

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Information Technology

RULE CITATION: All Rules

**DEADLINE FOR RECEIPT: Friday, December 11, 2020**

**PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Please be sure that all forms are signed by either the Rulemaking Coordinator or the Head of the rulemaking body.*

*Please ensure that the rulemaking body is accurate on all Forms. It appears as though the forms for 06D should be under the Center. I understand that the Center was established as a unit of DIT under Part 8, Article 15 of Chapter 143B of the General Statutes, but please reflect the rulemaking body accurately as provided by the statutory authority contained in your History Note.*

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

Amber May  
Commission Counsel  
Date submitted to agency: December 1, 2020

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Information Technology

RULE CITATION: 09 NCAC 06A .0104

**DEADLINE FOR RECEIPT: Friday, December 11, 2020**

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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. 150B-20(a) only requires the information contained in both (b)(1) and (2) for requests pertaining to adoptions or amendments. This limitation is currently only included in (b)(1). Please consider moving this language to (b)*

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

Amber May  
Commission Counsel  
Date submitted to agency: December 1, 2020

09 NCAC 06A .0104 is adopted as published in 35:4 NCR 385 as follows:

**SECTION .0104 – PETITIONS FOR RULE-MAKING**

**09 NCAC 06A .0104      RIGHT TO PETITION**

(a) Any person submitting a petition requesting the adoption, amendment, or repeal of a rule under this Chapter shall address the petition to the Rules Coordinator, Attn: DIT Legal Services, Mail Service Center 4101, Raleigh, North Carolina 27699-4101. Alternatively, a petition can also be emailed to [DITrulesrequests@nc.gov](mailto:DITrulesrequests@nc.gov).

(b) The petition shall contain the following:

(1) for petitions to adopt or amend a rule, a draft of the proposed rule or amendment;

(2) a statement of the effect of the requested rule change; and

(3) the name and address of the petitioner.

(c) The petition may contain the following:

(1) the reason for the proposal;

(2) the effect of the new rule on existing rules; or

(3) any data supporting the rule proposal.

*History Note: Authority G.S. 143B-1321(a)(16); 116E-4(b)*

*Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Information Technology

RULE CITATION: 09 NCAC 06D .0101

**DEADLINE FOR RECEIPT: Friday, December 11, 2020**

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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 Item (1), is "presenting it in a way that does not include personally identifying information of individuals" the same as "de-identifying data" as provided in G.S. 116E-1(2)? Please use consistent terminology where appropriate.*

*In Item (1), line 9, change "would be" to "is."*

*In Item (2), what is meant by "standards and policy"? The APA defines "policy" as a "nonbinding interpretive statement"; therefore, you cannot incorporate a policy into your rules. Do you need "standards and policy"?*

*In Item (2), delete "but is not limited to"*

*In Item (4), what is "early childhood data"?*

*Since you have already included the definitions in G.S. 116E-1 on line 5 it appears as though you do not need to redefine "System" as set forth in Item (6) of this Rule since it is already defined by the referenced statute. Further, "North Carolina Education Longitudinal Data System" is set forth in G.S. 116E-5, also making this definition unnecessary. To the extent that these definitions are necessary, it appears as though the definitions set forth in this Rule are expanding the terms as provided in G.S. 116E-1(5) and 116E-5. Please review and revise as necessary as this Item appears to either be unnecessary or beyond your statutory authority. If you decide that you need to define "North Carolina Longitudinal Data System" since it is not defined by G.S. 116E-1, please consider simply referencing G.S. 116E-5 to ensure that the Rule is consistent with the statute.*

*In Item (6), delete "solely"*

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

Amber May  
Commission Counsel

Date submitted to agency: December 1, 2020

09 NCAC 06D .0101 is adopted with changes as published in 35:4 NCR 385 as follows:

## **SECTION .0101 – NORTH CAROLINA EDUCATION LONGITUDINAL DATA SYSTEM**

### **09 NCAC 06D .0101 DEFINITIONS**

In addition to the definitions set forth in 116E-1, the following definitions shall apply to the Rules in this Section:

- (1) “Aggregated” means the act of collecting or combining information and presenting it in a way that does not include personally identifying information of individuals. Aggregated data can be used for the purposes of making comparisons or identifying patterns within or among groups of subjects or individuals. An example of aggregated data would be the number of high school graduates from Wake County who graduated from the University of North Carolina System with a Bachelor of Science in Engineering within the past three years and their average salary.
- (2) “Applicable law” means all statutes and rules of North Carolina and all relevant United States federal statutes, regulations, standards and policy requirements pertaining to the protection of privacy and security of confidential data. Applicable law includes but is not limited to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; the Health Insurance Portability and Accountability Act, 42 U.S.C. § 300gg, 29 U.S.C § 1181 *et seq.*, and 42 USC 1320d *et seq.*; the Workforce Innovation and Opportunity Act, 29 U.S.C. Ch. 32; and all regulations promulgated thereunder.
- (3) “Contributor” means an entity that discloses Data to the System. The Contributors may be one or more of the entities specified in G.S. § 116E-5(d)(1).
- (4) “Data” means individual level early childhood data, student data as defined in G.S. § 116E-1(4), workforce data as defined in G.S. § 116E-1(7), or other personally identifying data disclosed by the Contributors to the System and any data released from the System in response to data requests.
- (5) “GDAC” means the Government Data Analytics Center, which has the authority to operate and oversee the System pursuant to G.S. § 116E-4.
- (6) “North Carolina Education Longitudinal Data System” or “System” means the technical system operated by GDAC along with the technical systems maintained and operated by the Contributors to collect, store, aggregate, and report or disclose Data solely when those systems are being utilized to respond to a Request.
- (7) “Report” means the de-identified or aggregated information, data extract, or data file generated by the System using Data on a specified group of students, workforce members, or both, to fulfill a Request.
- (8) “Request” means an inquiry for a Report containing information on a specified group of students, workforce members, or both from the System by a Requestor
- (9) “Requestor” means an entity or individual that makes a Request to the System for a Report. A Requestor may also be a Contributor.

*History Note: Authority G.S. 143B-1321(a)(16); 116E-4(b)  
Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Information Technology

RULE CITATION: 09 NCAC 06D .0102

**DEADLINE FOR RECEIPT: Friday, December 11, 2020**

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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), what does "if submission is available online" mean? When would submission not be available online?*

*In (b), delete "at a minimum"*

*In (b)(2), add "the" before "Requestor"*

*In (b)(4), change "e.g." to "such as"*

*In (c)(2), when would this "be applicable"? Does this relate to the Requestor data sharing agreement only?*

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

Amber May  
Commission Counsel  
Date submitted to agency: December 1, 2020

09 NCAC 06D .0102 is adopted as published in 35:4 NCR 385 as follows:

**09 NCAC 06D .0102 DATA REQUEST PROCESS**

- (a) In order to initiate a Request for a Report from the System, a Requestor must complete an Education Longitudinal Data System Report Request Form located at: <https://it.nc.gov/services/nc-gdac>. The Requestor shall submit the form through the website if submission is available online, by emailing it to [gdacadmin@nc.gov](mailto:gdacadmin@nc.gov), or by mailing a hard copy to the following address: Government Data Analytics Center, 4101 Mail Service Center, Raleigh, NC 27699-4101.
- (b) The Requestor shall include, at a minimum, the following information in the Request form:
- (1) the name of the Requestor individual and his or her contact information;
  - (2) the name of the organization for whom Requestor is making the Request on behalf of, if applicable;
  - (3) whether or not the Requestor, or the organization the Requestor is making the Request on behalf of, is considered a public official as defined under 20 C.F.R. § 603.2(d);
  - (4) the categories or types of Data needed to generate the Reports being requested, e.g., data pertaining to students who graduated high school in 2013 who were students in the University of North Carolina School System in 2014;
  - (5) the purposes for which the Requestor will utilize the Reports; and
  - (6) to whom or in what medium the Requestor plans to publish research based on or interpretations of the Report.
- (c) Requestors who receive data shall:
- (1) store Reports on servers or media utilizing safeguards based on nationally accepted standards, including those published by the National Institute of Standards and Technology (NIST);
  - (2) comply with all Applicable Law and the Requestor data sharing agreement in storing and using the Reports, if applicable; and
  - (3) use a data destruction policy based on nationally accepted standards, including NIST standards, to destroy the Report after it has served the Requestor's stated purpose if the Report contains de-identified but not aggregated workforce data from the Division of Employment Security.

*History Note: Authority G.S. 143B-1321(a)(16); 116E-4(b)  
Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Information Technology

RULE CITATION: 09 NCAC 06D .0103

**DEADLINE FOR RECEIPT: Friday, December 11, 2020**

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In reviewing this Rule, the staff recommends the following technical changes be made:

*What is the overall intent of this Rule? Is this simply intended to provide notice that the MOU is a requirement to be a contributor?*

*In (a), are contributors required to enter into a MOU with another contributor? I'm not sure that I understand (a). Specifically, "... and one or more contributor" on line 5.*

*In (b), delete the "and" in between "maintains" and "that may" on line 15.*

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

Amber May  
Commission Counsel  
Date submitted to agency: December 1, 2020



09 NCAC 06D .0103 is adopted as published in 35:4 NCR 385 as follows:

**09 NCAC 06D .0103 CONTRIBUTOR DATA SHARING AGREEMENTS**

(a) All Contributors that plan to contribute Data to the System shall enter into one or more Memoranda of Understanding with the Government Data Analytics Center and one or more Contributor that contain, at a minimum, the following:

(1) obligations to comply with all Applicable Law when disclosing, accessing, or using Data in the System;

(2) limitations on Data access to authorized persons employed or contracted by the parties of the Memorandum of Understanding;

(3) requirements for safeguarding any Data disclosed by a Contributor; and

(4) terms regarding the relevant limitations of liability for State and local government agencies and private or non-governmental Contributors.

(b) In accordance with G.S. § 143B-1385(d)(2), each Contributor shall be the sole custodian of the Data it stores and maintains and that may be disclosed to the System. Each Contributor shall only disclose Data to the System and to GDAC that the Contributor is authorized to disclose in compliance with Applicable Law.

*History Note: Authority G.S. 143B-1321(a)(16); 116E-4(b)  
Eff. January 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Information Technology

RULE CITATION: 09 NCAC 06D .0104

**DEADLINE FOR RECEIPT: Friday, December 11, 2020**

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In reviewing this Rule, the staff recommends the following technical changes be made:

*In (b), how is it known whether a data sharing agreement is a requirement before Data can be disclosed? Is there a cross-reference available?*

*In (c), delete "at a minimum"*

*In (c)(2), assuming this is accurate as to your intent, please consider changing "as only de-identified information may be presented to Requestors in Reports from the System pursuant to" to simply "in accordance with" so that this reads "... included in reports in accordance with G.S. 116-5(e)"*

*In (c)(2), please correct the cross-reference. I've used G.S. 116-5(e) in the suggestion above, but please ensure that this is what you intended.*

*In (c)(6), what are these liabilities and warranties? Are these known to your regulated public?*

*When would (c)(7) be applicable?*

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

Amber May  
Commission Counsel  
Date submitted to agency: December 1, 2020

09 NCAC 06D .0104 is adopted as published in 35:4 NCR 385 as follows:

**09 NCAC 06D .0104**

**REQUESTOR DATA SHARING AGREEMENTS AND REQUIREMENTS**

- (a) Except as provided in Paragraph (b) of this Rule, all Requestors shall enter into a data sharing agreement with the Contributors that are the custodians of the Data that may be needed to generate a requested report. The requestor data sharing agreement shall be separate and distinct from the Memorandum of Understanding between the Contributors and GDAC.
- (b) Requestors who are also Contributors and parties to the Contributor Memorandum of Understanding shall not be required to enter into a Requestor data sharing agreement unless one or more of the Contributors responding to the party's Request requires a data sharing agreement to be entered into before Data is disclosed. An example of when a Requestor data sharing agreement may be required is an instance where a Contributor is making a Request of the NC Department of Commerce for Data that has not been Aggregated.
- (c) The Requestor data sharing agreements shall contain, at a minimum, the following:
- (1) limitations on Report access to authorized persons;
  - (2) prohibition on the re-identification of persons included in Reports as only de-identified information may be presented to Requestors in Reports from the System pursuant to G.S. 116E-(5)(e);
  - (3) information technology system and data security standards required by the Contributor who will be providing Data for the Report;
  - (4) privacy compliance standards;
  - (5) data breach procedures, including notification of DIT of any cybersecurity incidents as described by G.S. 143B-1320(a)(12) (4a) or G.S. 143b-1320(a)(15) (16a) using the incident report form available at: <https://it.nc.gov/resources/cybersecurity-risk-management/statewide-cybersecurity-incident-report-form>;
  - (6) terms regarding the disclaimer of liability and warranties as applied to Contributors; and
  - (7) data retention and data removal standards, if applicable.

*History Note: Authority G.S. 143B-1321(a)(16); 116E-4(b)*  
*Eff. January 1, 2021.*