



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

February 21, 2014

Glenn Cutler
Cemetery Commission
Sent via email to glenncutler@bellsouth.net

Re: Rules 21 NCAC 07A .0101, .0103, .0104, .0106, .0201, .0202, .0203, .0204, .0205;
07B .0103, .0104, .0105;
07C .0103, .0104, .0105; and
07D .0101, .0102, .0104, .0105, .0201, .0202, and .0203.

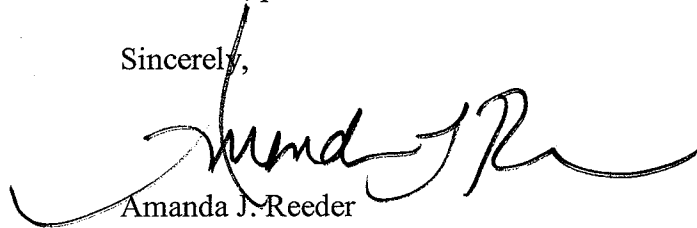
Dear Glenn:

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

The Commission objected to these rules based on ambiguity based on failure to complete the technical corrections as requested to clarify ambiguous language.

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 action, 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
919/431-3000
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Clerk's Office
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February 21, 2014

Frances Liles, Administrator
NC Rural Electrification Authority
Sent via email to files@nc-rea.net

Re: Rules 04 NCAC 08 .0101 and .0109.

Dear Frances:

At its meeting on February 20, 2014, the Rules Review Commission continued its objection to the above-captioned rules in accordance with G.S. 150B-21.12(c).

The Commission objected to both rules finding the agency lacks statutory authority to investigate member complaints against Telephone Membership Corporations.

The Commission additionally objected to Rule 08 .0109, finding the agency has no authority to set the process for arbitration outside of rulemaking as proposed in Item 6.

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 action, please let me know.

Sincerely,

Amanda J. Reeder
Commission Counsel

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

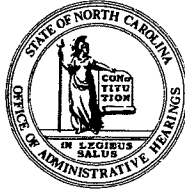
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February 21, 2014

John N. Fountain
Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors
Sent via email to jnf@youngmoorelaw.com

Re: Rule 21 NCAC 50 .0301

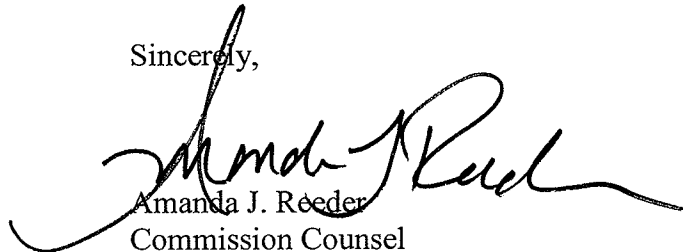
Dear Nick:

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

The Commission objected to the rule based on lack of statutory authority. The Commission found that the Board has no authority to waive the requirement that applicants for licensure take an exam as set forth in Paragraph (l) of the Rule.

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 action, please let me know.

Sincerely,



Amanda J. Reeder
Commission Counsel

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February 21, 2014

Via Email Only: william.cobey@dpi.nc.gov

William W. Cobey, Jr., Chairman
N.C. State Board of Education
6302 Mail Service Center
Raleigh, North Carolina 27699-6302

Re: 16 NCAC 06C .0701

Dear Chairman Cobey:

At the February 20, 2014 meeting of the Rules Review Commission, the Commission reviewed the one temporary rule filed by the N.C. State Board of Education on February 19, 2014. The Findings of Need form filed indicates that 16 NCAC 06C .0701, Model Teacher Contract, was adopted by the Board on February 6, 2014. The Commission declined to approve the above-captioned temporary rule based on the failure to comply with the Administrative Procedure Act (APA) in accordance with G.S. 150B-21.1(a) and 150B-21.9.

The findings of need for the rule states that the temporary rule was required by the Session Law 2013-360, Section 9.6(e) that states the following:

SECTION 9.6.(e) The State Board of Education shall develop by rule as provided in Article 2A of Chapter 150B of the General Statutes a model contract for use by local boards of education in awarding teacher contracts. The State Board may adopt a temporary rule for a model contract as provided in G.S. 150B-21.1 to provide a contract to local boards of education no later than January 1, 2014, but shall replace the temporary rule with a permanent rule as soon as practicable.

The Commission disapproved the above-captioned rule because the adoption date was after January 1, 2014 and therefore, the N.C. State Board of Education lacked the statutory authority for temporary rule making. Furthermore, the Commission expressed concerns that

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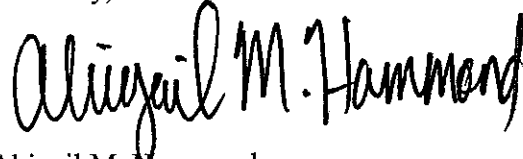
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the temporary rule did not contain a model contract for use by local boards of education.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.1(b1) or (b2). If you have any questions regarding the Commission's action, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Abigail M. Hammond". The signature is written in a cursive, flowing style.

Abigail M. Hammond
Commission Counsel

Enclosure: Filing for 16 NCAC 06C .0701

cc: Katie Cornetto, Rule-making Coordinator – katie.cornetto@dpi.nc.gov



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

ORIGINAL

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina State Board of Education

2. Rule citation & name: 16 NCAC 06C .0701 Model Teacher Contract

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

a. Proposed Temporary Rule submitted to OAH: 12/12/2013

b. Proposed Temporary Rule published on the OAH website: 12/17/2013

c. Public Hearing date: 1/15/2014

d. Comment Period: 12/19/2013 – 1/15/2014

e. Notice pursuant to G.S. 150B-21.1(a3)(2): 12/17/2013

f. Adoption by agency on: 2/6/2014

g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B-21.1(b) and G.S. 150B-21.3]: February 1, 2014

h. Rule approved by RRC as a permanent rule: N/A

FILED
2014 FEB 19 PM 1:24
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6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2013-360, Section 9.6(e)
Effective date: 7/1/2013
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

The State Board of Education was mandated by Session Law 2013-360, Section 9.6(e) to develop, by rule, a model teacher contract for use by local boards of education in awarding teacher contracts. Pursuant to S.L. 2013-360, Section 9.6(e), the State Board may adopt a temporary rule for a model contract and provide it to local boards no later than January 1, 2014, but shall replace the temporary rule with a permanent rule as soon as practicable. This law went into effect on July 1, 2013. The State Board has begun the permanent rule-making process.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The temporary rule is necessary for three reasons. The first is to comply with the law. S.L. 2013-360, Sec. 9.6(e) required the State Board of Education to develop, by rule, a model teacher contract for use by local boards of education in awarding teacher contracts. The law gave the State Board the option of adopting a temporary rule for the model contract to provide to local boards by January 1, 2014 and to adopt a permanent rule as soon as practicable.

Second, the temporary rule will provide local boards with needed certainty. Pursuant to G.S. 115C-325.3, all local boards of education will soon be required to place teachers on one, two, or four-year contracts. Under S.L. 2013-360, Sec. 9.6(f) and (g), these contracts begin with the 2014-2015 school year. Local boards will be relying on the Model Teacher Contract rule when drafting these contracts, many of which will be entered into as early as June of 2014.

Third, the temporary rule will provide for efficient use of local board resources and money. Once published, the rule will require all contracts between local boards and teachers to include the terms contained in the Model Teacher Contract rule. Any nonconforming contracts will need to be amended by the LEA in order to comply with the rule. Local boards will already have to pay legal fees for the initial drafting of their contracts. Immediate adoption of the temporary rule will prevent them from having to pay additional legal fees in the event that amendments are necessary.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Katie G. Cornetto

Phone: 919-807-3406

E-Mail: katie.cornetto@dpi.nc.gov

Agency contact, if any: Lou Martin

Phone: 919-807-3658

E-Mail: lou.martin@dpi.nc.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: William W. Cobey

Title: Chairman, NC State Board of Education

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

ORIGINAL

(d) If a superintendent intends to recommend to the local board of education that the school administrator be offered a new, renewed, or extended contract, the superintendent shall submit the recommendation to the local board for action. The local board may approve the superintendent's recommendation or decide not to offer the school administrator a new, renewed, or extended school administrator's contract.

If a superintendent decides not to recommend that the local board of education offer a new, renewed, or extended school administrator's contract to the school administrator, the superintendent shall give the school administrator written notice of his or her decision ~~and the reasons for his or her decision~~ no later than May 1 of the final year of the contract. The superintendent's reasons may not be arbitrary, capricious, discriminatory, personal, or ~~political-political, or prohibited by State or federal law~~. No action by the local board or further notice to the school administrator shall be necessary unless the school administrator files with the superintendent a written request, within 10 days of receipt of the superintendent's decision, for a hearing before the local board. Failure to file a timely request for a hearing shall result in a waiver of the right to appeal the superintendent's decision. If a school administrator files a timely request for a hearing, the local board shall conduct a hearing pursuant to the provisions of G.S. 115C-45(c) and make a final decision on whether to offer the school administrator a new, renewed, or extended school administrator's contract.

If the local board decides not to offer the school administrator a new, renewed, or extended school administrator's contract, the local board shall notify the school administrator of its decision by June 1 of the final year of the contract. A decision not to offer the school administrator a new, renewed, or extended contract may be for any cause that is not arbitrary, capricious, discriminatory, personal, or ~~political-political, or prohibited by State or federal law~~. ~~The local board's decision not to offer the school administrator a new, renewed, or extended school administrator's contract is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.~~

(e) Repealed by Session Laws 1995, c. 369, s. 1.

(f) If the superintendent or the local board of education fails to notify a school administrator by June 1 of the final year of the contract that the school administrator will not be offered a new school administrator's contract, the school administrator shall be entitled to 30 days of additional employment or severance pay beyond the date the school administrator receives written notice that a new contract will not be offered.

(g) ~~If, prior to appointment as a school administrator, the school administrator held career status as a teacher in the local school administrative unit in which he or she is employed as a school administrator, a school administrator shall retain career status as a teacher if the school administrator is not offered a new, renewed, or extended contract by the local board of education, unless the school administrator voluntarily relinquished that right or is dismissed or demoted pursuant to G.S. 115C-325.~~

(h) An individual who holds a provisional assistant principal's certificate license and who is employed as an assistant principal under G.S. 115C-284(c) shall be considered a school administrator for purposes of this section. Notwithstanding subsection (b) of this section, a local board may enter into one-year contracts with a school administrator who holds a provisional assistant principal's certificate license. ~~If the school administrator held career status as a teacher in the local school administrative unit prior to being employed as an assistant principal and the State Board for any reason does not extend the school administrator's provisional assistant principal's certificate, the school administrator shall retain career status as a teacher unless the school administrator voluntarily relinquished that right or is dismissed or demoted under G.S. 115C-325. Nothing in this subsection or G.S. 115C-284(c) shall be construed to require a local board to extend or renew the contract of a school administrator who holds a provisional assistant principal's certificate license."~~

SECTION 9.6.(e) The State Board of Education shall develop by rule as provided in Article 2A of Chapter 150B of the General Statutes a model contract for use by local boards of education in awarding teacher contracts. The State Board may adopt a temporary rule for a model contract as provided in G.S. 150B-21.1 to provide a contract to local boards of education no later than January 1, 2014, but shall replace the temporary rule with a permanent rule as soon as practicable.

SECTION 9.6.(f) G.S. 115C-325(c)(1) through (c)(3) and G.S. 115-325(c)(5) and (c)(6) are repealed effective August 1, 2013. Individuals who have not received career status prior to the 2013-2014 school year shall not be granted career status during the 2013-2014

16 NCAC 06C .0701 Model Teacher Contract is adopted under temporary procedures as follows:

16 NCAC 06C .0701 MODEL TEACHER CONTRACT

All contracts between a local board of education, as defined in G.S. 115C-5(5), and a teacher, as defined in G.S. 115C-325, shall contain the following:

- (1) A statement that the contract is effective only if approved by a majority of the local board at an officially called meeting of the local board.
- (2) The term of the contract. Such term may be for any length permitted by law. At the conclusion of the contract term, the local board may, but is not required to, re-employ the teacher by offering the teacher a subsequent contract as provided by law.
- (3) An indication of the compensation that the teacher shall receive for professional services performed pursuant to the contract. Such compensation shall be at a rate consistent with the North Carolina General Statutes, the salary schedule for teachers established by the State of North Carolina, and any local supplement that may apply. If the teacher is to be paid from local funds, the compensation will be consistent with the local salary schedule adopted pursuant to G.S. 115C-302.1(h).
- (4) With respect to qualifications:
 - (a) The teacher's obligation to maintain a North Carolina teaching license valid for the teacher's area of assignment.
 - (b) The teacher's obligation to inform the local board's Human Resources Office in the event that the teacher's license is revoked, suspended, expired, or not renewed for any reason.
 - (c) A statement that the teacher is solely responsible for obtaining and maintaining the required licensure.
- (5) With respect to duties:
 - (a) A requirement that the teacher shall perform all duties assigned by the superintendent and required by the laws of the State of North Carolina.
 - (b) A statement that the contract does not give the teacher a right to any particular assignment or school site.
 - (c) A requirement that the teacher agrees to become familiar with and abide by the policies and practices of the local board and the North Carolina State Board of Education, and to abide by the laws of the State of North Carolina and the United States.
- (6) With respect to special duties:
 - (a) A statement that, if there are special duties or assignments for which the local board has agreed to compensate the teacher, those will be described in a separate agreement and the additional compensation will not be considered salary for the purpose of computing the teacher's salary under the provisions of G.S. 115C-325.
 - (b) A statement that any return to regular duties is not a demotion as defined by law.

ORIGINAL

- 1 (7) A provision that explains the teacher's entitlement to health care benefits, earned leave and such
2 other benefits as are available pursuant to the laws of the State of North Carolina and the policies
3 and practices of the local board.
- 4 (8) Any requirements for termination of the contract initiated by the teacher pursuant to the provisions
5 and procedures provided in G.S. 115C-325.1 et seq.
- 6 (9) Any requirements for alteration or termination of the contract by the local board pursuant to the
7 provisions and procedures provided in G.S. 115C-325.1 et seq.
- 8 (10) With respect to modification, a statement that the contract is subject to modification as a result of
9 subsequent legislative enactments.
- 10 (11) With respect to severability, a statement that if any provision of the contract is held to be invalid
11 or unenforceable, such provision shall be severed and shall be inoperative, and the remainder of
12 the contract shall remain in full force and effect.
- 13 (12) A statement indicating that the contract shall be governed by the laws of the State of North
14 Carolina.
- 15 (13) Any other provisions deemed necessary or as required by law.

16

17 History Note: Authority S.L. 2013-360, Sec. 9.6(e);
18 Temporary Adoption Eff. February 1, 2014.