



November 17, 2020

Re: Request for North Carolina Register Publication of Substantially Revised Rule 16 NCAC 06H.0117
Operation of Federal Programs & Comment Period as set forth in N.C.G.S. 150 B-21.2

Dear NCOAH Rules Review Commission:

The State Board of Education has responded to the Rules Review Commission's September 2020 objection to 16 NCAC 06H.0017 by creating a substantially different rule that addresses subject matters and issues that are not in the original Rule published in the North Carolina Register in 34:13 NCAC 1250 on January 2, 2020.

I object to approval of the new rule on the grounds that it has not met the criteria listed in N.C.G.S. 150B.

The subject matter of the Rule published in the North Carolina Register on January 2, 2020 references federal regulations that pertain to the Department's administration of federal programs, but only as pertaining to the Department's ability to reclaim or withhold funds if an LEA or program sponsor fails to comply with current federal regulations or state policies. This January 2, 2020 published Rule tends to rely upon 2 CFR 200.339 Remedies for Noncompliance.

The new Rule revised on November 16, 2020 excludes all of the text from the original rule. This new rule references the Department's ability to impose any or all of the enforcement mechanisms authorized under 2 CFR Part 200. This November 16, 2020 revised Rule relies not only upon 2 CFR 200.339 but upon all of 2 CFR Part 200 (2 CFR 200.0 to 2 CFR 200.521). **The revised rule therefore addresses subject matters and issues that are not in the Rule published in the North Carolina Register on January 2, 2020. These issues were not addressed in the original rule so stakeholders have not had the opportunity to comment on these issues.** For example, 2 CFR 200.208 refers to the Department's ability to require payments as reimbursements rather than advance payments, require additional, more detailed financial reports, require additional project monitoring and establish additional prior approvals.

The new Rule differs substantially from the text of the Rule published in the North Carolina Register. **Pursuant to N.C.G.S. 150 B-21.2 (g), the Department shall not adopt this substantially different Rule unless the Department "publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f)."**

Pursuant to Rule 26 NCAC 05 .0112, I request a waiver of the deadline to submit written comments set forth in Rule 26 NCAC 05 .0103. The reason for this waiver request is that I was not able to review the rewritten text of the Rule until after the deadline passed.

Thank you for your consideration.

A blue ink signature of Danice Henderson, written in a cursive style.

Danice Henderson
Kinetic Minds, Inc.
2822 Cashwell Drive Num 101
Goldsboro, NC 27534



November 17th, 2020

RE: Request for North Carolina Register Publication of Substantially Revised Rule 16 NCAC 06H.0017 Operation of Federal Programs & Comment Period as set forth in N.C.G.S. 150 B-21.2

Dear NCOAH Rules Review Commission,

The State Board of Education has responded to the Rules Review Commission's September 2020 objection to 16 NCAC 06H.0017 by creating a substantially different rule that addresses subject matters and issues that are not in the original Rule published in the North Carolina Register in 34:13 NCAC 1250 on January 2nd, 2020.

I object to approval of the new rule on the grounds that it has not met the criteria listed in N.C.G.S. 150B.

The new Rule revised on November 16th, 2020 excludes all of the text from the original rule. The old language compared to the new language in 16 NCAC 06H.0017 is as stark a contrast as night and day. Metaphorically this resembles a "bait-and-switch" tactic upon review of the new language compared to the old language of this Rule. I have personally spoken in opposition to this rule in times past on the record (July 2nd, 2019 – NCDPI Public Hearing, September 17th, 2020 – OAH RRC meeting, etc.). As a matter of fact the OAH RRC opposed this rule on September 17th, 2020 as well. Even the State Board of Education's General Counsel failed to offer any public support on the legitimacy of this rule openly.

This Rule with this totally new language needs a public hearing period in order for the people of North Carolina to have their say before going up for a vote once again before the OAH RRC.

This new Rule language wasn't birthed on June 27th, 2018 as indicated on the document. This totally revised Rule was first made public to us on November 16th, 2020 which is a vast difference which constitutes a substantially different rule. Should the OAH RRC choose to approve this new Rule language for 16 NCAC 06H.0017 as is for the benefit of the State Board

of Education then an endorsement is added to the record by the OAH RRC on all of the unethical, illegal, and immoral tactics undertaken by the North Carolina Department of Public Instruction to reclaim Federal funds from educational agencies in North Carolina since the Rule was established on June 27th, 2018. In other words, all of the pending legal litigation and/or investigations that the North Carolina Department of Public Instruction and State Board of Education is potentially facing over this rule will make those that accepted this rule culpable to the previous actions undertaken by both of those State entities. Please don't dismiss my words as mere conjecture.

The new Rule differs substantially from the text of the Rule published in the North Carolina Register. **Pursuant to N.C.G.S. 150 B-21.2 (g), the Department shall not adopt this substantially different Rule unless the Department "publishes the text of the proposed rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f)."**

Pursuant to Rule 26 NCAC 05.0012, I request a waiver of the deadline to submit written comments set forth in Rule 26 NCAC 05.0013. The reason for this waiver request is that I was not able to review the rewritten text of the Rule until after the deadline passed.

Thank you for your consideration.

Eskabonna Henderson

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