

Burgos, Alexander N

Subject: FW: [External] Withdrawals, 16 NCAC 06H & 06K

From: Lou Martin <lou.martin@dpi.nc.gov>

Sent: Friday, November 6, 2020 9:38 AM

To: Reeder, Amanda J <amanda.reeder@oah.nc.gov>; Masich, Molly <molly.masich@oah.nc.gov>

Cc: Deanna Townsend-Smith <deanna.townsend-smith@dpi.nc.gov>; Thomas Ziko <Thomas.Ziko@dpi.nc.gov>

Subject: [External] Withdrawals, 16 NCAC 06H & 06K

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Amanda,

The State Board of Education approved the withdrawal of the following rules at their meeting on November 5, 2020:

- **16 NCAC 06H .0113 Nutrition Standards for Elementary Schools**
Unnecessary reiteration of obligations under federal statutes and regulations.
- **16 NCAC 6K .0101 School Security for Education Services for the Deaf and Blind**
Unnecessary internal management policy.
- **16 NCAC 06K .0103 NC Standard Course of Study, Occupational Course and Extended Content Standards for Education Services for the Deaf and Blind** Unnecessary internal management policy.

Please let us know if you need anything else.

Thanks!

Lou

Lou Martin
State Board of Education
984-236-2257

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16 NCAC 06H .0115 is adopted as with changes published in 34:13 NCR 1248 as follows:

**16 NCAC 06H .0115 DISPUTE RESOLUTION PROCESS FOR HOMELESS STUDENTS – LEA
DISPUTE RESOLUTION PROCESS**

(a) Each LEA shall develop and implement ~~a~~ an LEA dispute resolution process for parents, guardians, or unaccompanied youth who have complaints about eligibility, school selection, or enrollment to file an appeal to the local liaison upon registering, or attempting to register, the child or youth at the school ~~in which~~ where enrollment is sought. For purposes of this ~~policy process~~, the phrase "school ~~in which~~ where enrollment is sought" may be either the school of origin or the school located in the attendance zone of the child or youth's temporary residence. Enrollment shall be deemed to include attending classes and participating fully in all school activities, activities, as required by 42 USC 11434a(1). The LEA shall ~~define and describe~~ publish the LEA dispute resolution process ~~in its local board of education's official policy manual~~ on its website or in any school unit publication that sets forth the rules, procedures, and standards for students or parents. The LEA dispute resolution process shall provide that:

- (1) the parent, guardian, or unaccompanied youth may initiate the dispute resolution process with the local liaison at the school ~~in which~~ where enrollment is sought or at the local liaison's office;
- (2) faculty and staff of the school who know about the complaint must refer the parent, guardian, or unaccompanied youth to the local liaison;
- (3) the local liaison shall ~~expeditiously~~ carry out the LEA dispute resolution process within ~~fifteen~~ 15 school business days, or ~~thirty~~ 30 calendar days, whichever is less;
- (4) the LEA official(s) responsible for making the final LEA decision ~~are~~ shall be identified in the local policy;
- (5) the LEA shall enroll the child or youth immediately as required by 42 USC 11432 in the school ~~in which~~ where enrollment is sought pending resolution of any complaint between the school or LEA and the parent, guardian, or unaccompanied youth over school enrollment;
- (6) the LEA shall provide the student with all ~~the~~ services for which the student is eligible and shall permit the student to participate fully in school activities while the dispute is being resolved;
- (7) the LEA ~~shall, at the time a complaint is made to the local liaison when practicable, but in no case more than within one school business day, day later,~~ provide the parent, guardian, or unaccompanied youth with a statement of rights and procedures, written ~~in an understandable and uniform format in a language, manner, manner~~ and to the extent the LEA deems practicable, in a language that the parent, guardian, or unaccompanied youth can understand, that informs them of:
 - (A) contact information including telephone number, e-mail address, and physical address of the local liaison and of the State Coordinator for homeless education, with a ~~brief~~ description of their roles;
 - (B) the right to notify the local liaison, within two school business days of the school's decision, of the ~~parent's, guardian's,~~ parent's, guardian's, or unaccompanied youth's intent to

1 appeal the decision and the right to receive notice of the appeal procedure, including the
 2 timeline and process for making the initial appeal and any subsequent appeals available
 3 under LEA ~~policy, which policy.~~ This process must allow for requests for appeals to be
 4 made orally or in writing and must identify the LEA official(s) who makes the final LEA
 5 decision;

6 (C) a ~~simple~~ form that parents, guardians, or unaccompanied youth can understand, complete
 7 complete, and submit to the local liaison to formally initiate the appeal and any subsequent
 8 appeals available under LEA policy;

9 (D) the right to ~~appeal~~ appeal, or request an extension of time to appeal, the final LEA decision
 10 to the State Coordinator within three school business days of receipt of the final LEA
 11 decision; within three school business days after the final LEA decision, with the option of
 12 requesting an extension from the State Coordinator (though extensions are not guaranteed)
 13 and a step by step description on how to file this appeal;

14 (E) the right to enroll immediately in the school located in the attendance zone of the child or
 15 youth's temporary residence or remain in the school of origin with transportation provided
 16 by the LEA pending resolution of the dispute, if such transportation is requested by the
 17 parent, guardian, or local liaison on behalf of the youth;

18 (F) notice that ~~immediate enrollment includes full participation~~ the right to enroll includes the
 19 right to fully participate in all school activities;

20 (G) the right to obtain assistance of advocates or attorneys; and

21 (H) the right to provide supporting written or oral documentation during the appeals process.

22 (b) Each LEA shall appoint a local liaison for identifying homeless students. The local liaison shall:

23 (1) ensure that when parents, guardians, students, or unaccompanied youth initiate the dispute
 24 resolution process, all parties comply with the ~~LEA dispute resolution policy process~~ and that the
 25 ~~parents, students, and unaccompanied youth~~ appellants are provided with the information ~~listed~~
 26 ~~above.~~ required by Paragraph (a) of this Rule;

27 (2) ensure that each ~~unaccompanied youth and any student experiencing homelessness~~ homeless child
 28 or youth who files a dispute about enrollment or whose parent or guardian files such a dispute is
 29 enrolled immediately in the school pending resolution of the dispute;

30 (3) communicate the LEA dispute resolution process to parents, guardians, and unaccompanied ~~youth~~
 31 ~~experiencing homelessness;~~ youth; and

32 (4) inform the LEA superintendent, other ~~appropriate~~ school officials participating in the LEA dispute
 33 resolution process, and the State Coordinator of the dispute ~~immediately~~ no more than two school
 34 business days after the parent, guardian, or unaccompanied youth has initiated the dispute resolution
 35 process.

(c) The State Coordinator shall train the local liaisons to carry out and mediate the dispute resolution process and to ensure that each school and the LEA meets the requirements of the McKinney-Vento Act as amended by the Every Student Succeeds Act of ~~2015~~, 2015, as set forth in 42 U.S.C. 11431 et seq.

*History Note: Authority G.S. 115C-12; G.S. 115C-366; 42 U.S.C. 11431; 42 U.S.C. 11432; ~~450B-21; 42 U.S. Code § 11431; 42 U.S. Code § 11432; N.C. Constitution, Article IX, Sec. 5;~~
Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);
Emergency Rule Eff. August 20, 2019;
Eff. December 1, 2020.*

16 NCAC 06H .0116 is adopted with changes as published in 34:13 NCR 1250 as follows:

**16 NCAC 06H .0116 DISPUTE RESOLUTION PROCESS FOR HOMELESS STUDENTS –
STATE APPEALS PROCESS**

(a) Any parent, guardian, or unaccompanied youth who is not satisfied with the final LEA decision regarding enrollment may appeal the decision, within three school business days after the final LEA ~~decision~~, decision or within the period of any extension granted, to the State Coordinator through an oral or written appeal to the State Coordinator, including:

- (1) the name of the person making the appeal and, if available, his or her physical address, address if available, e-mail address, and telephone number;
~~number of the person filing the appeal;~~
- (2) the relationship or connection of the person to the child in question;
- (3) the name of the school system and the ~~specific~~ school in question;
- (4) the federal requirement alleged to have been violated;
- (5) how the requirement has been violated; and
- (6) the relief the person is seeking.

(b) If the State Coordinator receives an appeal ~~that is not complete,~~ that is missing information listed in Paragraph (a) of this Rule, the State Coordinator shall contact the person making the appeal and the local liaison, explain the deficiency, and offer the person ~~the opportunity to complete the appeal.~~ an opportunity to provide the missing information.

(c) Upon request of the State Coordinator, the local liaison shall provide the State Coordinator with the record of the complaint, the LEA's actions, and other ~~supporting~~ documents. If the matter involves more than one LEA, then the local liaisons shall cooperate to provide the State Coordinator with a complete record. ~~In either event, the~~ The local liaison or liaisons shall provide the complete record within three school business days following the State ~~coordinator's~~ Coordinator's request.

(d) The State Coordinator shall provide the LEA and the parent, guardian, or unaccompanied youth with the opportunity to respond to the LEA decision and to provide any additional evidence ~~they deem~~ he or she deems relevant within three school business days.

(e) The State Coordinator shall issue a final written decision to the parent, guardian, or unaccompanied youth and the LEA involved within 10 school business days following receipt of the ~~complete appeal~~. documents and information described with Paragraphs (a), (b), (c) and (d) of this Rule.

(f) The State Coordinator's decision shall include:

- (1) a summary of the issue appealed;
- (2) the federal requirement at issue; and
- (3) a description of the State Coordinator's decision in ~~an understandable and uniform format~~ a manner and form the parent, guardian, or unaccompanied youth understand, and, to the extent practicable as determined by the State Coordinator, provided in a language that the parent, guardian, or unaccompanied youth can understand, including further steps that the LEA or parent, guardian, or unaccompanied youth are required to take.

~~(f)(g)~~ Nothing contained in this Rule shall prohibit the State Coordinator from investigating whether the parent, guardian, or unaccompanied youth knowingly and voluntarily entered into any agreement affecting ~~their~~ his or her rights under McKinney-Vento Act as amended by the Every Student Succeeds Act of 2015. If the State Coordinator determines that the parent, guardian, or unaccompanied youth did not knowingly and voluntarily enter into the agreement, then the State Coordinator may void the agreement and enter a decision consistent with the applicable facts and State or federal law. ~~law~~, as set forth in 42 U.S.C. 11431 et seq.

*History Note: Authority G.S. 115C-12; G.S. 115C-366; 42 U.S.C. 11431; 42 U.S.C. 11432; ~~150B-21; 42 U.S. Code § 11431; 42 U.S. Code § 11432; N.C. Constitution, Article IX, Sec. 5;~~
Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);
Emergency Rule Eff. August 20, 2019;
Eff. December 1, 2020.*

16 NCAC 06H .0117 is proposed for adoption with changes as published in 34:13 NCAC 1250 as follows:

16 NCAC 06H .0117 OPERATION OF FEDERAL PROGRAMS

~~In accordance with applicable federal regulations, the Department shall administer such federal education programs as are authorized by Congress and accepted by the State Board of Education. In administering federal programs, the Department shall reclaim and/or withhold funds from any local education agency (LEA) or program sponsor that fails to comply with current federal regulations and state policies until the LEA or program sponsor complies.~~

Participants in federal education programs administered by the Department of Public Instruction shall be subject to the enforcement mechanisms authorized under 2 CFR Part 200, which is hereby incorporated by reference, including subsequent editions and amendments. The CFRs may be accessed at no cost at ecfr.gov.

History Note: Authority G.S. 115C-12; 115C-263; 115C-264; ~~115C-409; 115C-409~~; N.C. Constitution, Article IX,

~~Sec. 5;~~

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

Emergency Rule Eff. August 20, 2019;

Eff. December 1, 2020.

16 NCAC 06K .0104 is proposed for adoption as published in 34:13 NCAC 1250 with changes as follows:

16 NCAC 06K .0104 PLACEMENT PROCEDURES

~~(a) Consistent with federal regulations, the Education Services for the Deaf and Blind (ESDB) shall establish uniform procedures for referral, screening, and placement of Deaf, Hard of Hearing, Blind, Deaf Blind and Visually Impaired students in the state operated residential programs in ESDB.~~ (a) For purposes of this Section, “State residential school(s)” means The the North Carolina School for the Deaf, the Eastern North Carolina School for the Deaf, or the Governor Morehead School for the Blind.

(b) ~~Each ESDB school shall name a school representative who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of the each child. The individual must hold a current license as a special education teacher, administrator in North Carolina, or speech/language pathologist. In addition, the individual shall be knowledgeable about the North Carolina Standard Course of Study; Occupational Course of Study (OCS); and Extended Content Standards (ECS); and knowledgeable of the available resources of the school. It is important that the school representative has the authority to commit school resources and ensure that whatever services are described in the Individualized Education Program (IEP) will be provided.~~ Education Services for the Deaf and Blind (ESDB) is the division within the Department of Public Instruction responsible for managing the administration of the State residential schools.

(c) ~~The school representative will contact the local special education director, (not a particular school, unless directed by the local Exceptional Children director), and arrange to observe the student referred in multiple settings, including the student's classroom, cafeteria and a non-structured setting. All contact concerning possible admission to a State residential school must be initiated by the LEA local education agency (LEA), as defined in G.S. 115C-106.3(11), or local school public school unit, as defined in G.S. 115C-5(7a), in which where the student seeking admission to a residential school is domiciled or which that the student attends. Inquiries from parents and others shall be directed to the appropriate LEA.~~

~~(d) The school representative will review forms and consider information used in making the recommendation for placement. (Schools should consider the present status and needs of the student, reason for referral, and services presently and previously provided, and results of screening and assessment.) All state adopted forms must be completed and signed.~~

(d) ~~The school representative will participate in discussions about the least restrictive environment for student.~~ student’s Individual Education Program (IEP) team established under the 2004 Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004); as amended, and federal regulations adopted under that act, shall permit the ESDB to:

(1) participate in discussions and decisions about the least restrictive environment for student in accordance with G.S. § 115C-107.2(b)(2);

(2) review any information or documents that the LEA or local public school unit, submits in support of its request for admission; and

(3) observe the student referred in multiple settings, including the student's classroom, cafeteria, and a non-structured settings.

(e) If the student's IEP team decides that residential school placement is the least restrictive environment for the ~~referred~~ student, the ESDB ~~shall~~ school representative ~~should will take a copy of properly completed and signed forms back to the appropriate ESDB school, discuss with ESDB school staff, and~~ admit the student. and plan for the student's transition.

(f) ~~The ESDB superintendent shall be notified of all student placements and transitions back to an LEA.~~

*History Note: Authority G.S. 115C-12; 115C-107.2; 115C-150.13; ~~N.C. Constitution, Article IX, Sec. 5~~;
Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);
Emergency Rule Eff. August 20, 2019;
Eff. December 1, 2020.*

16 NCAC 06K .0105 is adopted as published in 34:13 NCR 1250 with changes as follows:

16 NCAC 06K .0105 WEAPONS PROHIBITED ON SCHOOL PROPERTY

(a) ~~All Education Services for the Deaf and Blind (ESDB) schools and places of employment within ESDB shall be free of all unauthorized weapons.~~ No employee or other person shall carry, or engage another person to carry, whether openly or concealed, an unauthorized weapon as defined ~~below defined~~ in Paragraph (b) of this Rule, on to residential school property at any ~~time~~, time, except as authorized by Paragraph (d) this Rule.

(b) “Unauthorized Weapon weapon” is defined as ~~any gun, rifle, pistol, or other firearm of any kind, or any dynamite cartridge, bomb, grenade, mine or other powerful explosive, BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slingshot, leaded cane, switchblade knife (a knife containing a blade that opens automatically by the release of a spring or a similar contrivance), blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, and any sharp pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on school property.~~ any weapon listed in G.S. 14-269.2 (b) through (e).

(c) “Residential school School property” is defined as any building, bus, school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by ~~the Education Services for the Deaf and the Blind~~ The the North Carolina School for the Deaf, the Eastern North Carolina School for the Deaf, or the Governor Morehead School for the Blind.

~~(d) Exceptions Include:~~ This Rule shall not apply to weapons or persons listed in G.S. 14-269.2 (g)(1), (1a), (2), and (7).

~~(A) — A weapon used solely for educational or school sanctioned ceremonial purposes, or used in a school approved program conducted under the supervision of an adult whose supervision has been approved by the school director;~~

~~(B) — Firefighters, emergency service personnel, North Carolina Forest Service Personnel, and any private police employed by the Education Service for the Deaf and the Blind when acting in the discharge of their official duties, law enforcement officers, or any of those persons specifically exempted by G.S. 14-269(b).~~

~~(d)(c)~~ Any employee who is aware that an unauthorized weapon has been carried onto residential school property must immediately notify the school director.

(1) Violation of this ~~policy~~ Rule may subject the employee to disciplinary action up to and including dismissal.

(2) The ~~principal~~ school director shall immediately report violations of this ~~policy~~ Rule to law enforcement.

History Note: Authority G.S. 14-269; 14-269.2; 115C-12; 115C-150.11; N.C. Constitution, Article IX, Sec. 5; Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b); Emergency Rule Eff. August 20, 2019; Eff. December 1, 2020.



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

September 17, 2020

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

Re: Objection to Rules 16 NCAC 06H .0113, .0115, .0116, and .0117; 06K .0101, .0103, .0104, and .0105.

Dear Mr. Ziko:

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

The Commission objected to Rule 06H .0113 for lack of statutory authority, clarity, and necessity, as well as failure to comply with the APA. Specifically, in Subparagraph (a), the Rule states that the meals shall be “consistent with the current edition of the Dietary Guidelines for Americans, Federal Regulations as approved for North Carolina and State Board of Education Policy on Nutrition Standards for School Meals.” The Rule does not provide any additional information on the Dietary Guidelines, including how those guidelines are created, who created it, and where it can be found. The Rule further does not address what federal regulations will apply, and it does not address who will approve them. Thus, this is unclear as written.

Additionally in Subparagraph (a)(1), the agency refers to the “State Board Education Policy on Nutrition Standards for School Meals.” The Commission found that the agency cannot refer in rule to a policy that it created without violating the APA, as the policy can change without going through notice and comment, and the effect of the Rule would change. Further, policies are not rules, as set forth in G.S. 150B-2(7a). Thus, as written, the Rule violates the APA.

In (b)(7), the Rule refers to allowing foods found in the “Food Buying Guide for Child Nutrition Programs” with no additional information of what this is or who created it. The Commission found this standard to be ambiguous as written.

Julian Mann, III, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
Senior Administrative Law Judge

Linda T. Worth
Deputy Director

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In (c)(1), the Rule refers to meeting “meal pattern requirements specified by the US Department of Agriculture” but does not include what those requirements are, nor where they can be located. The Commission found this language to be ambiguous as written.

Paragraph (d) of the Rule states that the nutrition standards (presumably, meaning this Rule) must be implemented for all elementary schools no later than the first day of the 2008 school year. However, G.S. 115C-264.3 required achievement by the end of the 2009-2010 school year. The Commission found that the agency does not have authority of to set an earlier effective date than that required by statute. Further, as the deadline in this Paragraph passed 12 years ago, the Commission found that this language was also unnecessary.

In Paragraph (e), the Rule says that the staff of DPI will review the nutrition standards and, “modify the standards as needed based on several criteria, including, but not limited to, current science, best practices in the food and beverage industry, and the availability and affordability of new foods and beverages.” The Rule does not address what constitutes “current science” nor “best practices in the food and beverage industry.” Further, there is no indication on what the phrase “availability and affordability” mean in this Rule. Therefore, the Commission found that this language was ambiguous as written.

In Paragraph (h), the Rule states that students with special nutritional needs “shall be exempt from the standards.” The Commission found it was unclear whether the intent of this Rule was to govern programs or individual students.

The Commission objected to Rule 06H .0115 for ambiguity. The Commission found that the Rule included several ambiguous terms, such as “official policy manual” in Paragraph (a), “understandable and uniform format” in Subparagraph (a)(7), and “brief” in Part (a)(7)(A). The agency did not respond to technical change requests to clarify these terms in advance of the Commission meeting.

The Commission objected to Rule 06H .0116 for ambiguity. The Commission found that the Rule included several ambiguous terms, such as “other supporting documents” in Paragraph (c) and “understandable and uniform format” in Subparagraph (e)(3). The agency did not respond to technical change requests to clarify these terms in advance of the Commission meeting.

The Commission objected to Rule 06H .0117 for ambiguity and failure to comply with the APA. Specifically, the Rule states that the Department shall reclaim or withhold funds for failure to comply with “state policies” until compliance occurs. The Commission found that the Rule does not say what policies it is referring to and is therefore ambiguous as written. Further, the Commission found that even if the Rule did name those policies, pursuant to the APA, policies cannot be used in a rule to control actions taken by the agency. Therefore, as written, the Rule violates the APA.

The Commission objected to Rule 06K .0101 for ambiguity. Specifically, the Commission found the term “Education Services for Deaf and Blind Schools” was unclear, and that the agency did not seem to be setting any standards within the Rule. The agency did not respond to technical change requests to clarify the term in advance of the Commission meeting.

The Commission objected to Rule 06K .0103 for lack of clarity and statutory authority. Specifically, the Commission found that the terms “Education Services for the Deaf and Blind,” “NC Standard Course of Study,” “Extended Course Standards,” and “Occupational Course of Study” unclear as written. Additionally, the Rule provides that these courses will be used for subjects “when a standard is provided” but does not state when this will occur nor who will provide them. Therefore, the Rule is ambiguous as written.

Further, the Commission found that G.S. 115C-85 requires the agency to adopt a standard course of study. The agency did not provide any authority for that adoption to be done outside of rulemaking. The Commission found that the agency lacked statutory authority to do so.

The Commission objected to Rule 06K .0104 for lack of statutory authority, clarity, and necessity. Specifically, the Commission found the following terms within the Rule to be ambiguous as written: “Education Services for the Deaf and Blind,” “Standard Course of Study,” “Occupational Course of Study,” and “Extended Content Standards.” The Rule does not state what these standards entail. Further, the Commission found that the agency provided no authority to establish these standards outside of rulemaking.

Paragraph (a) of the Rule refers to being consistent with “federal regulations” but does not state which regulations it is referring to. The Commission found this language was ambiguous as written.

Further, the Commission found that the Rule contains statements that are not regulating any matters, but appear to be asides or suggestions, such as in Paragraph (b), “It is important that the school representative has authority...” ; in Paragraph (d), “(Schools should consider...)”; and in Paragraph (f), “[T]he EDSB school representative should take a copy ...”. As written, these phrases do not convey a mandate and therefore are not, “reasonably necessary to implement or interpret an act of the General Assembly” as required by G.S. 150B-21.9(a)(3).

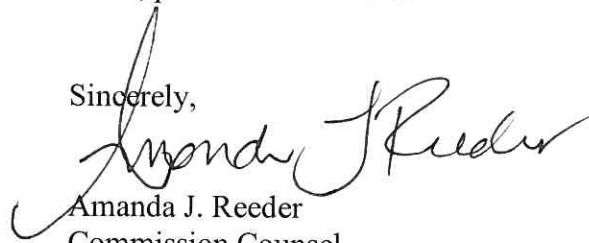
The Commission objected to Rule 06K .0105 lack of clarity and statutory authority. Specifically, the Commission found the terms “unauthorized weapon” in Paragraph (a) to be unclear. Further, the Rule defines “weapon” in Paragraph (b) to include a “BB gun, stun gun, air rifle, and air pistol.” However, G.S. 14-269.2, which is cited to by the agency in the Rule, states that these are exempt from the definition of the term. The agency did not provide any authority to change the statutory definition, and the Commission found that the agency is without authority to do so.

In addition, in Part (c)(2)(B), the Rule creates an exception for those individuals allowed to carry weapons on the premises. That list partially captures the list of exemptions in G.S. 14-269.2(g), but does not include all of those individuals. The agency did not provide any authority to change the statutory exemptions, and the Commission found that the agency is without authority to do so.

The agency did not respond to technical change requests to clarify these terms and 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,



Amanda J. Reeder
Commission Counsel

cc: Lou Martin, Rulemaking Coordinator



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

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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 06H and 06K

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,

Amanda J. Reeder
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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Rules Review
Commission
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Civil Rights
Division
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REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: All Rules Submitted

DEADLINE FOR RECEIPT: Friday, 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:

As set forth in Rule 26 NCAC 02C .0405(b)(1), whenever you make changes to these Rules in response to requested technical changes, you will remove all underlining and underline only language added at this time. You will strike all language you are removing at this time. You will not use highlighting. Do not remove any language that you published in the Register without showing it.

Please change the Introductory Statement to include the publication information. For example, "16 NCAC 06H .0114 is adopted as published in 34:13 pp 1208-1251 as follows:"

For all Rules that are changed in response to requested technical changes, the Introductory Statement will add "with changes" like so:

"16 NCAC 06H .0114 is adopted as published in 34:13 pp 1208-1251 with changes as follows:"

Please skip a line between the Introductory Statement and the Rule name.

In the History Note, please include an effective date below the Emergency Rule Eff. date. The earliest these Rules can become effective is August 1, 2020. You will show this by saying, "Eff. August 1, 2020."

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 1, 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 06H .0113

RECOMMENDED ACTION:

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

COMMENT:

Staff recommends objection to this Rule for lack of statutory authority, clarity, and necessity, as well as failure to comply with the APA. In the History Note for this Rule, the agency cites to G.S. 115C-12, which is entitled "Powers and Duties of the Board Generally" and G.S. 115C-264.3.

G.S. 115C-264.3 states:

§ 115C-264.3. Child Nutrition Program standards.

The State Board of Education, in direct consultation with a cross section of local directors of child nutrition services, shall establish statewide nutrition standards for school meals, a la carte foods and beverages, and items served in the After School Snack Program administered by the Department of Public Instruction and child nutrition programs of local school administrative units. The nutrition standards will promote gradual changes to increase fruits and vegetables, increase whole grain products, and decrease foods high in total fat, trans fat, saturated fat, and sugar. The nutrition standards adopted by the State Board of Education shall be implemented initially in elementary schools. All elementary schools shall achieve a basic level by the end of the 2009-2010 school year, followed by middle schools and then high schools.

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This Rule purports to set the nutritional standards for elementary school meals and after school program snacks. However, in Paragraph (a), the Rule states that the meals shall be “consistent with the current edition of the Dietary Guidelines for Americans, Federal Regulations as approved for North Carolina and State Board of Education Policy on Nutrition Standards for School Meals.” Staff does not know what the “Dietary Guidelines for Americans” is, and the Rule does not give any additional information on how it is created, who created it, and where it can be found. Staff further does not know what federal regulations will apply, as the Rule is silent on that, and it does not address who will approve them. It is possible that the agency could incorporate these outside standards under G.S. 150B-21.6; however, as it has failed to do so here, the Rule is unclear as written.

Finally, the agency refers to the “State Board Education Policy on Nutrition Standards for School Meals.” Staff notes that the agency is required to establish the nutrition standards, and it must do that through rulemaking by putting its policy in a Rule. The agency cannot refer in rule to a policy that it created without violating the APA, as the policy can change without going through notice and comment, and then the effect of the Rule would change. Further, policies are not rules, as set forth in G.S. 150B-2(7a). Thus, as written, the Rule violates the APA.

In (b)(7), the agency refers to allowing foods found in the “Food Buying Guide for Child Nutrition Programs” with no additional information of what this is, who created it, and whether it can be properly incorporated by reference under G.S. 150B-21.6. It is therefore an ambiguous standard and thus, ambiguous as written.

In (c)(1), the agency refers to meeting “meal pattern requirements specified by the US Department of Agriculture” but does not include what those requirements are, nor where they can be located. It is possible that the agency used this language to mirror G.S. 115C-264(a), which states:

§ 115C-264. Operation.

(a) In the operation of their public school nutrition programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School Support, Child Nutrition Services of the Department of Public Instruction and **in accordance with federal guidelines as established by the Food and Nutrition Service of the United States Department of Agriculture.**

However, that is not the language in the Rule and the agency did not cite to the law in its History Note. Thus, staff believes this is ambiguous as written.

The agency says in Paragraph (d) that the nutrition standards (presumably, this Rule) must be implemented for all elementary schools no later than the first day of the 2008 school year. However, G.S. 115C-264.3 required achievement by the end of the 2009-2010 school year. Staff is not aware of any authority of the agency to set an earlier effective date than that required by statute, and therefore believes the agency does not have statutory authority for Paragraph (d). Further, as the deadline in this Paragraph passed nearly 12 years ago, staff believes the Paragraph is unnecessary, as well.

In Paragraph (e), the agency says that the staff of DPI will review the nutrition standards and modify them annually. The agency does not say that it will do so through rulemaking, and given the reliance in Paragraph (a) on policy, staff is concerned that it is contemplated that this may be done

through policy. As that intention to change policy, rather than rule, is not stated in the Paragraph, staff is not recommending objection for failure to comply with the APA. However, staff notes that the DPI staff shall, “modify the standards as needed based on several criteria, including, but not limited to, current science, best practices in the food and beverage industry, and the availability and affordability of new foods and beverages.” Staff does not know, and the Rule does not address, what is “current science” nor “best practices in the food and beverage industry.” Further, there is no indication on what “availability and affordability” mean in this Rule.

In Paragraph (h), the agency says that students with special nutritional needs “shall be exempt from the standards.” As far as staff can tell, this Rule does not govern students, it governs the programs. If the intent of this Rule is govern each individual student, then this needs to be stated more clearly. Regardless of the intent, staff believes this Paragraph is unclear as written.

§ 115C-263. Required provision of services.

As a part of the function of the public school system, local boards of education shall provide to the extent practicable school food services in the schools under their jurisdiction. All school food services made available under this authority shall be provided in accordance with standards and regulations recommended by the Superintendent of Public Instruction and approved by the State Board of Education. (1955, c. 1372, art. 5, s. 34; 1965, c. 912; 1967, c. 990; 1975, c. 384; 1981, c. 423, s. 1.)

§ 115C-264. Operation.

(a) In the operation of their public school nutrition programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School Support, Child Nutrition Services of the Department of Public Instruction and in accordance with federal guidelines as established by the Food and Nutrition Service of the United States Department of Agriculture.

(b) For nutritional purposes, the public schools shall not (i) use cooking oils in their school food programs that contain trans-fatty acids or (ii) sell processed foods containing trans-fatty acids that were formed during the commercial processing of the foods.

(c) All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children and for no other purpose. The term "cost of operation" means the actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. "Personnel" means child nutrition supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food. Child nutrition personnel shall be paid from the funds of food services only for services rendered in behalf of the child nutrition program. Any cost incurred in the provisions and maintenance of school food services over and beyond the cost of operation shall be included in the budget request filed annually by local boards of education with boards of county commissioners. Public schools are not required to comply with G.S. 115C-522(a) in the purchase of supplies and food for such school food services. (1955, c. 1372, art. 5, s. 34; 1965, c. 912; 1967, c. 990; 1975, c. 384; 1981, c. 423, s. 1; 1991 (Reg. Sess., 1992), c. 900, s. 78; 2003-147, s. 5; 2004-124, s. 7.29(a); 2004-203, ss. 72(a), (b); 2005-253, s. 1.)

§ 115C-264.3. Child Nutrition Program standards.

The State Board of Education, in direct consultation with a cross section of local directors of child nutrition services, shall establish statewide nutrition standards for school meals, a la carte foods and beverages, and items served in the After School Snack Program administered by the Department of Public Instruction and child nutrition programs of local school administrative units. The nutrition standards will promote gradual changes to increase fruits and vegetables,

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increase whole grain products, and decrease foods high in total fat, trans fat, saturated fat, and sugar. The nutrition standards adopted by the State Board of Education shall be implemented initially in elementary schools. All elementary schools shall achieve a basic level by the end of the 2009-2010 school year, followed by middle schools and then high schools. (2005-457, s. 1; 2007-323, s. 7.36A(a); 2008-107, s. 7.25(a).)

§ 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:

- (1) Financial Powers. - The financial powers of the Board are set forth in Article 30 of this Chapter.
- (1a) To Submit a Budget Request to the Director of the Budget. - The Board shall submit a budget request to the Director of the Budget in accordance with G.S. 143C-3-3. In addition to the information requested by the Director of the Budget, the Board shall provide an analysis relating each of its requests for expansion funds to anticipated improvements in student performance.
- (2) Repealed by Session Laws 1985 (Regular Session, 1986), c. 975, s. 24.
- (3), (4) Repealed by Session Laws 1987 (Regular Session, 1988), c. 1025, s. 1.
- (5) Apportionment of Funds. - The Board shall have authority to apportion and equalize over the State all State school funds and all federal funds granted to the State for assistance to educational programs administered within or sponsored by the public school system of the State.
- (6) Power to Demand Refund for Inaccurate Apportionment Due to False Attendance Records. - When it shall be found by the State Board of Education that inaccurate attendance records have been filed with the State Board of Education which resulted in an excess allotment of funds for teacher salaries in any school unit in any school year, the school unit concerned may be required to refund to the State Board the amount allotted to said unit in excess of the amount an accurate attendance record would have justified.
- (7) Power to Alter the Boundaries of City School Administrative Units and to Approve Agreements for the Consolidation and Merger of School Administrative Units Located in the Same County. - The Board shall have authority, in its discretion, to alter the boundaries of city school administrative units and to approve agreements submitted by county and city boards of education requesting the merger of two or more contiguous city school administrative units and the merger of city school administrative units with county school administrative units and the consolidation of all the public schools in the respective units under the administration of one

board of education: Provided, that such merger of units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.

(8) Power to Make Provisions for Sick Leave and for Substitute Teachers. - The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

The minimum pay for a substitute teacher who holds a teaching certificate shall be sixty-five percent (65%) of the daily pay rate of an entry-level teacher with an "A" certificate. The minimum pay for a substitute teacher who does not hold a teaching certificate shall be fifty percent (50%) of the daily pay rate of an entry-level teacher with an "A" certificate. The pay for noncertified substitutes shall not exceed the pay of certified substitutes.

Local boards may use State funds allocated for substitute teachers to hire full-time substitute teachers.

If a teacher assistant acts as a substitute teacher, the salary of the teacher assistant for the day shall be the same as the daily salary of an entry-level teacher with an "A" certificate.

(9) Miscellaneous Powers and Duties. - All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

a. To certify and regulate the grade and salary of teachers and other school employees.

b. To adopt and supply textbooks.

c. Repealed by Session Laws 2017-126, s. 11, effective July 20, 2017.

c1. To issue an annual "report card" for the State and for each local school administrative unit, assessing each unit's efforts to improve student performance based on the growth in performance of the students in each school and taking into account progress over the previous years' level of performance and the State's performance in comparison with other states. This assessment shall take into account factors that have been shown to affect student performance and that the State Board considers relevant to assess the State's efforts to improve student performance. The annual "report card" for each local school administrative unit shall include the following:

1. The State Board shall award, in accordance with G.S. 115C-83.15, an overall numerical school achievement, growth, and performance score on a scale of zero to 100 and a corresponding performance letter grade of A, B, C, D, or F earned by each school within the local school administrative unit. The school performance score and grade shall reflect student performance on annual subject-specific assessments, college and workplace readiness measures, graduation rates, and student progress in achieving English language proficiency. In addition, the State Board shall award separate performance scores and grades for the following:

I. School performance of certain subgroups of students as provided in G.S. 115C-83.15.

II. For schools serving students in any grade from kindergarten to eighth grade, school performance in reading and mathematics respectively.

2. For schools serving students in third grade, the number and percentage of third grade students who (i) take and pass the alternative assessment of reading comprehension; (ii) were retained in third grade for not demonstrating reading proficiency as indicated in G.S. 115C-83.7(a); and (iii) were exempt from mandatory third grade retention by category of exemption as listed in G.S. 115C-83.7(b).

3. For high schools, measures of Advanced Placement course participation, Cambridge Advanced International Certificate of Education (AICE) Program participation, and International Baccalaureate Diploma Programme participation and Advanced Placement, Cambridge AICE, and International Baccalaureate examination participation and performance.

4. For schools serving any students in ninth through twelfth grade, the percentage of students who achieved the minimum score required for admission into a constituent institution of The University of North Carolina on a nationally normed test of college readiness.

5. For schools serving any students in ninth through twelfth grade, the percentage of students enrolled in Career and Technical Education courses who score at Silver, Gold, or Platinum levels on a nationally normed test of workplace readiness.

c2. Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 1.

c3. To develop a system of school building improvement reports for each school building. The purpose of school building improvement reports is to measure improvement in the growth in student performance at each school building from year to year, not to compare school buildings. The Board shall include in the building reports any factors shown to affect student performance that the Board considers relevant to assess a school's efforts to improve student performance. Local school administrative units shall produce and make public their school building improvement reports by March 15, 1997, for the 1995-96 school year, by October 15, 1997, for the 1996-97 school year, and annually thereafter. Each report shall be based on building-level data for the prior school year.

c4. To develop guidelines, procedures, and rules to establish, implement, and enforce the School-Based Management and Accountability Program under Article 8B of this Chapter in order to improve student performance, increase local flexibility and control, and promote economy and efficiency.

d. To formulate rules and regulations for the enforcement of the compulsory attendance law.

e. (Repealed effective July 1, 2020) To manage and operate a system of insurance for public school property, as provided in Article 38 of this Chapter.

In making substantial policy changes in administration, curriculum, or programs the Board should conduct hearings throughout the regions of the State, whenever feasible, in order that the public may be heard regarding these matters.

(9a), (9b) Repealed by Session Laws 2005-458, s. 1, effective October 2, 2005.

(9c) Power to Develop Content Standards. -

- a. The Board shall develop a comprehensive plan to revise content standards and the standard course of study in the core academic areas of reading, writing, mathematics, science, history, geography, and civics. The Board shall involve and survey a representative sample of parents, teachers, and the public to help determine academic content standard priorities and usefulness of the content standards. A full review of available and relevant academic content standards that are rigorous, specific, sequenced, clear, focused, and measurable, whenever possible, shall be a part of the process of the development of content standards. The revised content standards developed in the core academic areas shall (i) reflect high expectations for students and an in-depth mastery of the content; (ii) be clearly grounded in the content of each academic area; (iii) be defined grade-by-grade and course-by-course; (iv) be understandable to parents and teachers; (v) be developed in full recognition of the time available to teach the core academic areas at each grade level; and (vi) be measurable, whenever possible, in a reliable, valid, and efficient manner for accountability purposes.
- b. High school course content standards shall include the knowledge and skills necessary to pursue further postsecondary education or to attain employment in the 21st century economy. The high school course content standards also shall be aligned with the minimum undergraduate course requirements for admission to the constituent institutions of The University of North Carolina.
- c. The Board also shall develop and implement an ongoing process to align State programs and support materials with the revised academic content standards for each core academic area on a regular basis. Alignment shall include revising textbook criteria, support materials, State tests, teacher and school administrator preparation, and ongoing professional development programs to be compatible with content standards. The Board shall develop and make available to teachers and parents support materials, including teacher and parent guides, for academic content standards. The State Board of Education shall work in collaboration with the Board of Governors of The University of North Carolina to ensure that teacher and school administrator degree programs, ongoing professional development, and other university activity in the State's public schools align with the State Board's priorities.

(9d) Power to Develop Exit Standards and Graduation Requirements. -

- a. The Board may develop exit standards that shall be required for high school graduation. The Board shall require the following for high school graduation:
 - 1. Successful completion of instruction in cardiopulmonary resuscitation as provided in G.S. 115C-81.25(c)(10).
 - 2. A passing grade in the semester course on the Founding Principles of the United States of America and the State of North Carolina described in G.S. 115C-81.45(d)(1).
- b. The following restrictions apply to the Board regarding Algebra I and high school graduation projects:
 - 1. The Board shall not adopt or enforce any rule that requires Algebra I as a graduation standard or as a requirement for a high school diploma for any student whose individualized

education program (i) identifies the student as learning disabled in the area of mathematics and (ii) states that this learning disability will prevent the student from mastering Algebra I.

2. The Board shall not require any student to prepare a high school graduation project as a condition of graduation from high school; local boards of education may, however, require their students to complete a high school graduation as provided in G.S. 115C-47(54a).

(10) Power to Provide for Programs or Projects in the Cultural and Fine Arts Areas. - The Board is authorized and empowered, in its discretion, to make provisions for special programs or projects of a cultural and fine arts nature for the enrichment and strengthening of educational opportunities for the children of the State.

For this purpose, the Board may use funds received from gifts or grants and, with the approval of the Director of the Budget, may use State funds which the Board may find available in any budget administered by the Board.

(11) Power to Conduct Education Research. - The Board is authorized to sponsor or conduct education research and special school projects considered important by the Board for improving the public schools of the State. Such research or projects may be conducted during the summer months and involve one or more local school units as the Board may determine. The Board may use any available funds for such purposes.

(12) Duty to Provide for Sports Medicine and Emergency Paramedical Program. - The State Board of Education is authorized and directed to develop a comprehensive plan to train and make available to the public schools personnel who shall have major responsibility for exercising preventive measures against sports related deaths and injuries and for providing sports medicine and emergency paramedical services for injuries that occur in school related activities. The plan shall include, but is not limited to, the training, assignment of responsibilities, and appropriate additional reimbursement for individuals participating in the program.

The State Board of Education is authorized and directed to develop an implementation schedule and a program funding formula that will enable each high school to have a qualified sports medicine and emergency paramedical program by July 1, 1984.

The State Board of Education is authorized and directed to establish minimum educational standards necessary to enable individuals serving as sports medicine and emergency paramedical staff to provide such services, including first aid and emergency life saving skills, to students participating in school activities.

(13) Power to Purchase Liability Insurance. - The Board is authorized to purchase insurance to protect board members from liability incurred in the exercise of their duty as members of the Board.

(14) Duty to Provide Personnel Information to Local Boards. - Upon request, the State Board of Education and the Department of Public Instruction shall furnish to any county or city board of education any and all available personnel information relating to certification, evaluation and qualification including, but not limited to, semester hours or quarterly hours completed, graduate work, grades, scores, etc., that are on that date in the files of the State Board of Education or Department of Public Instruction.

(15) Duty to Develop Noncertified Personnel Position Evaluation Descriptions. - The Board is authorized and directed to develop position evaluation descriptions covering those positions in local school administrative units for which certification by the State Board of Education is not normally a prerequisite. The position evaluation descriptions required in this subdivision are to be used by local boards of education as the basis for assignment of noncertified employees to an appropriate pay grade in accordance with salary grades and ranges adopted by the State Board of Education. No appropriations are required by this subdivision.

(16) Power with Regard to Salary Schedules. - The Board shall provide for sick leave with pay for all public school employees in accordance with the provisions of this Chapter and shall promulgate rules and regulations providing for necessary substitutes on account of sick leave and other teacher absences.

a. Support personnel refers to all public school employees who are not required by statute or regulation to be certified in order to be employed. The State Board of Education is authorized and empowered to adopt all necessary rules for full implementation of all schedules to the extent that State funds are made available for support personnel.

b. Salary schedules for the following public school support personnel shall be adopted by the State Board of Education: school finance officer, office support personnel, teacher assistants, maintenance supervisors, custodial personnel, and transportation personnel. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Human Resources Commission.

By the end of the third payroll period of the 1995-96 fiscal year, local boards of education shall place State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board of Education so that the average salary paid is the State-allotted amount for the category. In placing employees on the salary schedule, the local board shall consider the education, training, and experience of each employee, including experience in other local school administrative units. It is the intent of the General Assembly that a local school administrative unit not fail to employ an employee who was employed for the prior school year in order to implement the provisions of this sub-subdivision. A local board of education is in compliance with this sub-subdivision if the average salary paid is at least ninety-five percent (95%) of the State-allotted amount for the category at the end of the third payroll period of the 1995-96 fiscal year, and at least ninety-eight percent (98%) of the State-allotted amount for the category at the end of the third payroll period of each subsequent fiscal year. The Department of Public Instruction shall provide technical assistance to local school administrative units regarding the implementation of this sub-subdivision.

c. Salary schedules for other support personnel, including but not limited to maintenance and school food service personnel, shall be adopted by the State Board of Education. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Human Resources Commission. These schedules shall apply if the local board of education does not adopt a salary schedule of its own for personnel paid from other than State appropriations.

(17) Power to Provide for School Transportation Programs. - The State Board of Education is authorized and empowered to promulgate such policies, rules, and regulations as it may deem

necessary and desirable for the operation of a public school transportation system by each local administrative unit in the State. Such policies, rules, and regulations shall include, but are not limited to, fund allocations and fiscal support to assure the effective and efficient use of funds appropriated by the General Assembly in support of the school transportation system. Nothing herein shall be construed to affect in any way or to lessen in any way the full and complete authority of local boards of education to assign pupils to schools in accordance with G.S. 115C-366.

(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.

(19) Duty to Identify Required Reports and to Eliminate Unnecessary Reports and Paperwork. - Prior to the beginning of each school year, the State Board of Education shall identify all reports that are required at the State level for the school year.

The State Board of Education shall adopt policies to ensure that local school administrative units are not required by the State Board of Education, the State Superintendent, or the Department of Public Instruction staff to (i) provide information that is already available on the student information management system or housed within the Department of Public Instruction; (ii) provide the same written information more than once during a school year unless the information has changed during the ensuing period; (iii) complete forms, for children with disabilities, that are not necessary to ensure compliance with the federal Individuals with Disabilities Education Act (IDEA); or (iv) provide information that is unnecessary to comply with State or federal law and not relevant to student outcomes and the efficient operation of the public schools. Notwithstanding the foregoing, the State Board may require information available on its student information management system or require the same information twice if the State Board can demonstrate a compelling need and can demonstrate there is not a more expeditious manner of getting the information.

The State Board shall permit schools and local school administrative units to submit all reports to the Department of Public Instruction electronically.

The State Board of Education, in collaboration with the education roundtables within the Department of Public Instruction, shall consolidate all plans that affect the school community, including school improvement plans. The consolidated plan shall be posted on each school's Web site for easy access by the public and by school personnel.

(20) Duty to Report Appointment of Caretaker Administrators and Boards. - Pursuant to G.S. 120-30.9G the State Board of Education shall submit to the Attorney General of the United States within 30 days any rules, policies, procedures, or actions taken pursuant to G.S. 115C-64.4 which could result in the appointment of a caretaker administrator or board to perform any of the powers and duties of a local board of education where that school administrative unit is covered by the Voting Rights Act of 1965.

(21) Duty to Monitor Acts of School Violence. - The State Board of Education shall monitor and compile an annual report on acts of violence in the public schools. The State Board shall adopt standard definitions for acts of school violence and shall require local boards of education to report them to the State Board in a standard format adopted by the State Board. The State Board shall submit its report on acts of violence in the public schools to the Joint Legislative Education Oversight Committee by March 15 of each year.

(22) Duty to Monitor the State of the Teaching Profession in North Carolina. - The State Board of Education shall monitor and compile an annual report on the state of the teaching profession in North Carolina that includes data on the decisions of teachers to leave the teaching

profession and data on teaching positions that local boards of education are unable to fill, as provided in G.S. 115C-299.5.

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

a. All coaches, school nurses, athletic directors, first responders, volunteers, students who participate in interscholastic athletic activities, and the parents of those students shall receive, on an annual basis, a concussion and head injury information sheet. School employees, first responders, volunteers, and students must sign the sheet and return it to the coach before they can participate in interscholastic athletic activities, including tryouts, practices, or competition. Parents must sign the sheet and return it to the coach before their children can participate in any such interscholastic athletic activities. The signed sheets shall be maintained in accordance with sub-subdivision d. of this subdivision.

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

b. If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with concussion, the student shall be removed from the activity at that time and shall not be allowed to return to play or practice that day. The student shall not return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such participation from (i) a physician licensed under Article 1 of Chapter 90 of the General Statutes with training in concussion management, (ii) a neuropsychologist licensed under Article 18A of Chapter 90 of the General Statutes with training in concussion management and working in consultation with a physician licensed under Article 1 of Chapter 90 of the General Statutes, (iii) an athletic trainer licensed under Article 34 of Chapter 90 of the General Statutes, (iv) a physician assistant, consistent with the limitations of G.S. 90-18.1, or (v) a nurse practitioner, consistent with the limitations of G.S. 90-18.2.

c. Each school shall develop a venue specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan shall include a delineation of roles, methods of communication, available emergency equipment, and access to and plan for emergency transport. This plan must be (i) in writing, (ii) reviewed by an athletic trainer licensed in North Carolina, (iii) approved by the principal of the school, (iv) distributed to all appropriate personnel, (v) posted conspicuously at all venues, and (vi) reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses, athletic directors, and volunteers for interscholastic athletic activities.

d. Each school shall maintain complete and accurate records of its compliance with the requirements of this subdivision pertaining to head injuries.

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

(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 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.

(25) Duty to Report to Joint Legislative Education Oversight Committee. - Upon the request of the Joint Legislative Education Oversight Committee, the State Board shall examine and evaluate issues, programs, policies, and fiscal information, and shall make reports to that Committee. Furthermore, by November 15 of each year, the State Board shall submit reports to that Committee regarding schools identified as low-performing, school improvement plans found to significantly improve student performance, personnel actions taken in low-performing schools, and recommendations for additional legislation to improve student performance and increase local flexibility.

(25a) [Development of Goals and Annual Report on Improvement in Graduation Rate.] Prior to the 2010-2011 school year, the State Board of Education shall:

a. Develop a growth model establishing annual goals for continuous and substantial improvement in the four-year cohort graduation rate by local school administrative units.

- b. Establish as a short-term goal that local school administrative units meet the annual growth model goals for improvement in the four-year cohort graduation rate beginning with the graduating class of 2011 and continuing annually thereafter.
- c. Establish as long-term minimum goals statewide four-year cohort graduation rates of seventy-four percent (74%) by 2014; eighty percent (80%) by 2016; and ninety percent (90%) by 2018.
- d. Establish as a long-term goal with benchmarks and recommendations to reach a statewide four-year cohort graduation rate of one hundred percent (100%).

The State Board of Education shall report to the Joint Legislative Education Oversight Committee by November 15, 2010, and annually thereafter on the goals, benchmarks, and recommendations described in this section. Such goals, benchmarks, and recommendations shall appropriately differentiate for students with disabilities and other specially identified subcategories within each four-year cohort. The report shall include goals and benchmarks by local school administrative unit, the strategies and recommendations for achieving the goals and benchmarks, any evidence or data supporting the strategies and recommendations, and the identity of the persons employed by the State Board of Education who are responsible for oversight of local school administrative units in achieving the goals and benchmarks.

(25b) Repealed by Session Laws 2012-142, s. 7.13(d), effective July 1, 2012.

(26) Repealed by Session Laws 2012-142, s. 7.13(f), effective July 1, 2012.

(27) Reporting Dropout Rates, Corporal Punishment, Suspensions, Expulsions, and Alternative Placements. - The State Board shall report by March 15 of each year to the Joint Legislative Education Oversight Committee on the numbers of students who have dropped out of school, been subjected to corporal punishment, been suspended, been expelled, been reassigned for disciplinary purposes, or been provided alternative education services. The data shall be reported in a disaggregated manner, reflecting the local school administrative unit, race, gender, grade level, ethnicity, and disability status of each affected student. Such data shall be readily available to the public. The State Board shall not include students that have been expelled from school when calculating the dropout rate. The Board shall maintain a separate record of the number of students who are expelled from school and the reasons for the expulsion.

(27a) Reducing School Dropout Rates. - The State Board of Education shall develop a statewide plan to improve the State's tracking of dropout data so that accurate and useful comparisons can be made over time. The plan shall include, at a minimum, how dropouts are counted and the methodology for calculating the dropout rate, the ability to track students movements among schools and districts, and the ability to provide information on who drops out and why.

(28) Duty to Develop Rules for Issuance of Driving Eligibility Certificates. - The State Board of Education shall adopt the following rules to assist schools in their administration of procedures necessary to implement G.S. 20-11 and G.S. 20-13.2:

- a. To define what is equivalent to a high school diploma for the purposes of G.S. 20-11 and G.S. 20-13.2. These rules shall apply to all educational programs offered in the State by public schools, charter schools, nonpublic schools, or community colleges.
- b. To establish the procedures a person who is or was enrolled in a public school or in a charter school must follow and the requirements that person shall meet to obtain a driving eligibility certificate.
- c. To require the person who is required under G.S. 20-11(n) to sign the driving eligibility certificate to provide the certificate if he or she determines that one of the following requirements is met:
 - 1. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and is not subject to G.S. 20-11(n1).
 - 2. The person seeking the certificate is eligible for the certificate under G.S. 20-11(n)(1) and G.S. 20-11(n1).

These rules shall apply to public schools and charter schools.

- d. To provide for an appeal to an appropriate education authority by a person who is denied a driving eligibility certificate. These rules shall apply to public schools and charter schools.
- e. To define exemplary student behavior and to define what constitutes the successful completion of a drug or alcohol treatment counseling program. These rules shall apply to public schools and charter schools.

The State Board also shall develop policies as to when it is appropriate to notify the Division of Motor Vehicles that a person who is or was enrolled in a public school or in a charter school no longer meets the requirements for a driving eligibility certificate.

The State Board shall develop a form for parents, guardians, or emancipated juveniles, as appropriate, to provide their written, irrevocable consent for a school to disclose to the Division of Motor Vehicles that the student no longer meets the conditions for a driving eligibility certificate under G.S. 20-11(n)(1) or G.S. 20-11(n1), if applicable, in the event that this disclosure is necessary to comply with G.S. 20-11 or G.S. 20-13.2. Other than identifying under which statutory subsection the student is no longer eligible, no other details or information concerning the student's school record shall be released pursuant to this consent. This form shall be used for students enrolled in public schools or charter schools.

The State Board of Education may use funds appropriated for drivers education to cover the costs of driving eligibility certificates.

(29) To Issue Special High School Diplomas to Veterans of World War II, Korea, and Vietnam. - The State Board of Education shall issue special high school diplomas to all honorably discharged veterans of World War II, the Korean Conflict, and the Vietnam era who request special diplomas and have not previously received high school diplomas.

(30) Duty to Adopt Model Guidelines and Policies for the Establishment of Local Task Forces on Closing the Academic Achievement Gap. - The State Board shall adopt a Model for

local school administrative units to use as a guideline to establish local task forces on closing the academic achievement gap at the discretion of the local board. The purpose of each task force is to advise and work with its local board of education and administration on closing the gap in academic achievement and on developing a collaborative plan for achieving that goal. The State Board shall consider the recommendations of the Commission on Improving the Academic Achievement of Minority and At-Risk Students to the 2001 Session of the General Assembly in establishing its guidelines.

(30a) Duty to Assist Schools in Meeting Adequate Yearly Progress. - The State Board of Education shall:

- a. Identify which schools are meeting adequate yearly progress with subgroups as specified in the No Child Left Behind Act of 2001;
- b. Study the instructional, administrative, and fiscal practices and policies employed by the schools selected by the State Board of Education that are meeting adequate yearly progress specified in the No Child Left Behind Act of 2001;
- c. Create assistance models for each subgroup based on the practices and policies used in schools that are meeting adequate yearly progress. The schools of education at the constituent institutions of The University of North Carolina, in collaboration with the University of North Carolina Center for School Leadership Development, shall assist the State Board of Education in developing these models; and
- d. Offer technical assistance based on these assistance models to local school administrative units not meeting adequate yearly progress, giving priority to those local school administrative units with high concentrations of schools that are not meeting adequate yearly progress. The State Board of Education shall determine the number of local school administrative units that can be served effectively in the first two years. This technical assistance shall include peer assistance and professional development by teachers, support personnel, and administrators in schools with subgroups that are meeting adequate yearly progress.

(31) To Adopt Guidelines for Individual Diabetes Care Plans. - The State Board shall adopt guidelines for the development and implementation of individual diabetes care plans. The State Board shall consult with the North Carolina Diabetes Advisory Council established by the Department of Health and Human Services in the development of these guidelines. The State Board also shall consult with local school administrative unit employees who have been designated as responsible for coordinating their individual unit's efforts to comply with federal regulations adopted under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794. In its development of these guidelines, the State Board shall refer to the guidelines recommended by the American Diabetes Association for the management of children with diabetes in the school and day care setting and shall consider recent resolutions by the United States Department of Education's Office of Civil Rights of investigations into complaints alleging discrimination against students with diabetes.

The guidelines adopted by the State Board shall include:

- a. Procedures for the development of an individual diabetes care plan at the written request of the student's parent or guardian, and involving the parent or guardian, the student's health care

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provider, the student's classroom teacher, the student if appropriate, the school nurse if available, and other appropriate school personnel.

- b. Procedures for regular review of an individual care plan.
- c. Information to be included in a diabetes care plan, including the responsibilities and appropriate staff development for teachers and other school personnel, an emergency care plan, the identification of allowable actions to be taken, the extent to which the student is able to participate in the student's diabetes care and management, and other information necessary for teachers and other school personnel in order to offer appropriate assistance and support to the student. The State Board shall ensure that the information and allowable actions included in a diabetes care plan as required in this subdivision meet or exceed the American Diabetes Association's recommendations for the management of children with diabetes in the school and day care setting.
- d. Information and staff development to be made available to teachers and other school personnel in order to appropriately support and assist students with diabetes.

The State Board shall ensure that these guidelines are updated as necessary and shall ensure that the guidelines and any subsequent changes are published and disseminated to local school administrative units.

(32) Duty to Encourage Early Entry of Motivated Students into Four-Year College Programs. - The State Board of Education, in cooperation with the Education Cabinet, shall work with local school administrative units, the constituent institutions of The University of North Carolina, local community colleges, and private colleges and universities to (i) encourage early entry of motivated students into four-year college programs and to (ii) ensure that there are opportunities at four-year institutions for academically talented high school students to get an early start on college coursework, either at nearby institutions or through distance learning.

The State Board of Education shall also adopt policies directing school guidance counselors to make ninth grade students aware of the potential to complete the high school courses required for college entry in a three-year period.

(33) Duty to Develop Recommended Programs for Use in Schools on Memorial Day. - The State Board of Education shall develop recommended instructional programs that enable students to gain a better understanding of the meaning and importance of Memorial Day. All schools, especially schools that hold school on Memorial Day, shall instruct students on the significance of Memorial Day.

(33a) Duty to Develop Recommended Programs for Use in Schools During Veterans' History Awareness Month. - The State Board of Education shall develop recommended programs in collaboration with active military installations, veterans, and veterans service organizations that enable students to gain a better understanding of the meaning and importance of the contributions of American veterans and, in particular, veterans from North Carolina. Recommended programs may be integrated into lesson plans and may include veteran participation and veteran sponsorship in the form of an Adopt-A-Veteran program. All schools are encouraged to collaborate with veterans and veteran service organizations during Veterans' History Awareness Month to designate time for appropriate commemorative activities.

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(34) Duty to Protect the Health of School-Age Children From Toxicants at School. - The State Board shall address public health and environmental issues in the classroom and on school grounds by doing all of the following:

- a. Develop guidelines for sealing existing arsenic-treated wood in playground equipment or establish a time line for removing existing arsenic-treated wood on playgrounds and testing the soil on school grounds for contamination caused by the leaching of arsenic-treated wood in other areas where children may be at particularly high risk of exposure.
- b. Establish guidelines to reduce students' exposure to diesel emissions that can occur as a result of unnecessary school bus idling, nose-to-tail parking, and inefficient route assignments.
- c. Study methods for mold and mildew prevention and mitigation and incorporate recommendations into the public school facilities guidelines as needed.
- d. Establish guidelines for Integrated Pest Management consistent with the policy of The North Carolina School Boards Association, Inc., as published in 2004. These guidelines may be updated as needed to reflect changes in technology.
- e. Establish guidelines for notification of students' parents, guardians, or custodians as well as school staff of pesticide use on school grounds.

(35) To Encourage Local Boards of Education to Enter into Agreements Regarding the Joint Use of Facilities for Physical Activity. - The State Board of Education shall encourage local boards of education to enter into agreements with local governments and other entities regarding the joint use of their facilities for physical activity. The agreements should delineate opportunities, guidelines, and the roles and responsibilities of the parties, including responsibilities for maintenance and liability.

(36) Duty to Charge Tuition for the Governor's School of North Carolina. - The State Board of Education may implement a tuition charge for students attending the Governor's School of North Carolina to cover the costs of the School.

(37) To Adopt Guidelines for Fitness Testing. - The State Board of Education shall adopt guidelines for the development and implementation of evidence-based fitness testing for students statewide in grades kindergarten through eight.

(38) Repealed by Session Laws 2012-194, s. 55(a), effective July 17, 2012.

(39) Power to Accredite Schools. - Upon the request of a local board of education, the State Board of Education shall evaluate schools in local school administrative units to determine whether the education provided by those schools meets acceptable levels of quality. The State Board shall adopt rigorous and appropriate academic standards for accreditation after consideration of (i) the standards of regional and national accrediting agencies, (ii) the academic standards adopted in accordance with subdivision (9c) of this section, and (iii) other information it deems appropriate.

The local school administrative unit shall compensate the State Board for the actual costs of the accreditation process.

(40) **(For applicability, see Editor's note)** To Establish High School Diploma Endorsements.

- The State Board of Education shall establish, implement, and determine the impact of adding (i) college, (ii) career, and (iii) college and career endorsements to high school diplomas to encourage students to obtain requisite job skills necessary for students to be successful in a wide range of high-quality careers and to reduce the need for remedial education in institutions of higher education. These endorsements shall reflect courses completed, overall grade point average, reading achievement, and other criteria as developed by the State Board of Education. A student shall only receive a high school diploma endorsement if that student receives on a nationally norm-referenced college admissions test for reading, either administered under G.S. 115C-174.11(c)(4) or as an alternative nationally norm-referenced college admissions test approved by the State Board, at least the benchmark score established by the testing organization that represents the level of achievement required for students to have approximately a fifty percent (50%) chance of obtaining a grade B or higher or a seventy-five percent (75%) chance of obtaining a grade C or higher in a corresponding credit-bearing, first-year college course. A student may retake a nationally norm-referenced test as many times as necessary to achieve the required benchmark score for reading in order to receive a high school diploma endorsement prior to the student's graduation. The State Board of Education shall report annually to the Joint Legislative Education Oversight Committee on high school diploma endorsements in accordance with G.S. 115C-156.2.

(41) To Establish Career and Technical Education Incentives. - The State Board of Education shall establish, implement, and determine the impact of a career and technical education incentive program as provided under G.S. 115C-156.2.

(42) To notify the General Assembly of federal grant applications. - The State Board of Education shall provide written notification to the General Assembly in accordance with G.S. 120-29.5 and to the Fiscal Research Division of its intent to apply for any federal grant prior to submitting the grant application. The notice shall include details about the grant and a brief summary of any anticipated policy implications of accepting the grant.

(43) To Ensure that Local Boards of Education Implement Injury Prevention and Return-to-Work Programs. - The State Board of Education shall develop policies and procedures to ensure that local boards of education implement and comply with loss prevention and return-to-work programs based on models adopted by the State Board. These models shall be designed to reduce the number of injuries resulting in workers' compensation claims and ensure injured employees with workers' compensation claims return to work in accordance with current State Board of Education policy.

(44) Duty to Ensure Educational Services in Private Psychiatric Residential Treatment Facilities (PRTFs). - The Board, in collaboration with the Department of Health and Human Services, shall ensure that educational services are provided to all students in PRTFs as required under Part 4 of Article 6 of Chapter 122C of the General Statutes. The Board shall ensure that a child with a disability as defined under G.S. 115C-106.3(1) in a PRTF receives educational services and procedural safeguards as provided in Article 9 of this Chapter.

(45) To provide notification of student and parent surveys. - The State Board of Education shall provide written notification to the General Assembly in accordance with G.S. 120-29.5 of its intent to conduct any mandatory student or parent surveys in individual local school

administrative units or on a statewide basis, including a copy of the proposed survey. The Department of Public Instruction shall also notify a superintendent of any plan to conduct a student or parent survey in the local school administrative unit. The superintendent shall be given a reasonable amount of time following notification to contact the Department with feedback on the survey prior to the survey being conducted in the local school administrative unit.

(46) Duty Regarding Anonymous Safety Tip Line Application. - The State Board of Education shall use the anonymous safety tip line application developed pursuant to G.S. 115C-105.51(b) for all public secondary schools serving students in grades six or higher operated under the control of the State Board of Education. (1955, c. 1372, art. 2, s. 2; art. 17, s. 6; art. 18, s. 2; 1957, c. 541, s. 11; 1959, c. 1294; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 584, s. 20.1; c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 236; c. 476, s. 138; c. 675; 1975, c. 686, s. 1; c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; c. 986; 1981, c. 423, s. 1; 1983, c. 630, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 16; 1985, c. 479, s. 55(c)(3); c. 757, s. 145(a); 1985 (Reg. Sess., 1986), c. 975, s. 24; 1987, c. 414, s. 1; 1987 (Reg. Sess., 1988), c. 1025, ss. 1, 3; 1989, c. 585, s. 1; c. 752, s. 65(c); c. 778, s. 6; 1991, c. 529, s. 3; c. 689, s. 196(b); 1991 (Reg. Sess., 1992), c. 880, s. 3; c. 900, s. 75.1(e); 1993, c. 321, ss. 125, 133(a), 139(b); 1993 (Reg. Sess., 1994), c. 769, ss. 19(a), 19.9; 1995, c. 60, s. 1; c. 324, s. 17.15(a); c. 450, s. 4; c. 509, s. 59; 1995 (Reg. Sess., 1996), c. 716, s. 1; 1996, 2nd Ex. Sess., c. 18, ss. 18.4, 18.28(a); 1997-18, s. 15(a), (c)-(e); 1997-221, s. 12(a); 1997-239, s. 1; 1997-443, s. 8.27(a), (e); 1997-443, s. 8.29(o), (u); 1997-507, s. 3; 1998-153, s. 16(b); 1998-212, ss. 9.16(a), 9.23; 1999-237, s. 8.25(d); 1999-243, s. 5; 1999-397, s. 3; 2001-86, s. 1; 2001-151, s. 1; 2001-424, ss. 28.30(e), (f), 31.4(a); 2002-103, s. 1; 2002-126, s. 7.15; 2002-159, s. 63; 2002-178, s. 1(a); 2003-251, s. 1; 2003-419, s. 1; 2005-155, s. 1; 2005-276, ss. 7.18, 9.34(a); 2005-446, s. 1; 2005-458, ss. 1, 2; 2006-75, s. 1; 2006-143, s. 1; 2006-203, s. 30; 2006-260, s. 1; 2009-305, s. 4; 2009-334, s. 1; 2009-451, s. 7.39(a); 2010-31, s. 7.5(c), (g); 2010-111, s. 1; 2010-112, s. 4(a); 2010-161, s. 1; 2011-145, ss. 7.9, 7.13(a); 2011-147, s. 3; 2011-185, s. 9(b); 2011-282, s. 4; 2011-306, s. 3; 2011-379, ss. 2(a), (b), 6(a); 2011-391, s. 14(b); 2012-142, ss. 7.13(d), (f), 7A.3(a); 2012-194, s. 55(a); 2013-1, s. 1(a); 2013-226, s. 9(e), (f); 2013-360, ss. 8.27(a), 8.28(a), 9.4(c), (d); 2013-382, s. 9.1(c); 2014-15, s. 1; 2014-78, s. 4; 2014-100, ss. 8.9, 8.26, 8.39(b); 2015-126, s. 1; 2015-241, ss. 8.25(a), (b); 2015-264, s. 82; 2016-94, s. 8.32(a); 2016-126, 4th Ex. Sess., s. 2; 2017-57, ss. 7.26(a), 7.26B(a); 2017-65, s. 2; 2017-102, s. 48(a); 2017-126, ss. 9-11; 2017-189, s. 5(a); 2017-197, s. 2.18(a); 2018-5, s. 7.26(b); 2019-142, s. 3; 2019-165, s. 3.2(c); 2019-176, s. 3(d); 2019-212, s. 4(

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

16 NCAC 06H .0113 NUTRITION STANDARDS FOR ELEMENTARY SCHOOLS

(a) Minimum Standards for school meals are as follows:

(1) Meals served shall be consistent with the current edition of the Dietary Guidelines for Americans, Federal Regulations as approved for North Carolina and State Board of Education Policy on Nutrition Standards for School Meals.

(2) When averaged over the week, reimbursable meals shall contain twenty to thirty-five percent (20-35%) of calories from fat, and less than ten percent (10%) total calories from saturated fat. Trans fat and sodium levels shall be monitored regularly and kept as low as possible.

(A) In addition to the above, the following standards shall apply:

(i) Reimbursable meals shall contain no more than 200 mg cholesterol when averaged over breakfasts and lunches for the week.

(ii) Food preparation methods for all foods shall be limited to baking, roasting, broiling, boiling, and steaming.

(iii) A minimum of one daily serving of whole grain products shall be offered; whole grain foods will be increased gradually to a minimum of eight servings per week as market availability of whole grain products increases to supply menu needs. Efforts to meet the daily target of whole grain foods shall be contingent upon market availability.

(iv) Four fruits and/or vegetables shall be offered daily. Fruits and vegetables may be canned, frozen, fresh, or dried with preparation methods limited to baking, roasting, broiling, boiling, and steaming. Dark green, deep yellow or orange fruits or vegetables shall be offered three or more times per week. Fresh fruits or vegetables shall be offered at least four times weekly at breakfast and/or lunch.

(v) Legumes shall be offered at least one time per week.

(vi) All milk choices shall be one percent (1%) or less milk fat.

(b) Minimum Nutrition Standards for A la Carte Foods and Beverages. If local policy allows A la Carte food and beverage choices, the following options may be offered:

(2) In addition to items offered as a part of the reimbursable meal, A la Carte items shall contain less than thirty-five percent (35%) total calories from fat, excluding seeds and nuts, less than ten percent (10%) total calories from saturated fat, less than one percent (1%) total calories from trans-fat, and less than thirty-five percent (35%) added sugar by weight

(3) Any item in the same serving size as offered that day as part of the reimbursable meal, with a limit of one additional entrée portion

(4) Single serving dairy products containing less than 200 calories, less than thirty-five percent (35%) total calories from fat, less than ten percent (10%) total calories from saturated fat, less than one

percent (1%) total calories from trans-fat, and less than thirty-five percent (35%) added sugar by weight

(5) Nuts and seeds (less than 1 oz portion)

(6) Single serving yogurt or frozen yogurt

(7) Canned, frozen, fresh, or dried fruits and vegetables found in the Food Buying Guide for Child Nutrition Programs with preparation methods limited to baking, roasting, broiling, boiling, and steaming water

(8) Milk containing one percent (1%) or less milk fat

(9) Fruit juice containing fifty percent (50%) or more fruit juice with no added sweeteners (less than 8 oz portion)

(10) Frozen fruit products containing 100% fruit with no added sweeteners (less than 8 oz portion)

(c) Minimum Standards for After School Snack Programs

(1) All After School Snack Programs (ASSP) administered by NC DPI shall meet the meal pattern requirements specified by the US Department of Agriculture.

(2) All foods and beverages available to students enrolled in the ASSP shall meet the same criteria required for A la Carte foods and beverages.

(d) Local Child Nutrition Programs shall implement these nutrition standards in all elementary schools no later than the first day of the 2008 school year.

(e) The Child Nutrition Services Section of the Department of Public Instruction shall review the nutrition standards for elementary schools annually and shall modify the standards as needed based on several criteria, including, but not limited to, current science, best practices in the food and beverage industry, and the availability and affordability of new foods and beverages.

(f) The Child Nutrition Services Section of the Department of Public Instruction shall monitor the progress of each local school administrative unit toward achieving the nutrition standards and shall provide technical assistance and training as needed to assist local school administrative units in implementing the nutrition standards. Each local Child Nutrition Program shall submit nutrient analyses of menus planned for the months of October and March annually which shall be used to assess progress towards achieving the standards.

(g) The Child Nutrition Services Section shall report annually on the progress of each local school administrative unit to the State Board of Education, and to the Joint Legislative Education Oversight Committee.

(h) Students who have special nutritional needs that are in conflict with the nutrition standards shall be exempt from the standards. Each student's special needs shall be addressed through a medically-recognized document provided by a health care professional. When the child's documented nutritional need differs from the nutrition standards, the Child Nutrition Program shall comply with a documented plan or other specific instructions.

History Note: Authority G.S. 115C-12; 115C-264.3;

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 06H .0114 - .0116

DEADLINE FOR RECEIPT: Friday, July 10, 2020

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:

G.S. 115C-366(a2) states:

§ 115C-366. Assignment of student to a particular school.

(a2) It is the policy of the State that every child of a homeless individual and every homeless child and youth has access to a free, appropriate public education. The State Board of Education and every local board of education shall ensure compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001. A local board of education shall not charge a homeless child or youth tuition for enrollment. An unaccompanied youth or a homeless child's or youth's parent, guardian, or legal custodian may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the homeless child or youth, and this determination shall be binding on the local board of education, subject to judicial review.

Is this the law you are relying upon to establish these Rules? If so, why isn't this cited to in the History Note? And what part of G.S. 115C-12 are you relying upon?

It appears that the McKinney-Vento Homeless Education Assistance Improvements Act of 2001 was reauthorized in December 2015, and the law that was formerly found in 29 USC was moved to 42 USC 11431, et. seq. Is that your understanding as well?

If so, Also, I note that G.S. 115C-366(a2) does not require you to follow the updated McKinney-Vento Act. What authority are you relying upon to do so?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 1, 2020

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06H .0115

DEADLINE FOR RECEIPT: Friday, July 10, 2020

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:

In (a), line 4, is this "process" the "LEA dispute resolution process" as defined in Rule .0114(4)? If so, why isn't this the same term here?

On lines 6, 7, and elsewhere the phrase is used, please change "in which" with "where" in "at the school in which enrollment is sought"

On line 6, you refer to "policy" but on line 4, it is a process. Please be consistent with the terms.

On line 9, define "fully"

On line 9, define "define and describe" What are you saying here? How are they defining the process?

On line 10, what is this "official policy manual"? How is it made available? By the LEA?

In (a)(3), line 15, delete "expeditiously" It is unnecessary, given that you have set the timeframe here.

On lines 15 and 16, please use figures for 15 and 30. [See Rule 26 NCAC 02C .0108(9)(c)]

In (a)(4), line 17, replace 'are' with "shall be"

In (a)(5), line 18, define "immediately"

In (a)(6), line 21, delete "the" after "all"

On line 22, define or delete "fully"

In (a)(7), line 23, who determines when this is practicable? To whom?

On line 25, define "understandable and uniform format"

On line 26, who determines "to the extent practicable"?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: July 1, 2020

On line 26, who determines what can be understood? Will there be different standards for adults and youths?

In (a)(7)(A), line 29, define “brief”

In (a)(7)(B), line 32, insert a comma after “guardian”

On line 34, end the sentence after “policy.” Then state “This process must...”

On line 35, should this state “This process must allow for requests for appeals...”? Otherwise, will the appeal hearings not be in-person?

In (a)(7)(C), Page 2, line 1, define “simple”

On lines 2-3, I am confused – how many appeal levels must the LEA provide? Is it one and they can add on more?

In (a)(7)(D), line 5, insert a comma after “decision”

On lines 5-7, are you saying that if the appeal is not filed within three school business days then the individual can request an extension from the State Coordinator? If so, this language can be simplified. And do not retain “(though extensions are not guaranteed)”

On lines 6-7, will this “step-by-step” description come from the State, given that this appeal is not governed by the LEA? Will the description be of the process set forth in Rule .0116?

In (a)(7)(E), line 8, define “immediately” But aren’t they already enrolled under (a)(5)?

On line 9, who is this transportation provided by?

In (a)(7)(F), line 12, what is “immediate” and “fully”?

Please end (a)(7)(G), line 13, with an “and” assuming you meant for all of these to be provided.

In (b)(1), line 16, and elsewhere in this Paragraph, you replaced “guardians” in the phrase used in Paragraph (a), “parents, guardians, or unaccompanied youth” with “students” Was this change intentional?

In (b)(1), line 18, replace “listed above” with “required by Paragraph (a) of this Rule;” or whatever portions of Paragraph (a) you intend to refer to.

And please be sure to end the sentence with a semicolon to be consistent with the other Subparagraphs.

In (b)(2), line 20, define “immediately”

In (b)(3), line 23, what is the point of “experiencing homelessness”? That is not elsewhere in this Rule.

In (b)(4), line 24, define “appropriate” or give guidance on how the LEA will determine this.

On line 25, define “immediately”

In (c), please include a citation here.

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

16 NCAC 06H .0115 is proposed for adoption as follows:

16 NCAC 06H .0115 DISPUTE RESOLUTION PROCESS FOR HOMELESS STUDENTS – LEA
DISPUTE RESOLUTION PROCESS

(a) Each LEA shall develop and implement a process for parents, guardians, or unaccompanied youth who have complaints about eligibility, school selection, or enrollment to file an appeal to the local liaison upon registering, or attempting to register, the child or youth at the school in which enrollment is sought. For purposes of this policy, the phrase “school in which enrollment is sought” may be either the school of origin or the school located in the attendance zone of the child or youth’s temporary residence. Enrollment shall be deemed to include attending classes and participating fully in school activities. The LEA shall define and describe the LEA dispute resolution process in its local board of education’s official policy manual. The LEA dispute resolution process shall provide that:

- (1) the parent, guardian, or unaccompanied youth may initiate the dispute resolution process with the local liaison at the school in which enrollment is sought or at the local liaison’s office;
- (2) faculty and staff of the school who know about the complaint must refer the parent, guardian, or unaccompanied youth to the local liaison;
- (3) the local liaison shall expeditiously carry out the LEA dispute resolution process within fifteen school business days, or thirty calendar days, whichever is less;
- (4) the LEA official(s) responsible for making the final LEA decision are identified in the local policy;
- (5) the LEA shall enroll the child or youth immediately in the school in which enrollment is sought pending resolution of any complaint between the school or LEA and the parent, guardian, or unaccompanied youth over school enrollment;
- (6) the LEA shall provide the student with all the services for which the student is eligible and shall permit the student to participate fully in school activities while the dispute is being resolved;
- (7) the LEA shall, at the time a complaint is made to the local liaison when practicable, but in no case more than one school business day later, provide the parent, guardian, or unaccompanied youth with a statement of rights and procedures, written in an understandable and uniform format, and to the extent practicable, in a language that the parent, guardian, or unaccompanied youth can understand, that informs them of:
 - (A) contact information including telephone number, e-mail address, and physical address of the local liaison and of the State Coordinator for homeless education, with a brief description of their roles;
 - (B) the right to notify the local liaison, within two school business days of the school’s decision, of the parent, guardian or unaccompanied youth’s intent to appeal the decision and the right to receive notice of the appeal procedure, including the timeline and process for making the initial appeal and any subsequent appeals available under LEA policy, which process must allow for appeals to be made orally or in writing and must identify the LEA official(s) who makes the final LEA decision;

(C) a simple form that parents, guardians, or unaccompanied youth can complete and submit to the local liaison to formally initiate the appeal and any subsequent appeals available under LEA policy;

(D) the right to appeal the final LEA decision to the State Coordinator within three school business days after the final LEA decision with the option of requesting an extension from the State Coordinator (though extensions are not guaranteed) and a step-by-step description on how to file this appeal;

(E) the right to enroll immediately in the school located in the attendance zone of the child or youth's temporary residence or remain in the school of origin with transportation provided pending resolution of the dispute, if such transportation is requested by the parent, guardian, or local liaison on behalf of the youth;

(F) notice that immediate enrollment includes full participation in all school activities;

(G) the right to obtain assistance of advocates or attorneys;

(H) the right to provide supporting written or oral documentation during the appeals process.

(b) Each LEA shall appoint a local liaison for identifying homeless students. The local liaison shall:

(1) ensure that when parents, students, and unaccompanied youth initiate the dispute resolution process, all parties comply with the LEA's dispute resolution policy and that the parents, students, and unaccompanied youth are provided with the information listed above.

(2) ensure that each unaccompanied youth and any student experiencing homelessness who files a dispute about enrollment or whose parent or guardian files such a dispute is enrolled immediately in the school pending resolution of the dispute;

(3) communicate the LEA dispute resolution process to parents, guardians, and unaccompanied youth experiencing homelessness; and

(4) inform the LEA superintendent, other appropriate school officials, and the State Coordinator of the dispute immediately after the parent, guardian, or unaccompanied youth has initiated the dispute resolution process.

(c) The State Coordinator shall train the local liaisons to carry out and mediate the dispute resolution process and to ensure that each school and the LEA meets the requirements of the McKinney-Vento Act as amended by the Every Student Succeeds Act of 2015.

History Note: Authority G.S. 115C-12; 42 U.S. Code § 11431; 42 U.S. Code § 11432;

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 06H .0116

DEADLINE FOR RECEIPT: Friday, July 10, 2020

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:

In (a), if you will allow extensions of this three school business day timeline (as indicated in Rule .0115), then this is the place to address it.

On line 7, so that I'm clear – the individual can request an appeal of the State Coordinator orally?

And how will they know who the State Coordinator is and how to contact him or her?

In (a)(1), line 8, should this read “physical address if available, e-mail address if available,...”?

In (a)(2), line 10, you refer to “child” but elsewhere the term is “unaccompanied youth” Shouldn't that term be used here for consistency?

In (a)(3), line 11, why do you need “specific”?

In (a)(4), how will they know what federal requirement was violated? Where are the federal requirements spelled out for them?

In (a)(6), what relief is available to them?

In (b), line 15, what is “complete”? Is it containing everything in Subparagraphs (a)(1) through (6)?

On line 15, should this be “State Coordinator” both places it is used?

In (b), will there be a deadline for the individual to respond to the State Coordinator? Will this be determined on a case-by-case basis or is it set? If it is set, it needs to be in the Rule.

In (c), line 18, what are these “other supporting documents” Who determines what they are? Will they be requested specifically by the State Coordinator on a case-by-case basis?

On lines 19 and 20, what is a “complete” record?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 1, 2020

On line 19, delete “In either event” and just begin the sentence, “The local liaison or liaisons shall...”

On line 20, shouldn’t “Coordinator” be capitalized to be consistent with the term elsewhere within the Rule?

In (d), line 23, please replace “they” with “he or she”

In (e), line 26, please replace “ten” with “10” As this was published as “10” in the Register, do not show it as a change – simply do it.

Also on line 26, what is “complete” appeal? The information in Paragraphs (c) and (d)?

Why is there a hard return after “appeal.” on line 26?

In (e)(3), line 30, define “understandable and uniform format”

On line 31, who determines “to the extent practicable”?

On line 32, who determines what can be understood? Will there be different standards for adults and youths?

What is the purpose of Paragraph (f)? This appears to govern internal management of the State Coordinator’s job and to address rights beyond the appeal in this Rule. Why isn’t this its own Rule?

On line 35, replace “their” with “his or her” since you refer on lines 34-35 to singular people.

On line 36, consider inserting a citation to the Act.

On Page 2, line 1, please define “knowingly and voluntarily”

On line 2, what law are you referring to? The one on lines 35-36? State law?

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

16 NCAC 06H .0116 is proposed for adoption as follows:

**16 NCAC 06H .0116 DISPUTE RESOLUTION PROCESS FOR HOMELESS STUDENTS - STATE
APPEAL PROCESS**

(a) Any parent, guardian, or unaccompanied youth who is not satisfied with the final LEA decision regarding enrollment may appeal the decision, within three school business days after the final LEA decision, to the State Coordinator through an oral or written appeal to the State Coordinator, including:

- (1) the name, physical address if available, e-mail address, and telephone number of the person filing the appeal;
- (2) the relationship or connection of the person to the child in question;
- (3) the name of the school system and the specific school in question;
- (4) the federal requirement alleged to have been violated;
- (5) how the requirement has been violated; and
- (6) the relief the person is seeking.

(b) If the State Coordinator receives an appeal that is not complete, the Coordinator shall contact the person making the appeal and the local liaison, explain the deficiency, and offer the person the opportunity to complete the appeal.

(c) Upon request of the State Coordinator, the local liaison shall provide the State Coordinator with the record of the complaint, the LEA's actions, and other supporting documents. If the matter involves more than one LEA, then the local liaisons shall cooperate to provide the State Coordinator with a complete record. In either event, the local liaison or liaisons shall provide the complete record within three school business days following the State coordinator's request.

(d) The State Coordinator shall provide the LEA and the parent, guardian, or unaccompanied youth with the opportunity to respond to the LEA decision and to provide any additional evidence they deem relevant within three school business days.

(e) The State Coordinator shall issue a final written decision to the parent, guardian, or unaccompanied youth and the LEA involved within ten school business days following receipt of the complete appeal.

The State Coordinator's decision shall include:

- (1) a summary of the issue appealed;
- (2) the federal requirement at issue; and
- (3) a description of the State Coordinator's decision in an understandable and uniform format, and, to the extent practicable, provided in a language that the parent, guardian, or unaccompanied youth can understand, including further steps that the LEA or parent, guardian, or unaccompanied youth are required to take.

(f) Nothing contained in this Rule shall prohibit the State Coordinator from investigating whether the parent, guardian, or unaccompanied youth knowingly and voluntarily entered into any agreement affecting their rights under McKinney-Vento Act as amended by the Every Student Succeeds Act of 2015. If the State Coordinator determines that the parent,

1 guardian, or unaccompanied youth did not knowingly and voluntarily enter into the agreement, then the State
2 Coordinator may void the agreement and enter a decision consistent with the applicable facts and law.

3
4 *History Note: Authority G.S. 115C-12; 42 U.S. Code § 11431; 42 U.S. Code § 11432;*
5 *Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);*
6 *Emergency Rule Eff. August 20, 2019.*
7

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 06H .0117

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 to this Rule for lack of clarity and failure to comply with the APA. This Rule purports to state that the Board will administer federal education programs. One of the laws cited in the History Note is G.S. 115C-409, which states:

§ 115C-409. Power to accept federal funds and aid.

- (a) The Board is authorized to accept, receive, use or reallocate to local school administrative units any federal funds, or aids, that may be appropriated now or hereafter by the federal government for the encouragement and improvement of any phase of the free public school program which, in the judgment of the Board, will be beneficial to the operation of the schools. However, the Board is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provisions of the Constitution or statutes of this State.
- (b) The State Board of Education or any other State agency designated by the Governor shall have the power and authority to provide library resources, textbooks, and other instructional materials purchased from federal funds appropriated for the funding of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362, effective April 11, 1965) or

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Commission Counsel

other acts of Congress for the use of children and teachers in private elementary and secondary schools in the State as required by acts of Congress and rules and regulations promulgated thereunder. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

On line 4, the Rule speaks to funds “accepted by the State Board of Education.” Staff notes there is no provision within the Rule regarding how the determination of “acceptance” will occur. However, based upon the provisions in G.S. 115C-409(a), this is within the judgment of the Board and must satisfy statutory criteria, so staff is not currently recommending objection based upon this language.

However, staff is recommending objection for the language on line 6 of the Rule, which states that the Department shall reclaim or withhold funds for failure to comply with “state policies” until compliance occurs. The Rule does not state what policies it is referring to; therefore, it is ambiguous as written. Further, even if the Rule did name those policies, those policies cannot be used in a rule to control actions taken by the agency; instead, the Rule must state what violations will result in the actions. An agency cannot cite to policies as binding in rule, as that violates the APA.

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06H .0117

DEADLINE FOR RECEIPT: Friday, July 10, 2020

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:

On the Submission for Permanent Rule form, Box 2, the name of the Rule does not match the name on the Rule. (The word is "Operations" on the Form and "Operation" on the Rule.) Please change one or the other to ensure the name is the same both places.

On line 3, how is "applicable" determined? Will it be determined based upon the specific program?

On line 3, replace "such" with "the"

On line 4, delete "as are"

On line 4, what do you mean "accepted by the State Board of Education"? How is this done?

On line 5, do not use "and/or" in Rule. Use "and" or "or" If you mean "reclaim or withhold or both" then use "or" here.

What is the process to reclaim the funds? What is the process for an appeal of this action by the State Board?

On lines 5 and 6, what is the "program sponsor"?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 1, 2020

1 16 NCAC 06H .0117 is proposed for adoption as follows:

2 **16 NCAC 06H .0117 OPERATION OF FEDERAL PROGRAMS**

3 In accordance with applicable federal regulations, the Department shall administer such federal education programs
4 as are authorized by Congress and accepted by the State Board of Education. In administering federal programs, the
5 Department shall reclaim and/or withhold funds from any local education agency (LEA) or program sponsor that fails
6 to comply with current federal regulations and state policies until the LEA or program sponsor complies.

7
8 History Note: Authority G.S. 115C-12; 115C-263; 115C-264; 115C-409;

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.
11

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06K .0101

DEADLINE FOR RECEIPT: Friday, July 10, 2020

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:

What is the purpose of this Rule? What does this regulate? It seems to me that the only thing you are doing is telling the schools to have some sort of security policy. There are no other requirements in this Rule. So, why do you need it?

On line 3, insert "the" before "Eastern"

On line 3, insert a comma after "Deaf" and before "and the Governor...:"

On line 4, delete the comma after "school"

What are the Education Services for the Deaf and Blind schools? Who are these three schools supposed to "provide guidance and support" to? If it is not the three schools listed, what are they? And if they are the three schools listed, then why not state that?

In the History Note, what section of G.S. 115C-12 are you citing to?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 1, 2020

1 16 NCAC 06K .0101 is proposed for adoption as follows:

2 **16 NCAC 06K .0101 SCHOOL SECURITY**

3 The North Carolina School for the Deaf, Eastern North Carolina School for the Deaf and the Governor Morehead
4 School, shall develop and implement policies to provide guidance and support to the Education Services for the Deaf
5 and Blind (ESDB) schools in the management of campus security.

6
7 *History Note: Authority G.S. 115C-12; 115C-150.13;*

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

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

10

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 06K .0103

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 to this Rule for lack of statutory authority and clarity. This Rule purports to require the use of standard content in certain educational circumstances. The agency cites to G.S. 115C-12 and 115C-150.13 (general rulemaking for schools for the deaf and hard of hearing) as authority for this Rule.

First, staff notes that it is unclear what "Education Services for the Deaf and Blind (ESDB)" refers to. Staff believes that it is referring to the three schools mentioned in Rule 16K.0101, but that is not clear.

Further, staff notes that G.S. 115C-12(9c)a charges the Board with this authority:

- (9c) Power to Develop Content Standards. -
 - a. The Board shall develop a comprehensive plan to revise content standards and the standard course of study in the core academic areas of reading, writing, mathematics, science, history, geography, and civics. The Board shall involve and survey a representative sample of parents, teachers, and the public to help determine academic content standard priorities and usefulness of the content standards. A full review of available and relevant academic content standards that are rigorous, specific, sequenced, clear, focused, and measurable, whenever possible, shall be a part of the process of the development of content standards. The revised content standards developed in the core

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Commission Counsel

academic areas shall (i) reflect high expectations for students and an in-depth mastery of the content; (ii) be clearly grounded in the content of each academic area; (iii) be defined grade-by-grade and course-by-course; (iv) be understandable to parents and teachers; (v) be developed in full recognition of the time available to teach the core academic areas at each grade level; and (vi) be measurable, whenever possible, in a reliable, valid, and efficient manner for accountability purposes.

Further, G.S. 115C-81.5 states:

§ 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:

- (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. (2017-126, s. 5.)

G.S. 150B-2(8a) defines “rule” (in relevant part) as:

"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 statutes mandate the development and adoption of the standard course of study for public schools across the State, which appears to align with the definition of Rule. Staff is not aware of any authority for the Board to adopt this “Standard Course of Study” outside of rulemaking.

Staff does not know, and the Rule does not provide any guidance on, what the “Extended Course Standards” or “Occupational Course of Study” are. The Rule requires that these courses be used when “a standard is provided.” As the Rule does not state what these standards are, the subjects that will have a standard, nor who will provide them, staff believes the Rule is ambiguous as written.

Article 9C.

Schools for Students with Visual and Hearing Impairments.

§ 115C-150.11. State Board of Education as governing agency.

The State Board of Education shall be the sole governing agency for the Governor Morehead School for the Blind, the Eastern North Carolina School for the Deaf, and the North Carolina School for the Deaf. The Superintendent of Public Instruction through the Department of Public Instruction shall be responsible for the administration, including appointment of staff, and oversight of a school governed by this Article. (2013-247, s. 2; 2016-126, 4th Ex. Sess., s. 16.)

§ 115C-150.12. Applicability of Chapter.

Except as otherwise provided, the requirements of this Chapter shall apply to the schools governed by this Article. (2013-247, s. 2.)

§ 115C-150.13. Rule making.

(a) The State Board of Education shall adopt rules necessary for the Department of Public Instruction to implement this Article, including, at a minimum, rules to address eligibility for admission criteria. In determining rules for admission criteria, the State Board of Education shall take into account the following factors:

- (1) State and federal laws.
- (2) Optimal academic and communicative outcomes for the child.
- (3) Parental input and choice.
- (4) Recommendations in a child's Individualized Education Program (IEP).

(b) Rules shall be adopted in accordance with Chapter 150B of the General Statutes. (2013-247, s. 2.)

§ 115C-150.14. Tuition and room and board.

(a) Only children who are residents of North Carolina are entitled to free tuition and room and board at a school governed by this Article.

(b) A school governed by this Article may enroll a foreign exchange student and shall charge the student the full, unsubsidized per capita cost of providing education at the school for the period of the student's attendance. A school that seeks to enroll foreign exchange students under this section shall submit a plan prior to enrolling any of those students to the State Board of Education for approval, including the proposed costs to be charged to the students for attendance

and information on compliance with federal law requirements. For the purposes of this section, a foreign exchange student is a student who is domiciled in a foreign country and has come to the United States on a valid, eligible student visa.

(c) Notwithstanding subsection (b) of this section, foreign exchange students who have obtained the status of nonimmigrants pursuant to the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(F) may only be enrolled in a school governed by this Article in grades nine through 12 for a maximum of 12 months at the school. (2013-247, s. 2; 2016-94, s. 8.12(b).)

§ 115C-150.15. Reporting to residential schools on deaf and blind children.

(a) Request for Consent. - Local superintendents shall require that the following request for written consent be presented to parents, guardians, or custodians of any hearing impaired or visually impaired children no later than October 1 of each school year: "North Carolina provides three public residential schools serving visually and hearing impaired students: the Governor Morehead School for the Blind, the Eastern North Carolina School for the Deaf, and the North Carolina School for the Deaf. Do you consent to the release of your contact information and information regarding your child and his or her impairment to these schools so that you can receive more information on services offered by those campuses?"

(b) Annual Report to Residential Schools. - Local superintendents shall report by November 30 each year the names and addresses of parents, guardians, or custodians of any hearing impaired or visually impaired children who have given written consent to the directors of the Governor Morehead School for the Blind, the Eastern North Carolina School for the Deaf, and the North Carolina School for the Deaf. The report shall include the type of disability of each child, including whether the hearing and visual impairments range from partial to total disability, and if the child has multiple disabilities with the visual or hearing impairment not identified as the primary disability of the student. The report shall also be made to the Department of Public Instruction.

(c) Confidentiality of Records. - The directors of the Governor Morehead School for the Blind, the Eastern North Carolina School for the Deaf, and the North Carolina School for the Deaf shall treat any information reported to the schools by a local superintendent under subsection (b) of this section as confidential, except that a director or the director's designee may contact the parents, guardians, or custodians of any hearing impaired or visually impaired children whose information was included in the report. The information shall not be considered a public record under G.S. 132-1. (2016-94, s. 8.12(a).)

SUBCHAPTER IV. EDUCATION PROGRAM.

Article 8.

General Education.

Part 1. Courses of Study.

§§ 115C-81 through 115C-81.4: Repealed by Session Laws 2017-126, ss. 1-4, effective July 20, 2017.

§ 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:

- (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.

Amanda J. Reeder
Commission Counsel

- (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. (2017-126, s. 5.)

§ 115C-81.10. Career and technical education.

Instruction in career and technical education shall include the following:

- (1) The integration of academic and career and technical education.
- (2) A sequential course of study leading to career and college readiness.
- (3) Increased student work skill attainment and job placement.
- (4) Increased linkages, where geographically feasible, between public schools and community colleges, so the public schools can emphasize academic preparation and the community colleges can emphasize specific job training.
- (5) Instruction and experience, to the extent practicable, in all aspects of the industry the students are prepared to enter. (2017-126, s. 5.)

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06K .0103

DEADLINE FOR RECEIPT: Friday, July 10, 2020

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:

On the Submission for Permanent Rule form, Box 2, the name does not match the name on the Rule. Please either amend the form or the rule so that they match.

In the Rule, what is "Education Services for the Deaf and Blind (ESDB)"?

On lines 4-5, where are the rules governing these courses of studies located? If you do not have rules on this, please show where the Board is exempt from rulemaking to establish these.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 1, 2020

1 16 NCAC 06K .0103 is proposed for adoption as follows:

2 **16 NCAC 06K .0103 NC STANDARD COURSE OF STUDY, OCCUPATIONAL COURSE AND**
3 **EXTENDED CONTENT STANDARDS**

4 Education Services for the Deaf and Blind (ESDB) shall follow the requirements of the NC Standard Course of Study,
5 Occupational Course of Study, and Extended Content Standards, for each subject for which a standard is provided.

6
7 *History Note: Authority G.S. 115C-12; 115C-150.13;*

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

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

10

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 06K .0104

RECOMMENDED ACTION:

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

COMMENT:

Staff recommends objection to this Rule for lack of statutory authority, clarity, and necessity. This Rule purports to establish placement procedures for the State residential schools named in G.S. 115C-150.11. The agency cites to G.S. 115C-12 and 115C-150.13 (general rulemaking for schools for the deaf and hard of hearing) as authority for this Rule.

As stated in earlier Staff Opinions, staff is unsure what "EDSB" refers to and believes the term is ambiguous. In addition, in Paragraph (b), the agency refers to the "Standard Course of Study; Occupational Course of Study (OCS) and Extended Content Standards (ECS);" The agency does not state what those standards entail, and staff is not aware of any authority for the agency to establish those outside of rulemaking.

In addition, in Paragraph (a), the agency refers to being consistent with "federal regulations" but does not state which regulations are being referenced. Therefore, staff believes this language is ambiguous as written.

Further, this Rule contains statements that are not regulating anything, but appear to be asides or suggestions, such as in Paragraph (b), "It is important that the school representative has authority..."; in Paragraph (d), "(Schools should consider...)"; and in Paragraph (f), "[T]he EDSB school representative should take a copy ...". As these statements do not convey a mandate, Staff believes that these statements are unnecessary, as they are not, "reasonably necessary to implement or interpret an act of the General Assembly[.]" [(G.S. 150B-21.9(a)(3))]

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06K .0104

DEADLINE FOR RECEIPT: Friday, July 10, 2020

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:

In the Rule, what is "Education Services for the Deaf and Blind (ESDB)"?

In (a), line 3, what federal regulations are you referring to?

Also on line 3, define "uniform procedures"

On line 5, please capitalize "State" assuming you mean NC, and hyphenate the term, "State-operated"

In (b), line 6, how is this qualification determined? Do you mean they possess the licensure or knowledge required in this Paragraph?

On line 7, please replace "the" before "child" with "each"

On line 8, what is an "administrator"? And I note that you are only requiring NC licensure for administrators, not teachers or speech/language pathologists.

If you intended to require NC licensure, please note that the title for "speech/language pathologists" in NC is "Speech and Language Pathologists;" and "Audiologists" (see G.S. 90-293)

On lines 9 and 10, define "knowledgeable"

On line 9, why haven't you separated "Occupational Course of Study" from "Extended Content Standard" by a semicolon? Are those supposed to be contained in the same term?

And where are the rules governing these standards?

On line 10, define "available resources of the school" How is this known?

Delete the sentence on lines 10-12, as it is not written to regulate anything. If you need to retain it, you need to rewrite to include a mandate.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 1, 2020

In (c), line 13, who is the “local special education director”? How is this known?

On lines 13-14, do not use parenthesis in rule. Either remove the parenthesis or delete the phrase.

On line 14, who is the “local Exceptional Children director”? Is this different from the local special education director on line 13?

On line 15, insert a comma after “cafeteria”

On line 15, what is a “non-structured setting”?

On line 16, what is your authority to restrict admission to individuals referred by an LEA? Charter schools cannot make this referral? Further, G.S. 115C-150.14(b) allows foreign exchange students to attend these schools. Are LEAs referring those individuals?

On line 16, what is the “appropriate” LEA? Is this known?

In (d), line 18, what forms are you referring to? Who provides them?

Also on line 18, what “information” are you referring to?

On line 19, never use the word “should” in a Rule.

On line 19, delete “and” before “services”

On line 20, what “screening and assessment” are you referring to? I see that on line 4 there is “screening” but what is the assessment? Is it what is in Paragraph (c)? if so, clarify this. If not, then state what assessment you are referring to within the Rule text.

On line 20, what are “state-adopted” forms? Who adopted them? G.S. 150B-2(8a) holds that the substantive contents of all forms must be in rule or law. Are the contents of these forms in rule or law?

On line 21, “completed and signed” by whom?

In (e) and throughout the Rule where the term is used, I take it “least restrictive environment” is a known term?

On line 24, never use the word “should” In a Rule.

On line 24, define “properly” and “appropriate”

On line 25, insert a comma after “staff” And what staff is this referring to? Staff of the EDSB school?

In (g), notified by whom?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 1, 2020

16 NCAC 06K .0104 is proposed for adoption as follows:

16 NCAC 06K .0104 PLACEMENT PROCEDURES

(a) Consistent with federal regulations, the Education Services for the Deaf and Blind (ESDB) shall establish uniform procedures for referral, screening, and placement of Deaf, Hard of Hearing, Blind, Deaf-Blind and Visually Impaired students in the state operated residential programs in ESDB.

(b) Each ESDB school shall name a school representative who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of the child. The individual must hold a current license as a special education teacher, administrator in North Carolina, or speech/language pathologist. In addition, the individual shall be knowledgeable about the North Carolina Standard Course of Study; Occupational Course of Study (OCS) and Extended Content Standards (ECS); and knowledgeable of the available resources of the school. It is important that the school representative has the authority to commit school resources and ensure that whatever services are described in the Individualized Education Program (IEP) will be provided.

(c) The school representative will contact the local special education director, (not a particular school, unless directed by the local Exceptional Children director) and arrange to observe the student referred in multiple settings, including the student's classroom, cafeteria and a non-structured setting. All contact concerning possible admission to a residential school must be initiated by the LEA. Inquiries from parents and others shall be directed to the appropriate LEA.

(d) The school representative will review forms and consider information used in making the recommendation for placement. (Schools should consider the present status and needs of the student, reason for referral, and services presently and previously provided, and results of screening and assessment.) All state-adopted forms must be completed and signed.

(e) The school representative will participate in discussions about the least restrictive environment for student.

(f) If the IEP team decides that residential school placement is the least restrictive environment for the referred student, the ESDB school representative should take a copy of properly completed and signed forms back to the appropriate ESDB school, discuss with staff and plan for the student's transition.

(g) The ESDB superintendent shall be notified of all student placements and transitions back to an LEA.

History Note: Authority G.S. 115C-12; 115C-150.13;

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 06K .0105

DEADLINE FOR RECEIPT: Friday, July 10, 2020

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:

In (a), line 3, what are these “places of employment within EDSB”?

On line 4, what is an “unauthorized” weapon?

On line 5, do not use “defined below” Cite to the Paragraph of the Rule you are referring to.

In (b) and (c), put the terms you are defining in quotation marks. “Weapon” is defined as...

In Paragraph (b), G.S. 14-269.2(b) exempts the following from the definition of “weapon”: a BB gun, stun gun, air rifle, or air pistol. And G.S. 14-269.2(b1) exempts fireworks. What authority are you relying upon to include these in your definition?

On line 8, you define “switchblade knife” using the same language from G.S. 14-269.2(3). Why are you reciting this definition here?

On line 10, what are “clips”? Are they part of the phrase “nail files and clips”? If so, please insert a comma after the term. If not, then please define and separate using a comma as appropriate.

In (c), line 13, who is the Education Services for the Deaf and Blind?

In (c)(1), this is not an exception to (c). This needs to be Paragraph (d) and state what the exceptions are – if you mean “The following weapons are allowed on school grounds:”, then state that.

Since (c)(1)(A) is reciting G.S. 14-269.2(g)(1), why not just refer to that instead of spelling out the specific requirements of that law?

If you wish to retain it:

On line 16, hyphenate “school-approved” to be consistent with the statute.

On line 17, how is this approval requested and upon what basis is it granted? Is it entirely up to the individual school director?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: July 1, 2020

In current (c)(1)(B), I see that you are partially reciting 14-269.2(g)(1a) and (2), but you are not capturing everyone in (2). In addition, what about those in 14-269.2(g)(5), (6), and (7)? What authority are you relying upon to not include these individuals?

- (g) This section shall not apply to any of the following:
 - (1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority.
 - (1a) A person exempted by the provisions of G.S. 14-269(b).
 - (2) Firefighters, emergency service personnel, North Carolina Forest Service personnel, detention officers employed by and authorized by the sheriff to carry firearms, and any private police employed by a school, when acting in the discharge of their official duties.
 - (3) Home schools as defined in G.S. 115C-563(a).
 - (4) Weapons used for hunting purposes on the Howell Woods Nature Center property in Johnston County owned by Johnston Community College when used with the written permission of Johnston Community College or for hunting purposes on other educational property when used with the written permission of the governing body of the school that controls the educational property.
 - (5) A person registered under Chapter 74C of the General Statutes as an armed armored car service guard or an armed courier service guard when acting in the discharge of the guard's duties and with the permission of the college or university.
 - (6) A person registered under Chapter 74C of the General Statutes as an armed security guard while on the premises of a hospital or health care facility located on educational property when acting in the discharge of the guard's duties with the permission of the college or university.
 - (7) A volunteer school safety resource officer providing security at a school pursuant to an agreement as provided in G.S. 115C-47(61) and either G.S. 162-26 or G.S. 160A-288.4, provided that the volunteer school safety resource officer is acting in the discharge of the person's official duties and is on the educational property of the school that the officer was assigned to by the head of the appropriate local law enforcement agency.

In (d), line 22, and (d)(2), line 25, define "immediately"

Amanda J. Reeder
 Commission Counsel
 Date submitted to agency: July 1, 2020

In (d)(1), line 24, and (d)(2), line 25, this is a Rule, not a policy. Correct this terminology.

What authority are you relying upon for (d)(1)?

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

16 NCAC 06K .0105 is proposed for adoption as follows:

16 NCAC 06K .0105 WEAPONS PROHIBITED ON SCHOOL PROPERTY

(a) All Education Services for the Deaf and Blind (ESDB) schools and places of employment within ESDB shall be free of all unauthorized weapons. No employee or other person shall carry, or engage another person to carry, whether openly or concealed, an unauthorized weapon as defined below, on to school property at any time.

(b) Weapon is defined as any gun, rifle, pistol, or other firearm of any kind, or any dynamite cartridge, bomb, grenade, mine or other powerful explosive, BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slingshot, leaded cane, switchblade knife (a knife containing a blade that opens automatically by the release of a spring or a similar contrivance), blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on school property.

(c) School property is defined as any building, bus, school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by the Education Services for the Deaf and the Blind.

(1) Exceptions Include:

(A) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school approved program conducted under the supervision of an adult whose supervision has been approved by the school director;

(B) Firefighters, emergency service personnel, North Carolina Forest Service Personnel, and any private police employed by the Education Service for the Deaf and the Blind when acting in the discharge of their official duties, law enforcement officers, or any of those persons specifically exempted by G.S. 14-269 (b).

(d) Any employee who is aware that an unauthorized weapon has been carried onto school property must immediately notify the school director.

(1) Violation of this policy may subject the employee to disciplinary action up to and including dismissal.

(2) The principal shall immediately report violations of this policy to law enforcement.

History Note: Authority G.S. 14-269; 14-269.2; 115C-12;

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

Emergency Rule Eff. August 20, 2019.