-based accountability systems.

...

**§ 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. (1995 (Reg. Sess., 1996), c. 731, s. 2; 1997-430, s. 4; 2013-355, s. 1(e); 2014-101, s. 7.)

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Link to Alternative School Statutes: [G.S. 115C, Article 8C](#)

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

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish all needed rules and regulations for the system of free public schools, subject to laws enacted by the General Assembly. 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. The powers and duties of the State Board of Education are defined as follows:

...

- (24) **Duty to Develop Standards for Alternative Learning Programs,** Provide Technical Assistance on Implementation of Programs, and Evaluate Programs. - The State Board of Education shall adopt standards for assigning students to alternative learning programs. These standards shall include (i) a description of the programs and services that are recommended to be provided in alternative learning programs and (ii) a process

Ashley Snyder

Commission Counsel

for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision. The State Board also shall adopt policies that define what constitutes an alternative school and an alternative learning program.

The State Board of Education shall also adopt standards to require that local school administrative units shall use (i) the teachers allocated for students assigned to alternative learning programs pursuant to the regular teacher allotment and (ii) the teachers allocated for students assigned to alternative learning programs only to serve the needs of these students.

The State Board of Education shall provide technical support to local school administrative units to assist them in developing and implementing plans and proposals for alternative learning programs.

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. As part of its evaluation of the effectiveness of these programs, the State Board shall, through the application of the accountability system developed under G.S. 115C-83.15 and G.S. 115C-105.35, measure the educational performance and growth of students placed in alternative schools and alternative programs. If appropriate, the Board may modify this system to adapt to the specific characteristics of these schools. Also as part of its evaluation, the State Board shall evaluate its standards adopted under this subdivision and make any necessary changes to those standards based on strategies that have been proven successful in improving student achievement and shall report to the Joint Legislative Education Oversight Committee by April 15, 2006 to determine if any changes are necessary to improve the implementation of successful alternative learning programs and alternative schools.

**§ 115C-105.47A. Proposals to establish alternative learning programs or alternative schools.**

(a) Before establishing any alternative learning program or alternative school, the local board of education shall develop a proposal to implement the program or school that includes all of the following:

- (1) The educational and behavioral goals for students assigned to the program or school.
- (2) The policies and procedures for the operation of the program or school based on the State Board's standards adopted under G.S. 115C-12(24). The policies and procedures shall address the assignment of students to the program or school.
- (3) Identified strategies that will be used to improve student achievement and behavior.
- (4) Documentation that similar programs and schools in or out of the State, or both, have demonstrated success in improving the academic achievement and behavior of students assigned to them.
- (5) The estimated actual cost of operating the program or school. To the extent practicable, this shall include the cost of:
  - a. Staffing the program or school with teachers who have at least four years' teaching experience and who have received an overall rating of at least above standard on a formal evaluation and are certified in the areas and grade levels being taught;
  - b. Providing optimum learning environments, resources and materials, and high quality, ongoing professional development that will ensure students who are placed in the program or school are provided enhanced educational opportunities in order to achieve their full potential;

*Ashley Snyder*

*Commission Counsel*

- c. Providing support personnel, including school counselors, psychiatrists, clinical psychologists, social workers, nurses, and other professionals to help students and their families work out complex issues and problems;
  - d. Maintaining safe and orderly learning environments; and
  - e. Providing transitional supports for students exiting the program or school and reentering the referring school.
- (6) Documented support of school personnel and the community for the implementation of the program or school.

(b) After the local board completes the proposal under subsection (a) of this section, the board shall submit the proposal to the State Board of Education for its review. The State Board shall review the proposal expeditiously and, if appropriate, may offer recommendations to modify the proposal. The local board shall consider any recommendations made by the State Board before implementing the alternative learning program or alternative school.

*Ashley Snyder*  
*Commission Counsel*



## **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 06G .0517

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 necessity and clarity. The Rule begins, "Unless otherwise prohibited by federal or state law..." without referencing any federal laws or regulations in the body of the Rule or the history note. Therefore, staff is unsure which federal laws may apply and staff recommends objection for lack of clarity.*

*The Rule states "The purpose of the following rules is to establish the criteria for eligibility and the procedures for applying for this designation [as an Alternative School]." The criteria for eligibility and application requirements are included in Rules 16 NCAC 06G .0518 and .0519. This amounts to a general purpose statement and does not meet the definition of a "rule" in G.S. 150B-2(8a). Therefore, staff also recommends objection for lack of necessity.*

### **§ 150B-2. Definitions.**

As used in this Chapter,

- (8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

1 16 NCAC 06G .0517 is proposed for adoption as follows:

2 **16 NCAC 06G .0517      ALTERNATIVE CHARTER SCHOOL – PURPOSE AND APPLICABILITY**

3 Unless otherwise prohibited by federal or state law, a charter school that meets specific criteria may be eligible to be  
4 designated an “Alternative School” for purposes of participation in the “North Carolina Alternative Schools’  
5 Alternative Accountability Model.” The purpose of the following rules is to establish the criteria for eligibility and  
6 the procedures for applying for this designation.

7  
8 *History Note:      Authority G.S. 115C-12(24), 115C-218(a)(2);*

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

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0518

**DEADLINE FOR RECEIPT: July 10, 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 update Box 2 of your form to match the Rule name.*

*Throughout this Rule, please change "must" to "shall."*

*Throughout this Rule, please capitalize "State" if you are referring to North Carolina.*

*In (a), when do these definitions apply? Is it just in this Rule?*

*At line 4, any school or only a charter school?*

*At line 6, define "unwanted academic or personal outcomes."*

*At line 7, what type of "interventions?"*

*At line 8, please delete "but not limited to" because it is unnecessary.*

*At line 8, what are the "proficiency standards?" Are the State-level standards in rule?*

*At line 9, please delete or define "inadequately."*

*At line 9, what are "unidentified learning needs?"*

*At line 9, define "alienation from school life."*

*At line 10, under what circumstances is the curriculum or instruction "unchallenging?" Who makes this determination?*

*At line 10, please define "poor school attendance."*

*At lines 10-11, define "negative peer influence."*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: June 29, 2020

*At line 11, please define “unmanageable behavior.”*

*At line 12, please define “inadequate” support from family. What does this mean? How is it determined?*

*At line 15, what do you mean by “for purposes of accountability?”*

*In (b)(1), how does a charter school determine whether at least 75% of its students are “at risk?” Who determines whether a student falls within the definition?*

*Please review the formatting in (b). (b)(1) appears to be in a different category than (2)-(5). Consider making (b)(1) part of (b).*

*In (b)(2), please define “recently.”*

*In (b)(4), please define “recently.”*

*In (b)(5), define “long-term suspension.”*

*In (b)(6), please compare this language with the definition, which includes elementary students. Should the definition include elementary students?*

*At line 24, please delete or define “immediately.”*

*At line 25, what “adequate documentation” is required? Please be specific.*

*At line 25, what “application” are you referring to? Are the contents or substantive requirements of the application in rule in accordance with 150B-2(8a)(d)?*

*In your history note, why is 115C-218(a)(2) listed?*

*At line 26, do you mean “this Rule” instead of “this policy?”*

*Why is 115C-105.46 not listed as authority for this Rule?*

*Can charter schools be alternative schools? See 115C-105.47A. Or do charter schools focus on serving “at risk students” within their application – description, admission procedures, mission statement, etc?*

*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 29, 2020

16 NCAC 06G .0518 is proposed for adoption as follows:

**16 NCAC 06G .0518      ALTERNATIVE CHARTER SCHOOL – ELIGIBILITY**

**(a) Definitions**

(1) “Student at risk” means a person eligible to enroll in a North Carolina public school who because of a wide range of individual, personal, financial, familial, social, behavioral or academic circumstances may experience failure at school or other unwanted academic or personal outcomes unless interventions occur to reduce the risk factors. Circumstances which often place students at risk may include, but are not limited to: not meeting state or local proficiency standards; grade retention; unidentified or inadequately addressed learning needs; alienation from school life; experiencing unchallenging curricula or instruction; tardiness or poor school attendance; negative peer influence; unmanageable behavior; substance abuse and other health risk behaviors, abuse and neglect; inadequate support from family or schools ; and limited English proficiency.

(2) “Dropout” means any student who leaves school for any reason before graduation or completion of a program of studies without transferring to another elementary or secondary school.

(b) In order to qualify for designation as an “alternative school” for purposes of accountability under Chapter 115C of the General Statutes, the charter school must include grades 9-12.

(1) At least 75% of the school’s population in grades 9-12 must be “Students at risk” of academic failure and must also meet one or more of the following indicators:

(2) The students must either be recently released from a juvenile justice facility, or otherwise be subject to and participating in the juvenile justice court process;

(4) The students must be currently served by a treatment facility licensed pursuant to Chapter 122C of the General Statutes, or have recently been discharged from such a facility;

(5) The students must be currently under long-term suspension from a public or private school; or

(6) The students must be high-school dropouts as defined above; or be imminently at risk of dropping out as demonstrated by adequate documentation in the charter school’s application for designation under this policy.

*History Note: Authority G.S. 115C-12(24), 115C-218(a)(2);*

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

*Emergency Rule Eff. August 20, 2019.*

## **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 06G .0519

RECOMMENDED ACTION:

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

COMMENT:

*Staff recommends objection for failure to comply with the APA and ambiguity. Subparagraph (a)(2) refers to accountability options in the "Department of Public Instruction's School Based Management and Accountability Program under 115C-105.20." Referring to the "Management and Accountability Program" rather than stating the accountability options in rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the Program outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide the options in rule also make the meaning of this Rule unclear. Therefore, staff recommends objection for failure to comply with the APA and ambiguity.*

*Staff also recommends objection to Paragraph (b) for ambiguity for use of the undefined term "well-defined."*

### **§ 115C-105.20. School-Based Management and Accountability Program.**

(a) The General Assembly believes that all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as its guide, the State Board of Education shall develop a School-Based Management and Accountability Program. The primary goal of the Program shall be to improve student performance.

(b) In order to support local boards of education and schools in the implementation of this Program, the State Board of Education shall adopt guidelines, including guidelines to:

- (1) Assist local boards and schools in the development and implementation of school-based management under Part 2 of this Article.

Ashley Snyder  
Commission Counsel

- (2) Recognize the schools that meet or exceed their goals.
- (3) Identify low-performing schools under G.S. 115C-105.37, and create assistance teams that the Board may assign to schools identified as low-performing under G.S. 115C-105.37. The assistance teams should consist of currently practicing teachers and staff, representatives of institutions of higher education, school administrators, and others the State Board considers appropriate.
- (4) Enable assistance teams to make appropriate recommendations under G.S. 115C-105.38.
- (5) Establish a process to resolve disputes between local boards and schools in the development and implementation of school improvement plans under G.S. 115C-105.27. This process shall provide for final resolution of the disputes.

16 NCAC 06G .0519 is proposed for adoption as follows:

**16 NCAC 06G .0519      ALTERNATIVE CHARTER SCHOOL - APPLICATION**

(a) A charter school that meets the eligibility criteria set forth in 16 NCAC 06G .0518 and seeks to be designated as an “alternative school” shall submit an application to the Office of Charter Schools that includes the following:

(1) The school’s mission as it relates to the request for designation as an “alternative school”;

(2) A designation of which alternative accountability option, as defined by the Department of Public Instruction’s School Based Management and Accountability Program under G.S. 115C-105.20, that it is requesting, which option cannot be changed except at the time of renewal;

(3) The criteria the school plans to use that will meet the eligibility requirements, including the documentation the school will use to support its admissions process;

(4) An admission plan for recruiting at-risk students as described in the application;

(5) An explanation of how the school intends to serve its student population; and

(6) The goals the school is setting for academic achievement for its student population.

(b) A plan that is not well-defined shall not be approved.

*History Note: Authority G.S. 115C-12(24), 115C-218(a)(2);*

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

*Emergency Rule Eff. August 20, 2019.*



## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0520

**DEADLINE FOR RECEIPT: July 10, 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 update Box 2 of your form to match the Rule name.*

*In (a), under what circumstances is this "appropriate?"*

*In (a), what is the timeline for submission?*

*In (a) and (b), are the contents or substantive requirements of the application in rule in accordance with 150B-2(8a)(d)?*

*At line 4, please consider deleting "such."*

*In (c), what is required for an application to be considered "complete?"*

*Can charter schools be alternative schools? See 115C-105.47A. Or do charter schools focus on serving "at risk students" within their application – description, admission procedures, mission statement, etc?*

*In (d), under what circumstances does the State Board approve an alternative charter school?*

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 29, 2020

1 16 NCAC 06G .0520 is proposed for adoption with changes as published in 34:13 NCAC 1246 as follows:

2  
3 **16 NCAC 06G .0520      ALTERNATIVE CHARTER SCHOOL – APPLICATION APPROVAL**  
4

- 5 (a) The Charter School Advisory Board (“CSAB”) shall, ~~if appropriate,~~ establish a timeline, available on the  
6 Office of Charter School’s webpage, for the submission of applications for alternative charter schools and  
7 for the review and approval of ~~such~~ applications.
- 8 (b) The CSAB shall develop an application template, available on the Office of Charter School’s website, to be  
9 used for applicants for alternative charter school designation.
- 10 (c) The Office of Charter Schools (“OCS”) will first review the alternative charter school application for  
11 completeness, give the applicant five days to provide missing information, and will then submit all complete  
12 applications to the CSAB for its review.
- 13 (d) The CSAB shall review complete applications and make recommendations to the State Board of Education.
- 14 (e) The State Board of Education’s approval of alternative charter school designation is valid for three years  
15 from the effective date of the approval, which effective date will be set forth in the approval document.  
16

17 *History Note: Authority G.S. 115C-12(24), 115C-218(a)(2); 115C-218.2*

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

19 ~~*Emergency Rule Eff. August 20, 2019;*~~

20 ~~*Eff. October 1, 2020.*~~  
21  
22

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0521

**DEADLINE FOR RECEIPT: July 10, 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 update Box 2 of your form to match the Rule name.*

*At line 5, please change "should" to either "shall" or "may."*

*At line 6, what criteria are used for CSAB's review? Please review the rule citation.*

*At line 7, projected outcomes of what? Is this clarified in statute or rule?*

*In (b), what are the "eligibility criteria?" How does CSAB determine whether they have been met?*

*In (b), under what circumstances does the State Board grant final approval?*

*How does this relate to 115C-105.47A? Can a charter school be an alternative school?*

*Does the three-year renewal period comply with 115C-218.6(b)?*

*If the designation as an alternative school is denied, does the school retain its charter?*

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 29, 2020

1 16 NCAC 06G .0521 is proposed for adoption with changes published in 34:13 NCAC 1246 as follows:

2  
3 **16 NCAC 06G .0521      ALTERNATIVE CHARTER SCHOOL – REVIEW AND RENEWAL OF**  
4 **DESIGNATION**  
5

6 (a) The Charter School Advisory Board ("CSAB") shall review each alternative charter school every three years to  
7 determine if the school ~~should~~ shall continue with its alternative charter school designation. In its review the CSAB  
8 shall utilize the criteria set forth in ~~16 NCAC 06G .0521~~.0519. The CSAB shall also evaluate the school's academic  
9 progress and compare the ~~projected outcomes in the alternative charter school's application to actual outcomes~~ goals  
10 the school set in its application in .0519(6) for academic achievement for its student population to its students' actual  
11 academic achievements.

12 (b) If the review shows that the school continues to meet eligibility criteria in 16 NCAC 06G .0518, is achieving its  
13 academic goals, and is in compliance with Chapter 115C, Article 14A and the rules in this Section, the CSAB ~~may~~  
14 shall recommend the school to the State Board of Education for final approval for another three-year designation.  
15

16 *History Note:*      *Authority G.S. 115C-12(24); 115C-218(a)(2);*

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

18 *Eff. October 1, 2020.*  
19

## REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0522

**DEADLINE FOR RECEIPT: July 10, 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 update Box 2 of the form to reflect the rule name.*

*In (a), which rules are you referring to when you say "these rules?"*

*In (a), what are the "criteria for designation?" Please consider providing a cross-reference.*

*At line 4, please capitalize "State" if you are referring to North Carolina.*

*At line 4, did you intend to say State or federal "law?" If this was your intent, which statutes are you referring to?*

*At line 4, do you mean "may" or "shall?" If you mean "may," under what circumstances does this occur? And under what circumstances does (a)(1) apply vs. (a)(2)?*

*In (a)(1), investigate the school for what? Where is your statutory authority for (a)(1)?*

*In (b), under what circumstances does the CSAB "find cause" to terminate the school's designation?*

*I take it the State Board then has the final decision with regards to whether to terminate a designation? Under what circumstances is a designation terminated?*

*If a designation is revoked, does the school maintain its charter?*

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 29, 2020

1 16 NCAC 06G .0522 is proposed for adoption with changes as published in 34:13 NCAC 1246 as follows:

2  
3 **16 NCAC 06G .0522      ALTERNATIVE CHARTER SCHOOL – TERMINATION OF DESIGNATION**

4  
5 (a) If at any time it appears the school is not meeting the criteria for designation as an alternative charter school under  
6 ~~these Rules~~ Rule .0517, or is otherwise not in compliance with ~~state~~ State or federal laws the Charter School Advisory  
7 Board ("CSAB") may:

8       (1)      direct the Office of Charter Schools or the Department of Public Instruction to investigate the school;  
9                or

10       (2)      direct the school to appear before the CSAB and respond to questions.

11 (b) In the event the CSAB finds cause to terminate the school's designation as an alternative school, the CSAB may  
12 make such a recommendation to the State Board of Education ("SBE").

13  
14 *History Note:*     *Authority G.S. 115C-12(24); 115C-218(a)(2); 115C-218(b)(10)(c); 115C-218.95*  
15                       ~~*Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);*~~  
16                       *Eff. October 1, 2020.*  
17