

## Burgos, Alexander N

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**Subject:** FW: [External] Re: RFC for September SBE Rule

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**From:** Ascher, Seth M <seth.ascher@oah.nc.gov>  
**Sent:** Tuesday, August 27, 2024 3:25 PM  
**To:** Collins, Ryan <Ryan.Collins@dpi.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ziko, Thomas <Thomas.Ziko@dpi.nc.gov>  
**Subject:** Re: [External] Re: RFC for September SBE Rule

Ryan,

Thank you. I anticipate recommending approval of your updated rules at September's meeting. I'll let you know if anything changes before then.

**Seth Ascher**

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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**From:** Ryan Collins <[Ryan.Collins@dpi.nc.gov](mailto:Ryan.Collins@dpi.nc.gov)>  
**Sent:** Tuesday, August 27, 2024 3:20 PM  
**To:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Ziko, Thomas <[Thomas.Ziko@dpi.nc.gov](mailto:Thomas.Ziko@dpi.nc.gov)>  
**Subject:** [External] Re: RFC for September SBE Rule

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Good Afternoon, Seth,

I have made the requested changes. The revised rule and form are attached.

Best,

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

*Assistant General Counsel*

North Carolina State Board of Education

[ryan.collins@dpi.nc.gov](mailto:ryan.collins@dpi.nc.gov)

984.236.2255 (o)



**NORTH CAROLINA**  
State Board of Education  
Department of Public Instruction

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1                   **SECTION .0400 – ~~ANNUITIES AND PENSIONS~~ SALARY AND BENEFITS**

2  
3       16 NCAC 06C .0408 is adopted with changes as published in 38:23 NCR 1500–1503 follows:

4  
5       **16 NCAC 06C .0408       PARENTAL LEAVE**

6       (a) For the purposes of this Rule, the following definitions shall apply:

- 7           (1)       “Child” means a newborn biological child or a newly placed adopted, foster, or otherwise legally  
8                   placed child under the age of 18 whose parent is an eligible employee.
- 9           (2)       “Continuous” leave means leave taken over a continuous period for the full amount of leave to  
10                   which an eligible employee is entitled under Paragraph (c).
- 11          (3)       “Eligible employee” means a person employed to fill a permanent, probationary, or time-limited  
12                   position in a public-school unit (“PSU”) who meets the eligibility requirements set forth in  
13                   Paragraph (b). “Eligible employee” shall not include temporary employees or independent  
14                   contractors.
- 15          (4)       “Intermittent” leave means leave taken in separate periods for a single qualifying event that  
16                   cumulatively equal the amount of leave to which an eligible employee is entitled under Paragraph  
17                   (c) of this Rule. Intermittent leave may include periods of leave ranging from half of an employee’s  
18                   regularly scheduled workday to several consecutive workdays.
- 19          (3)       “Parent” means the legal guardian or custodian of a child through birth, adoption, foster care, or  
20                   other legal placement.
- 21          (4)       “Public school unit” or “PSU” is defined in G.S. ~~115C-5(7a)~~. This 115C-5(7a), except that this Rule  
22                   shall only apply to a charter school if the board of directors for the charter school has opted to  
23                   provide for paid parental leave in accordance with G.S. 115C-218.90(a)(6). The board shall notify  
24                   the ~~Division of Financial and Business Services~~ Office of Charter Schools at the Department of  
25                   Public Instruction of its intent to offer paid parental leave no later than October 1 of the fiscal year  
26                   for which it intends the leave to be available.
- 27          (5)       “Qualifying event” means when an eligible employee becomes a parent to a child.

28       (b) To be eligible for paid parental leave, a PSU employee shall, at the time of the qualifying event, have been in pay  
29       status, as defined in 25 NCAC 01D .0105, with a PSU, state agency, or other public entity providing paid parental  
30       leave under G.S. 126-8.6 for at least 1,040 hours without a break in service within the previous 12-month period. The  
31       employee may aggregate periods of employment with different employers to satisfy this requirement, except that any  
32       period of employment by a charter school shall not satisfy this requirement unless the governing board of the charter  
33       school has elected to provide paid parental leave in accordance with G.S. 115C-218.90(a)(6). For purposes of this  
34       Rule, a break in service is defined in 25 NCAC 01D .0144, provided it shall not include:

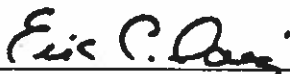
- 35           (1)       Any period in the past 12 months during which the employee was receiving workers’ compensation  
36                   under G.S. 97-1 et seq. or on short-term disability under G.S. 135-105.
- 37           (2)       Any period in which the employee was on leave without pay.

- (3) Any period in which the employee was absent due to military service in the Armed Forces of the United States, in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301–4333.
- (4) For a 10- or 11-month employee whose employment will continue for the following school year, the time between the conclusion of one employment period and the commencement of the following employment period.
- (5) For an employee who transitions from one employer offering paid parental leave under G.S. 126-8.6 to another employer providing paid parental leave under G.S. 126-8.6, any time between the date of separation from the first employer and the date of hire for the second employer, not to exceed 31 days.
- (c) A full-time eligible employee who becomes a parent to a child shall be entitled to the following:
- (1) For a parent who gives birth to a child, up to eight weeks of paid parental leave consisting of:
- (A) Four weeks for physical and mental recuperation; and
- (B) Four weeks for bonding with the child.
- (2) For any other qualifying event, up to four weeks of paid parental leave for bonding with the child.
- (d) A part-time eligible employee who becomes a parent to a child shall be entitled to a prorated share of paid parental leave based upon the hours in the employee's regular, weekly schedule compared to the hours worked by a full-time employee in a similar position within the PSU, provided that the prorated share of leave shall not exceed the total number of weeks provided to a full-time employee under Paragraph (c).
- (e) If an eligible employee gives birth to a child and places the child up for adoption or into foster care, or otherwise legally places the child with another person to serve as the child's parent, the employee shall be entitled to up to four weeks of leave for physical and mental recuperation from the time of the child's birth. Neither a birthing parent nor a non-birthing parent shall be entitled to additional leave for bonding with the child.
- (f) If a fetus dies prior to a completed birth, or if a child dies after a completed birth, the following rules shall apply:
- (1) If the fetus dies before the conclusion of the 12th week of pregnancy, there is no qualifying event creating an entitlement to paid parental leave under this Rule.
- (2) If the fetus dies after the conclusion of the 12th week of pregnancy but prior to a completed birth, an otherwise eligible employee who carried the child shall be entitled to up to four weeks of leave for physical and mental recuperation. Neither a birthing parent nor a non-birthing parent shall be entitled to additional leave for bonding with the child.
- (3) If a child dies after a completed birth, an otherwise eligible employee shall be entitled to the same amount of leave to which the employee would be entitled under Paragraphs (c) or (d).
- (g) The paid parental leave provided by this Rule shall result in compensation at 100 percent of the eligible employee's regular, straight-time pay.
- (h) The paid parental leave provided under this Rule is in addition to any other leave authorized by this Chapter, State or federal law, or policies established by the PSU, provided that the paid parental leave:

- (1) Shall not be counted against or deducted from an eligible employee's sick, vacation, bonus, or other accrued leave.
- (2) Shall be reported by the PSU separately from all other paid leave.
- (3) Shall not accrue and is not eligible for donation to another employee.
- (4) Shall not be used for calculating the employee's retirement benefits.
- (5) Shall run concurrently with any leave to which the employee may be entitled under the Family and Medical Leave Act, 28 U.S.C. 2601–2654, provided the PSU has complied with the appropriate notice requirements in 29 C.F.R. 825.300.
- (i) An eligible employee who requests paid parental leave shall do so in accordance with policies adopted by the employee's PSU, subject to the following:
- (1) The paid parental leave may be used any time during the 12 months following a qualifying event on either a continuous or intermittent basis. A PSU shall not deny or delay an employee's request to use paid parental leave, or otherwise require the employee to use the leave on a prescribed schedule, without the employee's consent.
- (2) The employee shall provide advanced notice to the PSU of the employee's intent to use paid parental leave in accordance with policies adopted by the PSU. When possible, the employee shall provide notice at least ten weeks in advance of a qualifying event, but under no circumstances shall a PSU require more than ten weeks' notice.
- (3) The paid parental leave provided by this Rule may be used only once for a qualifying event within a 12-month period. Multiple births, adoptions, or other legal placements within the same 12-month period shall not entitle an otherwise eligible employee to more than one award of paid parental leave.
- (4) If both parents of a child are employed by the same PSU, the PSU shall permit both parents to take paid parental leave simultaneously if they so request, subject to Subparagraphs (1) and (2) of this Paragraph.
- (5) An employee shall forfeit any unused paid parental leave 12 months after the date of the qualifying event.
- (j) This paid parental leave provided by this Rule applies only to requests for paid parental leave related to qualifying events occurring on or after July 1, 2023. Nothing in this Rule shall prohibit an employer, if authorized, from providing paid parental leave in amounts greater than what is required by this Rule.

*History Note: Authority G.S. 115C-12(5); 115C-12(8); 115C-12(16); 115C-272; 115C-285; 115C-302.1; 115C-315; 126-8.6;*  
*Temporary Adoption Eff. Oct. 27, 2023;*  
*Eff. October 1, 2024.*

# SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: State Board of Education	
2. Rule citation & name (name not required for repeal): 16 NCAC 06C .0408 (Parental Leave)	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READoption <input type="checkbox"/> REPEAL through READoption	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 6/3/24 Link to Agency notice: <a href="https://files.nc.gov/oah/documents/2024-06/Volume-38-Issue-23-June-3-2024.pdf?VersionId=YAKuzsmCDDT33fVEXIHBmiNMvDjhFQl0">https://files.nc.gov/oah/documents/2024-06/Volume-38-Issue-23-June-3-2024.pdf?VersionId=YAKuzsmCDDT33fVEXIHBmiNMvDjhFQl0</a> Hearing on: 6/21/24 Adoption by Agency on: 8/5/24 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1)  <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority:  <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply.  <input type="checkbox"/> This Rule was part of a combined analysis.  <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input checked="" type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
<div style="text-align: center;"><b>9. REASON FOR ACTION</b></div> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;">           9A. What prompted this action? Check all that apply:  <input type="checkbox"/> Agency  <input type="checkbox"/> Court order / cite:  <input type="checkbox"/> Federal statute / cite:  <input type="checkbox"/> Federal regulation / cite:         </div> <div style="width: 48%;"> <input checked="" type="checkbox"/> Legislation enacted by the General Assembly              Cite Session Law: S.L. 2023-14  <input type="checkbox"/> Petition for rule-making  <input type="checkbox"/> Other:         </div> </div> <div style="margin-top: 10px;">           9B. Explain: S.L. 2023-14, Part V—as amended by S.L. 2023-65, Part XIII-A, and S.L. 2023-134, Section 7.83—added G.S. 126-8.6 to the North Carolina General Statutes, which provides for paid parental leave for State employees and employees of other public entities, including the public school system. G.S. 126-8.6(c) directs the State Human Resources Commission (SHRC) to adopt rules and policies providing for State employees to receive paid parental leave of up to 8 weeks after giving birth to a child and up to 4 weeks after any other qualifying event (defined as becoming a parent to a child). G.S. 126-8.6(e) directs the “appropriate governing board, officer, or entity” to adopt rules and policies awarding paid parental leave to other employees covered by the law that are “substantially equivalent” to those adopted by the SHRC. As the governing board for the North Carolina public school system, the State Board of Education (SBE) is charged with adopting paid parental leave rules for public school employees. The SHRC adopted its temporary rules, effective August 25, 2023, and published in the North Carolina Register at 38:06 NCR 354–57. The SBE adopted its temporary rule, effective October 27, 2023, and published in the Register at 38:10 NCR 639–41. The SHRC proposed permanent rules to replace the temporary rules, published in the Register at 38:18 NCR 1204–08, which added additional substantive provisions not previously addressed by the temporary rules. The SHRC adopted these rules (unchanged from publication) on June 7, 2024, and the RRC approved them during its meeting on July 31, 2024. The SBE has adopted a final permanent rule, which is substantially equivalent to the SHRC final permanent rules.         </div>	
10. Rulemaking Coordinator: Ryan M. Collins Phone: 984-236-2255 E-Mail: <a href="mailto:ryan.collins@dpi.nc.gov">ryan.collins@dpi.nc.gov</a>  Additional agency contact, if any: Thomas J. Ziko Phone: 984-236-1040 E-Mail: <a href="mailto:thomas.ziko@dpi.nc.gov">thomas.ziko@dpi.nc.gov</a>	11. Signature of Agency Head* or Rule-making Coordinator:  <div style="text-align: center; margin: 10px 0;">  </div> *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: Eric C. Davis Title: Chairman

## SUBMISSION FOR PERMANENT RULE

RRC AND OAH USE ONLY

Action taken:

- ☐ RRC extended period of review:
- ☐ RRC determined substantial changes:
- ☐ Withdrawn by agency
- ☐ Subject to Legislative Review
- ☐ Other:

## **Burgos, Alexander N**

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**From:** Ascher, Seth M  
**Sent:** Monday, August 26, 2024 4:17 PM  
**To:** Collins, Ryan  
**Cc:** Burgos, Alexander N; Ziko, Thomas  
**Subject:** RFC for September SBE Rule  
**Attachments:** SBE RFC September.docx

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the State Board of Education for the September 2024 RRC meeting. The RRC will formally review these Rules at its meeting on Wednesday, September 25, 2024, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. There is one stylistic change for one rule. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on September 9, 2024.

Please let me know if you have any questions of concerns.

### **Seth Ascher**

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

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