

Burgos, Alexander N

Subject: FW: [External] Re: BOE RFC

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Tuesday, March 17, 2026 12:22 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: BOE RFC

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Received. Thank you.

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, March 17, 2026 11:47 AM
To: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: BOE RFC

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Ryan,

Attached is a letter returning this rule. Let me know if you have any questions.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] Re: BOE RFC

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Tuesday, February 24, 2026 8:56 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: BOE RFC

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Seth,

Yes, that is correct. I will follow up with you end of next week after the State Board meeting with a (hopefully) final resolution on this.

Ryan

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Monday, February 23, 2026 4:56 PM
To: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: BOE RFC

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Ryan,

Circling back to this, can you confirm that the Board of Education would like the period of review for 16 NCAC 06H .0102 extended until March?

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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Burgos, Alexander N

Subject: FW: [External] Re: BOE RFC

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Thursday, February 5, 2026 12:41 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: BOE RFC

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Seth,

After reviewing this matter internally, I have concluded that this rule is likely unnecessary, as its substantive contents are covered by a separate, more recently adopted rule. Accordingly, I have recommended to the State Board of Education that it withdraw this rule from consideration and allow it to expire. I believe the Board intends to accept that recommendation, but it will not be able to take formal action on that recommendation until it's next meeting on March 5th.

As such, do I need to request RRC extend the time for consideration to its March meeting?

Thanks so much,

Ryan

P.S. Alex - for some reason my initial email did not go to Seth; I apologize that you are receiving this twice!

Burgos, Alexander N

Subject: FW: [External] Re: BOE RFC
Attachments: 1.2026 Extension letter SBE.docx

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, January 29, 2026 1:39 PM
To: Collins, Ryan <Ryan.Collins@dpi.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: BOE RFC

Ryan,

Attached is a letter memorializing the extension granted by the RRC at today's meeting.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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Burgos, Alexander N

Subject: FW: [External] Re: BOE RFC

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, January 27, 2026 1:45 PM
To: Collins, Ryan <Ryan.Collins@dpi.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: BOE RFC

Thanks. I anticipate recommending approval of the final revised version of these three rules, and an extension on the remaining rule at Thursday's meeting.

Hope the weather was uneventful for you.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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Burgos, Alexander N

Subject: FW: [External] Re: BOE RFC
Attachments: 16 NCAC 06H .0101 (Definitions).docx; 16 NCAC 06H .0104 (Sale of Competitive Foods).docx; 16 NCAC 06D .0508 (Read to Achieve Program) - FINAL.docx

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Tuesday, January 27, 2026 1:34 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: BOE RFC

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Seth,

My apologies for failing to highlight the post-publication changes. I've corrected that in the attached versions. I've also updated the CFR references per your guidance.

We would like to move forward with consideration of all rules except 06H .0102 at the meeting this Thursday. I'll be available online if there are questions.

Thanks so much,

Ryan

1 16 NCAC 06D .0508 is amended with changes as published in 40:07 NCR 636 as follows:

2
3 **16 NCAC 06D .0508 NORTH CAROLINA READ TO ACHIEVE PROGRAM**

4 (a) The governing board of each public school unit shall adopt retention and promotion policies for students in Grade
5 3 that are consistent with Chapter 115C, Article 8, Part ~~1a~~ **1A** of the General Statutes.

6 (b) For the purpose of ~~implementing the requirements of Chapter 115C, Article 8, Part 1a of the General Statutes,~~
7 assessing reading proficiency under G.S. 115C-83.7(b)(3), local school administrative units shall utilize the alternative
8 assessment approved by the State Board of Education in accordance with G.S. 115C-83.3. Any alternative assessment
9 approved by the SBE shall include the requirements listed in G.S. 115C-83.6(b) and shall not include the use of a
10 "three-cueing system" as defined in G.S. 115C-83.3(9a).

11 (c) The board of directors for a charter school may use an alternative assessment of its choice to ~~satisfy the~~
12 ~~requirements of Chapter 115C, Article 8, Part 1a of the General Statutes,~~ assess reading proficiency under G.S. 115C-
13 83.7(b)(3), provided that the board of directors notifies the SBE of the assessment it intends to use no later than
14 December August 1 of the school year in which it intends to use the alternative assessment. ~~The board of directors~~
15 ~~shall be responsible for any expenses associated with utilization of any alternative assessment other than the SBE-~~
16 ~~approved alternative assessment.~~ The provisions of this Paragraph shall also apply to the following:

17 (d) ~~The provisions of Paragraph (c) of this Rule shall also apply to the following:~~

- 18 (1) a local board of education, with respect to any school under the local board's jurisdiction that has
19 been authorized to operate under the Restart Model in accordance with 16 NCAC 06G .0317.
20 (2) a chancellor, with respect to any school operated as a laboratory school under Chapter 116, Article
21 29A of the General Statutes, if the chancellor accepts funding appropriated by the General Assembly
22 to support the Read to Achieve program.

23 (d) The governing body of a public school unit shall be responsible for any expenses associated with utilization of an
24 alternative assessment.

25 (e) For purposes of supplemental tutoring offered in accordance with G.S. 115C-83.8(e), a student is identified as
26 "retained twice" if the student was retained once in Kindergarten, Grade 1, Grade 2, or Grade 3, and was retained
27 again in Grade 3 either by placement in a Grade 3 class or a combined Grades 3 and 4 class in which the student
28 received Grade 3 instruction in reading.

29
30 *History Note: Authority G.S. 115C-12; 115C-83.1; 115C-83.3; 115C-83.6; 115C-83.7; 115C-83.7A; 115C-83.8;*
31 *115C-83.10; 115C-174.11; 115C-218.85;*
32 *Eff. July 1, 2014;*
33 *Amended Eff. February 1, 2026; January 1, 2025.*

1 16 NCAC 06H .0101 is readopted with changes as published in 40:07 NCR 637–639 as follows:

2
3 **SUBCHAPTER 06H - FEDERAL PROGRAMS**

4 **SECTION .0100 – OPERATION OF FEDERAL PROGRAMS**

5
6 **16 NCAC 06H .0101 DEFINITIONS**

7 **(a)** As used in this ~~Subchapter~~ Subchapter, the following definitions apply:

8 (1) "Federal agency" is defined in 2 C.F.R. 200.1.

9 (2) "Federal award" is defined in 2 C.F.R. 200.1.

10 (3) "Federal financial assistance" is defined in 2 C.F.R. 200.1.

11 (4) "Federal program" is defined in 2 C.F.R. 200.1.

12 ~~(5)~~ (5) "Free appropriate public education" (~~FAPE~~) or "FAPE" is defined by 34 CFR 300.13. in 34 C.F.R.
13 300.101.

14 ~~(6)~~ (6) "Individualized education program" (~~IEP~~) or "IEP" is defined by 34 CFR 300.340. in 34 C.F.R.
15 300.320.

16 ~~(7)~~ (7) "Least restrictive environment" (~~LRE~~) or "LRE" is defined by 34 CFR 300.550–300.556. in 34
17 C.F.R. 300.114.

18 (8) "Local education agency" or "LEA" is defined in 34 C.F.R. 303.28(a). For the purpose of federal
19 programs administered by the State Board of Education, the term "LEA" includes any public school
20 unit, as defined in G.S. 115C-5(7a), that is a subrecipient of a federal award.

21 ~~(9)~~ (9) "Parent" is defined by 34 CFR 300.20. in 34 C.F.R. 300.30.

22 (5) ~~"Willie M." class members are children under age 18 who now or will in the future suffer from~~
23 ~~serious emotional, mental or neurological handicaps, which handicaps have been accompanied by~~
24 ~~behavior which is characterized as violent or assaultive; and who are or will be in the future~~
25 ~~involuntarily placed in institutions or otherwise placed in residential programs; and who have not~~
26 ~~been provided appropriate treatment and education programs by the state.~~

27 (10) "Recipient" is defined in 2 C.F.R. 200.1. For the purpose of federal programs administered by the
28 State Board of Education, "recipient" includes a "grantee" as defined in 34 C.F.R. 77.1(c).

29 (11) "State education agency" or "SEA" is defined in 34 C.F.R. 300.41. The State Board of Education is
30 the SEA for the State of North Carolina.

31 (12) "Subaward" is defined in 2 C.F.R. 200.1.

32 (13) "Subrecipient" is defined in 2 C.F.R. 200.1. For the purpose of federal programs administered by
33 the State Board of Education, "subrecipient" includes a "subgrantee" as defined in 34 C.F.R. 77.1(c).

34 **(b)** The provisions of 2 C.F.R. 200.1 and Subpart A of Part 300 of Title 34 of the Code of Federal Regulations are
35 incorporated by reference throughout this Subchapter, including subsequent amendments and editions thereof. A copy
36 of these regulations is available at no cost from <https://www.ecfr.gov/current/title-2/section-200.1> and
37 <https://www.ecfr.gov/current/title-34/part-300/subpart-A>.

1
2 *History Note: Authority G.S. ~~115C-141~~; 115C-106.3; 115C-107.2; 2 C.F.R. 200.1; 34 C.F.R. 300.28; 34 C.F.R.*
3 *300.30; 34 C.F.R. 300.41; 34 C.F.R. 300.101; 34 C.F.R. 300.114; 34 C.F.R. 320;*
4 *Eff. July 1, 1986;*
5 *Amended Eff. December 1, 1999; June 1, ~~1996~~. 1996;*
6 *Readopted Eff. February 1, 2026.*

1 16 NCAC 06H .0104 is readopted with changes as published in 40:07 NCR 637–639 as follows:

2
3 **16 NCAC 06H .0104 CHILD NUTRITION PROCEDURES SALE OF COMPETITIVE FOODS**

4 ~~(a) National School Lunch Program policies and standards are as follows:~~

5 ~~(1) A la carte sales are limited to foods contributing to the nutritional well being of the child and aiding~~
6 ~~in the establishment of good food habits. School food authorities and sponsoring organizations may~~
7 ~~provide these foods under the following conditions:~~

8 ~~(A) Sponsors must operate all food and beverage services during or before the established lunch~~
9 ~~period through the school food service department.~~

10 ~~(B) The school food service department retains all receipts from the sale of these items.~~

11 ~~(C) Sponsors must use all food service income for the purpose of the school's non profit child~~
12 ~~nutrition programs.~~

13 ~~(D) A la carte items may not include foods of minimum nutritional value, as follows:~~

14 ~~(i) soda water (soda pop),~~

15 ~~(ii) water ices,~~

16 ~~(iii) chewing gum,~~

17 ~~(iv) processed foods made predominately from sweeteners or artificial sweeteners~~
18 ~~with a variety of minor ingredients. These foods include hard candy, jellies and~~
19 ~~gums, marshmallow candies, fondant, licorice, spun candy, and candy coated~~
20 ~~popcorn; and~~

21 ~~(v) confections and carbonated drinks.~~

22 ~~(E) Adults may purchase individual food items without purchasing a complete lunch.~~

23 ~~(2) Competitive food sales by a school of extra food items in the lunchroom or its general environs must~~
24 ~~be on a non profit basis. "On a non profit basis" means that the sponsor deposits income form the~~
25 ~~sale of such food items to the account of the school's non profit lunch and breakfast programs and~~
26 ~~uses the income solely for these programs.~~

27 ~~(A) The school may sell extra food items after the established lunch hour is over, only with the~~
28 ~~approval of the LEA. The established lunch hour is over when the last pupil has been~~
29 ~~served for the day.~~

30 ~~(B) Occupational home economics instructional programs which operate under an approved~~
31 ~~annual vocational education plan and which involve the preparation and sale of foods to~~
32 ~~individuals other than students are not in competition with the child nutrition program.~~

33 ~~(C) The Department may deny the opportunity to participate in the program to any school food~~
34 ~~authority which operates in violation of state policy.~~

35 (a) As used in this Rule, the following definitions shall apply:

36 (1) "Competitive food" is defined in 7 C.F.R. 210.11(a)(2).

37 (2) "National School Lunch Program" is defined in 7 C.F.R. 210.2.

1 (3) "Nonprofit school food service" is defined in 7 C.F.R. 210.2.

2 (4) "Nonprofit school food service account" is defined in 7 C.F.R. 210.2.

3 (5) "School campus" is defined in 7 C.F.R. 210.11(a)(4).

4 (6) "School day" is defined in 7 C.F.R. 210.11(a)(5).

5 ~~(b) Sponsors must use receipts from child nutrition programs for the cost of operation as outlined in current federal~~
6 ~~regulations and state policy.~~

7 (b) The provisions of Part 210 of Title 7 of the Code of Federal Regulations are incorporated by reference in this Rule,
8 including subsequent amendments and editions thereof. A copy of these regulations is available at no cost from
9 <https://www.ecfr.gov/current/title-7/part-210>.

10 ~~(b)~~ (c) All competitive foods shall, at minimum, meet the general nutrition standards established by 7 C.F.R. 210.1.

11 ~~(c)~~ (d) Each LEA shall maintain records in accordance with 7 CFR 210.11.

12 ~~(d)~~ (e) Each LEA may sell competitive foods during the school day, on the school campus, under the following
13 conditions:

14 (1) All receipts from the sale of these items before the cafeteria closes for the day shall be deposited in
15 the nonprofit school food service account.

16 (2) Adults may purchase individual food items without purchasing a complete lunch.

17 ~~(e)~~ (f) Instructional programs in culinary arts, which operate under an approved Career and Technical Education
18 plan and involve the preparation and sale of foods to individuals other than students, are not subject to this Rule.

19 ~~(f)~~ (g) The State Board of Education may deny the opportunity to participate in the National School Lunch Program
20 to any LEA which operates in violation of this Rule.

21 ~~(g)~~ (h) No full-time public school employee is eligible for part-time employment in nonprofit school food
22 services.

23 ~~(h)~~ (i) The only adults who may eat in the school food service department nonprofit school food services are school
24 employees, personnel on official school business business, and invited local patrons. These persons shall pay, as a
25 minimum, the adult price for lunch.

26
27 *History Note: Authority G.S. 115C-263; 115C-264; 7 C.F.R. 210.11(b)(1);*

28 *Eff. July 1, 1986. 1986;*

29 *Readopted Eff. February 1, 2026.*

Burgos, Alexander N

Subject: FW: [External] Re: BOE RFC

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Monday, January 26, 2026 12:38 PM
To: Collins, Ryan <Ryan.Collins@dpi.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: BOE RFC

Ryan,

Thanks for getting these to me. I have no problem recommending extension on Rule 06H. 0102.

For the other three rules, two issues:

1. Please highlight the post publication changes and add "with changes" to the intro line. See an example here: <https://www.oah.nc.gov/documents/rules/permanent-amendment-text-added-after-publication/download?attachment>
2. On the incorporation of CFR, the Commission has previously asked for more precise links than just to the ecf generally. Looking at what you are doing, I believe that these would be the correct links placed in the appropriate rules:

<https://www.ecfr.gov/current/title-2/section-200.1>

<https://www.ecfr.gov/current/title-34/part-300/subpart-A>

<https://www.ecfr.gov/current/title-7/part-210>

That said, given the weather situation, if you need an extension past this meeting for all the rules, I don't think that would be a problem. Please get me the updated rules or let me know about the extension by the end of the day Tuesday.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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Burgos, Alexander N

Subject: FW: [External] Re: BOE RFC
Attachments: BOE RFC Jan 26 (agency response).docx; 16 NCAC 06H .0101 (Definitions).docx; 16 NCAC 06H .0104 (Sale of Competitive Foods).docx; 16 NCAC 06D .0508 (Read to Achieve Program) - FINAL.docx

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Friday, January 23, 2026 3:33 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: BOE RFC

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Seth,

Thank you for your assistance with the incorporation question! Attached is the RFC with agency responses, along with copies of rules that have been revised.

We would like to delay RRC review of Rule 06H. 0102 to allow staff time to study this further. The changes that may be necessitated would likely be substantive and require further approval by the State Board of Education. The other rules can move forward without it.

Best,

Ryan

Ryan M. Collins, J.D., M.Ed.

Deputy General Counsel

Office of General Counsel

ryan.collins@dpi.nc.gov

984.236.2255 (o)



NORTH CAROLINA
State Board of Education
Department of Public Instruction

1 16 NCAC 06D .0508 is amended as published in 40:07 NCR 636 as follows:

2
3 **16 NCAC 06D .0508 NORTH CAROLINA READ TO ACHIEVE PROGRAM**

4 (a) The governing board of each public school unit shall adopt retention and promotion policies for students in Grade
5 3 that are consistent with Chapter 115C, Article 8, Part ~~1a~~ 1A of the General Statutes.

6 (b) For the purpose of ~~implementing the requirements of Chapter 115C, Article 8, Part 1a of the General Statutes,~~
7 assessing reading proficiency under G.S. 115C-83.7(b)(3), local school administrative units shall utilize the alternative
8 assessment approved by the State Board of Education in accordance with G.S. 115C-83.3. Any alternative assessment
9 approved by the SBE shall include the requirements listed in G.S. 115C-83.6(b) and shall not include the use of a
10 "three-cueing system" as defined in G.S. 115C-83.3(9a).

11 (c) The board of directors for a charter school may use an alternative assessment of its choice to ~~satisfy the~~
12 ~~requirements of Chapter 115C, Article 8, Part 1a of the General Statutes,~~ assess reading proficiency under G.S. 115C-
13 83.7(b)(3), provided that the board of directors notifies the SBE of the assessment it intends to use no later than
14 ~~December~~ August 1 of the school year in which it intends to use the alternative assessment. ~~The board of directors~~
15 ~~shall be responsible for any expenses associated with utilization of any alternative assessment other than the SBE-~~
16 ~~approved alternative assessment.~~ The provisions of this Paragraph shall also apply to the following:

17 (d) ~~The provisions of Paragraph (c) of this Rule shall also apply to the following:~~

- 18 (1) a local board of education, with respect to any school under the local board's jurisdiction that has
19 been authorized to operate under the Restart Model in accordance with 16 NCAC 06G .0317.
20 (2) a chancellor, with respect to any school operated as a laboratory school under Chapter 116, Article
21 29A of the General Statutes, if the chancellor accepts funding appropriated by the General Assembly
22 to support the Read to Achieve program.

23 (d) The governing body of a public school unit shall be responsible for any expenses associated with utilization of an
24 alternative assessment.

25 (e) For purposes of supplemental tutoring offered in accordance with G.S. 115C-83.8(e), a student is identified as
26 "retained twice" if the student was retained once in Kindergarten, Grade 1, Grade 2, or Grade 3, and was retained
27 again in Grade 3 either by placement in a Grade 3 class or a combined Grades 3 and 4 class in which the student
28 received Grade 3 instruction in reading.

29
30 *History Note: Authority G.S. 115C-12; 115C-83.1; 115C-83.3; 115C-83.6; 115C-83.7; 115C-83.7A; 115C-83.8;*
31 *115C-83.10; 115C-174.11; 115C-218.85;*
32 *Eff. July 1, 2014;*
33 *Amended Eff. February 1, 2026; January 1, 2025.*

1 16 NCAC 06H .0101 is readopted as published in 40:07 NCR 637–639 as follows:

2
3 **SUBCHAPTER 06H - FEDERAL PROGRAMS**

4 **SECTION .0100 – OPERATION OF FEDERAL PROGRAMS**

5
6 **16 NCAC 06H .0101 DEFINITIONS**

7 (a) As used in this Subchapter, the following definitions apply:

8 (1) "Federal agency" is defined in 2 C.F.R. 200.1.

9 (2) "Federal award" is defined in 2 C.F.R. 200.1.

10 (3) "Federal financial assistance" is defined in 2 C.F.R. 200.1.

11 (4) "Federal program" is defined in 2 C.F.R. 200.1.

12 ~~(5)~~ (5) "Free appropriate public education" (FAPE) or "FAPE" is defined by 34 CFR 300.13. in 34 C.F.R.
13 300.101.

14 ~~(6)~~ (6) "Individualized education program" (IEP) or "IEP" is defined by 34 CFR 300.340. in 34 C.F.R.
15 300.320.

16 ~~(7)~~ (7) "Least restrictive environment" (LRE) or "LRE" is defined by 34 CFR 300.550–300.556. in 34
17 C.F.R. 300.114.

18 (8) "Local education agency" or "LEA" is defined in 34 C.F.R. 303.28(a). For the purpose of federal
19 programs administered by the State Board of Education, the term "LEA" includes any public school
20 unit, as defined in G.S. 115C-5(7a), that is a subrecipient of a federal award.

21 ~~(9)~~ (9) "Parent" is defined by 34 CFR 300.20. in 34 C.F.R. 300.30.

22 ~~(5) "Willie M." class members are children under age 18 who now or will in the future suffer from~~
23 ~~serious emotional, mental or neurological handicaps, which handicaps have been accompanied by~~
24 ~~behavior which is characterized as violent or assaultive; and who are or will be in the future~~
25 ~~involuntarily placed in institutions or otherwise placed in residential programs; and who have not~~
26 ~~been provided appropriate treatment and education programs by the state.~~

27 (10) "Recipient" is defined in 2 C.F.R. 200.1. For the purpose of federal programs administered by the
28 State Board of Education, "recipient" includes a "grantee" as defined in 34 C.F.R. 77.1(c).

29 (11) "State education agency" or "SEA" is defined in 34 C.F.R. 300.41. The State Board of Education is
30 the SEA for the State of North Carolina.

31 (12) "Subaward" is defined in 2 C.F.R. 200.1.

32 (13) "Subrecipient" is defined in 2 C.F.R. 200.1. For the purpose of federal programs administered by
33 the State Board of Education, "subrecipient" includes a "subgrantee" as defined in 34 C.F.R. 77.1(c).

34 (b) The provisions of 2 C.F.R. 200.1 and Subpart A of Part 300 of Title 34 of the Code of Federal Regulations are
35 incorporated by reference throughout this Subchapter, including subsequent amendments and editions thereof. A copy
36 of these regulations is available at no cost from <https://www.ecfr.gov>.

1 *History Note:* Authority G.S. ~~115C-141~~; 115C-106.3; 115C-107.2; 2 C.F.R. 200.1; 34 C.F.R. 300.28; 34 C.F.R.
2 300.30; 34 C.F.R. 300.41; 34 C.F.R. 300.101; 34 C.F.R. 300.114; 34 C.F.R. 320;
3 Eff. July 1, 1986;
4 Amended Eff. December 1, 1999; June 1, ~~1996~~. 1996;
5 Readopted Eff. February 1, 2026.

1 16 NCAC 06H .0104 is readopted as published in 40:07 NCR 637–639 as follows:

2
3 **16 NCAC 06H .0104 CHILD NUTRITION PROCEDURES SALE OF COMPETITIVE FOODS**

4 ~~(a) National School Lunch Program policies and standards are as follows:~~

5 ~~(1) A la carte sales are limited to foods contributing to the nutritional well being of the child and aiding~~
6 ~~in the establishment of good food habits. School food authorities and sponsoring organizations may~~
7 ~~provide these foods under the following conditions:~~

8 ~~(A) Sponsors must operate all food and beverage services during or before the established lunch~~
9 ~~period through the school food service department.~~

10 ~~(B) The school food service department retains all receipts from the sale of these items.~~

11 ~~(C) Sponsors must use all food service income for the purpose of the school's non profit child~~
12 ~~nutrition programs.~~

13 ~~(D) A la carte items may not include foods of minimum nutritional value, as follows:~~

14 ~~(i) soda water (soda pop),~~

15 ~~(ii) water ices,~~

16 ~~(iii) chewing gum,~~

17 ~~(iv) processed foods made predominately from sweeteners or artificial sweeteners~~
18 ~~with a variety of minor ingredients. These foods include hard candy, jellies and~~
19 ~~gums, marshmallow candies, fondant, licorice, spun candy, and candy coated~~
20 ~~popcorn; and~~

21 ~~(v) confections and carbonated drinks.~~

22 ~~(E) Adults may purchase individual food items without purchasing a complete lunch.~~

23 ~~(2) Competitive food sales by a school of extra food items in the lunchroom or its general environs must~~
24 ~~be on a non profit basis. "On a non profit basis" means that the sponsor deposits income from the~~
25 ~~sale of such food items to the account of the school's non profit lunch and breakfast programs and~~
26 ~~uses the income solely for these programs.~~

27 ~~(A) The school may sell extra food items after the established lunch hour is over, only with the~~
28 ~~approval of the LEA. The established lunch hour is over when the last pupil has been~~
29 ~~served for the day.~~

30 ~~(B) Occupational home economics instructional programs which operate under an approved~~
31 ~~annual vocational education plan and which involve the preparation and sale of foods to~~
32 ~~individuals other than students are not in competition with the child nutrition program.~~

33 ~~(C) The Department may deny the opportunity to participate in the program to any school food~~
34 ~~authority which operates in violation of state policy.~~

35 (a) As used in this Rule, the following definitions shall apply:

36 (1) "Competitive food" is defined in 7 C.F.R. 210.11(a)(2).

37 (2) "National School Lunch Program" is defined in 7 C.F.R. 210.2.

1 (3) "Nonprofit school food service" is defined in 7 C.F.R. 210.2.

2 (4) "Nonprofit school food service account" is defined in 7 C.F.R. 210.2.

3 (5) "School campus" is defined in 7 C.F.R. 210.11(a)(4).

4 (6) "School day" is defined in 7 C.F.R. 210.11(a)(5).

5 ~~(b) Sponsors must use receipts from child nutrition programs for the cost of operation as outlined in current federal~~
6 ~~regulations and state policy.~~

7 (b) The provisions of Part 210 of Title 7 of the Code of Federal Regulations are incorporated by reference in this Rule,
8 including subsequent amendments and editions thereof. A copy of these regulations is available at no cost from
9 <https://www.ecfr.gov>.

10 (c) All competitive foods shall, at minimum, meet the general nutrition standards established by 7 C.F.R. 210.1.

11 (d) Each LEA shall maintain records in accordance with 7 CFR 210.11.

12 (e) Each LEA may sell competitive foods during the school day, on the school campus, under the following conditions:

13 (1) All receipts from the sale of these items before the cafeteria closes for the day shall be deposited in
14 the nonprofit school food service account.

15 (2) Adults may purchase individual food items without purchasing a complete lunch.

16 (f) Instructional programs in culinary arts, which operate under an approved Career and Technical Education plan and
17 involve the preparation and sale of foods to individuals other than students, are not subject to this Rule.

18 (g) The State Board of Education may deny the opportunity to participate in the National School Lunch Program to
19 any LEA which operates in violation of this Rule.

20 ~~(h)~~ (h) No full-time public school employee is eligible for part-time employment in nonprofit school food services.

21 ~~(i)~~ (i) The only adults who may eat in the school food service department nonprofit school food services are school
22 employees, personnel on official school business, and invited local patrons. These persons shall pay, as a
23 minimum, the adult price for lunch.

24
25 *History Note: Authority G.S. 115C-263; 115C-264; 7 C.F.R. 210.11(b)(1);*

26 *Eff. July 1, ~~1986~~ 1986;*

27 *Readopted Eff. February 1, 2026.*

**Request for Changes Pursuant to
N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;; and”
 - Right: “~~day~~, day; and”
7. Formatting instructions and examples may be found at:
<https://www.oah.nc.gov/rule-format-examples>

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Board of Education

RULE CITATION: 16 NCAC 06D .0508

DEADLINE FOR RECEIPT: January 23, 2026

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 5, the "A" in "Part 1A" should be capitalized.

I have made this correction.

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Board of Education

RULE CITATION: 16 NCAC 06H .0101

DEADLINE FOR RECEIPT: January 23, 2026

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Have you incorporated the various CFR provisions referenced here in another rule? If so, where?

I added Paragraph (b) incorporating the relevant provisions.

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Board of Education

RULE CITATION: 16 NCAC 06H .0102

DEADLINE FOR RECEIPT: January 23, 2026

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 6, "may" is generally a problem in rules without more specific information. What are the circumstances or procedures for withholding funds? Without these details, the rule is potentially vague or unnecessary.

We would like to delay RRC review of this Rule to allow staff time to study this further. The changes that may be necessitated would likely be substantive and require further approval by the State Board of Education.

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

Seth Ascher
Commission Counsel
Date submitted to agency: January 9, 2026

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Board of Education

RULE CITATION: 16 NCAC 06H .0104

DEADLINE FOR RECEIPT: January 23, 2026

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

*Are the sections of the CFR referenced in this rule already incorporated in another rule?
If so, where?*

I added Paragraph (b) incorporating the relevant provisions.

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

Burgos, Alexander N

Subject: FW: [External] Re: BOE RFC

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Friday, January 9, 2026 3:33 PM
To: Collins, Ryan <Ryan.Collins@dpi.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: BOE RFC

Ryan,

G.S. 150B-21.6 has requirements for incorporation of material by reference, which is what you are doing here. https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_150B/GS_150B-21.6.pdf

The style guide, while potentially out of date in some places, has a good example of language to use for incorporation in Chapter 11: <https://www.oah.nc.gov/documents/rules/administrative-rule-style-guide-updated-april-2021/download>. Most agencies rely on some version of that language when they incorporate by reference.

The incorporation only has to be done once, as long as it is clear what you are doing. For example, DOL has a rule with all their incorporations: <http://reports.oah.state.nc.us/ncac/title%2013%20-%20labor/chapter%2007%20-%20office%20of%20occupational%20safety%20and%20health/subchapter%20a/13%20ncac%2007a%20.0301.pdf>.

You can also do it individually as items come up. A recent EMC (15A NCAC 02B .0226) example does this: <https://www.oah.nc.gov/emc-final-revised-rules-1/open>

For your rules, the first question is are these sections of the CFR already incorporated somewhere in your rules. If so, I just need to know where that is. If they are not, you'll need to do it in these rules. It is up to the agency how much they want to incorporate, either each specific CFR rule which will require its own language, or you can do a whole part of the CFR at once (assuming you want to incorporate the whole thing).

Hopefully this makes sense. Happy to discuss it further with you next week.

Seth Ascher

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Friday, January 9, 2026 2:28 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] Re: BOE RFC

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Hello Seth,

Thank you for your feedback. For two of the rules, you included the following question:

Have you incorporated the various CFR provisions referenced here in another rule? If so, where?

Could you elaborate on this question? This the first rule I've done that has relied on authority from federal law, so if I've missed something in the APA or RRC rules related to this, I'd appreciate your guidance on that. We have several more rules in the pipeline that reference federal law so I'd like to be proactive in revising those as well.

Ryan

Ryan M. Collins, J.D., M.Ed.

Assistant General Counsel

Office of General Counsel

ryan.collins@dpi.nc.gov

984.236.2255 (o)



NORTH CAROLINA
State Board of Education
Department of Public Instruction