



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

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October 25, 2012

Dedra Alston  
2201 Mail Service Center  
Raleigh, NC 27699-2201

Re: 10A NCAC 09 .3004, .3007, .3008

Dear Ms Alston:

At its October 18, 2012 meeting the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule .3004 based on lack of statutory authority and ambiguity. The agency has not cited specific authority for the restrictions in this rule which prohibit "[a]ctivities, instruction, or communications, which promote religious beliefs" from being "directed toward children participating in the NC Pre-K program (formerly the "More at Four" program) during the NC Pre-K day."

It appears these programs can be operated by any child care facility that is subject to these rules, including child care programs run by religious groups, and the rules are not restricted to programs operated by a public school system. If that is so, then there needs to be explicit authority to restrict any religious component of a school curriculum that might normally be offered by the child care program.

If "religious sponsored child care facilities" are eligible to operate under the NC Pre-K program and receive funding under it, then this rule would seem to violate G.S. 110-106.

In addition this rule is ambiguous in that it is not clear what constitutes "activities, instruction, or communications which promote religious beliefs." Would the presence of any religious art, pictures, signs or symbols on or within a building or room housed in a religious building or room constitute a violation?

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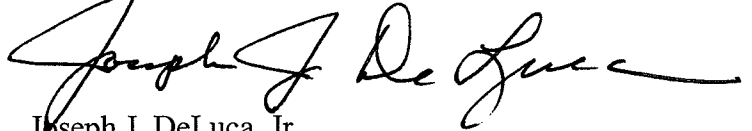
An Equal Employment Opportunity Employer

The Commission objected to Rule .3007 based on lack of authority or ambiguity. It is unclear what constitutes the "Early Learning and Development Standards. There is no authority to adopt them outside the rulemaking process and the NCAC.

The Commission objected to Rule .3008 based on ambiguity. In this rule it is unclear what an "approved assessment instrument" is or how the approval is made. There is no authority to make the "approved" determination outside rulemaking.

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,

A handwritten signature in black ink, appearing to read "Joseph J. DeLuca, Jr.", with a long horizontal flourish extending to the right.

Joseph J. DeLuca, Jr.  
Commission Counsel

JJD:jbe

1 10A NCAC 09 .3004 has been adopted as published in 26:23 NCR 1890 as follows:

2  
3 **10A NCAC 09 .3004 RELIGIOUS ACTIVITIES**

4 Activities, instruction, or communications, which promote religious beliefs, shall not be directed toward children  
5 participating in the NC Pre-K program during the NC Pre-K day.

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7 History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);

8 Eff. November 1, 2012.

1 10A NCAC 09 .3007 has been adopted as published in 26:23 NCR 1890 as follows:

2  
3 10A NCAC 09 .3007 EARLY LEARNING STANDARDS AND CURRICULA

4 (a) NC Pre-K programs shall use North Carolina's Early Learning and Development Standards (and subsequent  
5 editions), to guide their planning of developmentally appropriate, high-quality pre-kindergarten experiences for  
6 children.

7 (b) Each NC Pre-K classroom shall use a curriculum as defined in 10A NCAC 09 .0102.

8  
9 History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);

10 Eff. November 1, 2012.

1 10A NCAC 09 .3008 has been adopted with changes as published in 26:23 NCR 1890 as follows:

2

3 10A NCAC 09 .3008 **INSTRUCTIONAL FORMATIVE ASSESSMENTS**

4 Classroom staff are required to conduct ongoing assessments to gather information about each child's growth and  
5 skill development, as well as inform instruction. One of the approved assessment instruments as indicated in the NC  
6 Pre-K contractual agreement shall be used to meet this requirement.

7

8 *History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);*

9 *Eff. November 1, 2012.*