

Burgos, Alexander N

Subject: FW: [External] 16 NCAC 06C .0602 Objection Letter

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Tuesday, May 14, 2024 3:29 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] 16 NCAC 06C .0602 Objection Letter

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Thanks, Seth. It's on my calendar and I will plan to join via WebEx.

Burgos, Alexander N

Subject: FW: [External] 16 NCAC 06C .0602 Objection Letter

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, May 14, 2024 3:19 PM
To: Collins, Ryan <Ryan.Collins@dpi.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] 16 NCAC 06C .0602 Objection Letter

Ryan,

I anticipate recommending approval of the updated rule at the meeting on May 29th.

We recommend that someone from the agency be available if there are any questions, but it shouldn't be a problem to participate via Webex if that is more convenient for you or your agency. Assuming nothing comes up between now and the meeting, your rule will likely be handled early in the agenda.

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] 16 NCAC 06C .0602 Objection Letter
Attachments: 16 NCAC 06C .0602 (Standards of Professional Conduct).docx

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Monday, May 6, 2024 11:18 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] 16 NCAC 06C .0602 Objection Letter

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Good Morning, Seth,

The State Board of Education approved a revised version of 16 NCAC 06C .0602 during its meeting on May 2, 2024. The revised version removes the provision that was previously noted as Paragraph (2) of the proposed amendments. I believe this should be sufficient to address the RRC's objection.

Please let me know if you need anything else. I am available to attend the meeting on May 29th in person if needed.

Best,

Ryan

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

Assistant General Counsel

North Carolina State Board of Education

ryan.collins@dpi.nc.gov

984.236.2255 (o)



NORTH CAROLINA
State Board of Education
Department of Public Instruction

1 16 NCAC 06C .0602 is amended under temporary procedures as follows:

2
3 **16 NCAC 06C .0602 STANDARDS OF PROFESSIONAL CONDUCT**

4
5 ~~(a) The standards [Standards of Professional Conduct (“Standards”)] listed in this Section shall be generally accepted~~
6 ~~for the education profession and shall be the basis for State Board review of [reviewing the] performance of~~
7 ~~professional educators. [educators by the State Board of Education (“SBE”).] These standards shall establish~~
8 ~~mandatory prohibitions and requirements for educators. Violation of these standards [Standards] shall subject an~~
9 ~~educator to investigation and disciplinary action by the SBE or LEA. [any public school unit by which the educator is~~
10 ~~employed.]~~

11 ~~(b) Professional educators shall adhere to the standards of professional conduct contained [Standards as set forth] in~~
12 ~~this Rule. Any intentional act or omission that violates these standards [Standards] is prohibited.~~

13 ~~This Rule establishes uniform Standards of Professional Conduct (“Standards”) for professional educators in North~~
14 ~~Carolina, which apply to all persons who hold a professional educator license issued pursuant to this Subchapter and~~
15 ~~Chapter 115C, Article 17E of the General Statutes. These Standards shall be the basis for reviewing the performance~~
16 ~~or professional educators by the State Board of Education (“SBE”). Violation of these Standards shall be grounds for~~
17 ~~disciplinary sanctions against a professional educator’s license as provided in this Section.~~

18 (1) ~~Generally recognized professional standards. Recognized Professional Standards.~~ The educator shall adhere
19 to and practice the professional standards of all federal, state, and local governing bodies. ~~bodies [with oversight~~
20 ~~of public education] with public education oversight.~~

21 ~~(2) Personal conduct. [Conduct.]~~ The educator shall serve as a positive role model for students, parents, and the
22 community. Because the educator is entrusted with the care and education of small children and adolescents, the
23 educator shall demonstrate a high standard of personal character and conduct. ~~[The educator is entrusted with the~~
24 ~~care and education of children and adolescents. As a result, the educator shall demonstrate a high standard of~~
25 ~~personal character and conduct and shall serve as a positive role model for students, parents, and the community.]~~

26 ~~[(3)] (2) Conduct with Students.~~ The educator shall treat all students with respect and maintain appropriate
27 professional boundaries with all students, regardless of whether that student is directly under the care or
28 supervision of the educator. ~~[The] Specifically the,~~ educator shall not engage in any of the following conduct
29 toward or in the presence of a student:

30 (A) Use of profane, vulgar, or demeaning language.

31 (B) Intentional or reckless exposure of students to profane, vulgar, or sexually explicit material except as part
32 of age-appropriate classroom instruction or other pedagogical practice.

33 ~~[(B) Intentional solicitation.] (C) Solicitation,~~ encouragement, or consummation of a romantic, physical, or
34 sexual relationship with a ~~[student.] student in any form, whether written, verbal, or physical.~~ As used in this
35 context, “solicitation” or “encouragement” shall include engaging in a pattern of flirtatious behavior; efforts
36 to gain access to, or time alone with, a student with no clear educational or school-related objective; provision
37 of individualized or specialized treatment, including tangible or monetary gifts, to a student that does not

1 comply with generally recognized professional standards for educators; or any other behavior that could be
2 perceived by a rational observer as excessively personal or intimate in the context of the educator-student
3 relationship.

4 ~~[(C)]~~ (D) Solicitation, encouragement, or consummation of sexual contact with a student.

5 ~~[(D)]~~ (E) Sexual harassment, as defined in 34 C.F.R. 106.30(a).

6 ~~[(E)]~~ (F) Child abuse, as defined in G.S. 14-318.2 or G.S. 14-318.4.

7 ~~[(4)]~~ (3) Alcohol and Controlled Substances. The educator shall not be under the influence of, possess, use, or
8 consume an alcoholic beverage or a controlled substance, as defined in G.S. 90-95, on school premises, at a
9 school-sponsored activity, or when otherwise discharging the educator's professional duties, unless the educator
10 has a prescription from a licensed medical professional authorizing such use. The educator shall not furnish
11 alcoholic beverages or controlled substances to a student, except for the administration of medication prescribed
12 by a ~~licensee~~ licensed medical professional in accordance with the educator's professional duties.

13 ~~(3)~~ ~~[(5)]~~ (4) Honesty. The educator shall not engage in conduct involving dishonesty, fraud, deceit, or
14 misrepresentation in the performance of the educator's professional duties, including the following:

15 (A) ~~statement~~ statements or representations of professional qualifications;

16 (B) application or recommendation for professional employment, promotion, or licensure;

17 (C) ~~application or recommendation~~ applications or recommendations for college or university admission,
18 scholarship, grant, academic award, or similar benefit;

19 (D) ~~representation~~ statements or representations of completion of college or staff development credit;

20 (E) evaluation or grading of students or school personnel;

21 (F) submission of financial or program compliance reports submitted to state, federal, or other governmental
22 agencies;

23 (G) submission of information in the course of an official inquiry by the ~~employing LEA or the SBE~~ related
24 to facts of unprofessional misconduct, provided, however, SBE or the educator's employing PSU into
25 allegations of professional misconduct, provided that an educator shall be given adequate notice of the
26 allegations and may be represented by legal counsel; and

27 (H) submission of information in the course of an investigation into school related criminal activity by a law
28 enforcement agency, child protective services, or any other agency with the ~~right authority to investigate,~~
29 regarding school related criminal activity; provided, however, investigate, provided that an educator shall be
30 entitled to decline to give evidence may ~~refuse~~ decline to provide information to law enforcement if such
31 evidence may tend to could incriminate the educator as that term is defined by the Fifth Amendment to in
32 violation of the educator's rights under the U.S. Constitution, United States Constitution or North Carolina
33 Constitution.

34 ~~[(6)]~~ (5) Compliance with Criminal Laws. The educator shall not violate the criminal laws of this State, the United
35 States, or any other state or territory under the jurisdiction of the United States.

36 ~~(4)~~ ~~[(7)]~~ (6) Proper remunerative conduct. Remunerative Conduct. The educator shall not solicit current students
37 or parents of students to purchase equipment, supplies, or services from the educator in a private remunerative

1 capacity. An educator shall not tutor for remuneration students currently assigned to the educator's classes, unless
2 approved by the local superintendent. An educator shall not accept any compensation, benefit, or thing of value
3 other than the educator's regular compensation for the performance of any service that the educator is required to
4 render in the course and scope of the educator's employment. This Rule shall not restrict performance of any
5 overtime or supplemental services at the request of the ~~LEA; PSU,~~ nor shall it ~~apply to or~~ restrict the acceptance
6 of gifts ~~or tokens of minimal value offered and accepted openly~~ from students, parents, or other persons in
7 recognition or appreciation of ~~service,~~the educator's professional service, provided the gift is given and received
8 freely, openly, and without expectation of favor or advantage to the donor in return.

9 ~~(5) Conduct with students. The educator shall treat all students with respect. The educator shall not commit any~~
10 ~~abusive act or sexual exploitation with, to, or in the presence of a student, whether or not that student is or has~~
11 ~~been under the care or supervision of that educator, as defined below:~~

12 (A) ~~any use of language that is considered profane, vulgar, or demeaning;~~

13 (B) ~~any sexual act;~~

14 (C) ~~any solicitation of a sexual act, whether written, verbal, or physical;~~

15 (D) ~~any act of child abuse, as defined by law;~~

16 (E) ~~any act of sexual harassment, as defined by law; and~~

17 (F) ~~any intentional solicitation, encouragement, or consummation of a romantic or physical relationship with~~
18 ~~a student, or any sexual contact with a student. The term "romantic relationship" shall include dating any~~
19 ~~student.~~

20 ~~(6) [(8)] (7) Confidential information. Information.~~ The educator shall keep ~~in confidence~~ confidential all
21 personally identifiable information regarding students or their family members that the educator has ~~been~~ obtained
22 in the course of professional service, unless disclosure is required or permitted by law ~~or professional standards,~~
23 or is necessary for the personal safety of the student or others.

24 ~~(7) [(9)] (8) Rights of [others.] Others.~~ The educator shall not willfully or maliciously violate the constitutional
25 or civil rights of a student, parent/legal parent or legal guardian, or colleague.

26 ~~(8) [(10)] (9) Required reports. Reports.~~ The educator shall make all reports required by G.S. 115C-Chapter 115C
27 of the General Statutes.

28 ~~(9) Alcohol or controlled substance abuse. The educator shall not:~~

29 (A) ~~be under the influence of, possess, use, or consume on school premises or at a school sponsored activity~~
30 ~~a controlled substance as defined by G.S. 90-95, the Controlled Substances Act, without a prescription~~
31 ~~authorizing such use;~~

32 (B) ~~be under the influence of, possess, use, or consume an alcoholic beverage or a controlled substance on~~
33 ~~school premises or at a school sponsored activity involving students; or~~

34 (C) ~~furnish alcohol or a controlled substance to any student except as indicated in the professional duties of~~
35 ~~administering legally prescribed medications.~~

36 ~~(10) Compliance with criminal laws. The educator shall not commit any act referred to in G.S. 115C-332 and any~~
37 ~~felony under the laws of the United States or of any state.~~

1 ~~(11)~~ (10) ~~Public funds and property.~~ Funds and Property. The educator shall not misuse public funds or ~~property,~~
2 ~~funds of a school-related organization, or colleague's funds,~~ property or any funds belonging to an organization
3 ~~affiliated with the school or PSU.~~ The educator shall account for funds collected from students, colleagues, ~~or~~
4 ~~parents/legal guardians.~~ parents, or legal guardians of students. The educator shall not submit fraudulent requests
5 for reimbursement, expenses, or pay.

6 ~~(12)~~ (11) ~~Scope of professional practice.~~ Professional Practice. The educator shall not perform any ~~act as an~~
7 ~~employee in a position~~ professional duty or function for which licensure is required by ~~the rules of the SBE or by~~
8 ~~G.S. 115C or the North Carolina General Statutes~~ this Chapter or by Chapter 115C of the General Statutes during
9 any period in which the educator's license ~~has been~~ is suspended or revoked.

10 ~~(13)~~ (12) ~~Conduct related to ethical violations.~~ Abuse of Authority. The educator shall not directly or indirectly
11 use or threaten to use any official authority or influence in any manner that ~~tends to discourage, restrain, interfere~~
12 ~~with, coerce, or discriminate~~ discourages, restrains, coerces, interferes with, or discriminates against any
13 subordinate or any licensee who in good faith ~~reports, discloses, divulges, reports~~ or otherwise brings to the
14 attention of ~~an LEA, a PSU,~~ the SBE, or any other public agency authorized to take remedial action, any facts or
15 information relative to the actual or suspected violation of any law or rule regulating the duties of persons serving
16 in the public school system, including ~~but not limited to these Rules.~~ those established by this Section.

17
18 *History Note:* Authority G.S. 115C-295.3; 115C-12(9); 115C-270.5; 115C-307;

19 Eff. May 1, 1998.

20 Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].

21

Burgos, Alexander N

Subject: FW: [External] 16 NCAC 06C .0602 Objection Letter

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Thursday, April 25, 2024 4:17 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] 16 NCAC 06C .0602 Objection Letter

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Great, thanks Seth!

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, April 25, 2024 4:10 PM
To: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] 16 NCAC 06C .0602 Objection Letter

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Ryan,

Assuming that you did not need to make any changes to the 500 form, you can just send me the rule. If you do need to update it, it will need to be resigned. Note the Commission didn't object to the finding of need, so they are not expecting an updated form.

Also, you are correct that the 270 days to replace a temporary rule starts from the publication in the register, which will be after the effective date.

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] 16 NCAC 06C .0602 Objection Letter

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Tuesday, April 23, 2024 4:41 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] 16 NCAC 06C .0602 Objection Letter

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Seth,

Thank you for that. I should have the revised rule to you next Thursday or Friday. Two more questions:

Do I need to include a revised Form 0500 since I am taking this rule back to the agency for approval? If so, I need to plan ahead for that so that I can get the SBE Chair's signature on it.

On the permanent rule for 16 NCAC 06C .0408, I'm setting out a projected timeline in an effort to ensure we can submit the permanent rule to RRC before the temporary rule expires. I'm looking at G.S. 150B-21.1(d), which says, in pertinent part: "A temporary rule expires . . . 270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission." The temporary rule for 16 NCAC 0C .0408 was published in the NC Register on November 15, 2023, but had an effective date of October 27, 2023. Am I correct that the 270 days begins on November 15, 2023, *not* October 27, 2023?

Thanks,

Ryan

Burgos, Alexander N

Subject: FW: [External] 16 NCAC 06C .0602 Objection Letter

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, April 23, 2024 4:26 PM
To: Collins, Ryan <Ryan.Collins@dpi.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] 16 NCAC 06C .0602 Objection Letter

Ryan,

Thanks for letting me know.

You can send me the revised version of the temporary rule directly. The formatting is the same as from before my original review. Just make sure the post-publication changes are formatted correctly. You can see the examples for that here: <https://www.oah.nc.gov/rule-format-examples#RuleFormatExamplesforPublicationintheNCAdministrativeCode-6054>

When putting out a permanent rule to replace a temporary rule, for the purposes of formatting you just ignore the existence of the temporary rule. So it is like a brand new adoption for the purposes of formatting.

Sincerely,

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] 16 NCAC 06C .0602 Objection Letter

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Tuesday, April 23, 2024 7:51 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] 16 NCAC 06C .0602 Objection Letter

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Hi Seth,

I had on my list to email you this week so thank you for following up.

I am presenting a proposed change to 16 NCAC 06C .0602 to the State Board of Education at its meeting next Thursday, May 2nd. After internal discussions with staff, we are recommending that the SBE simply remove the objectionable provision. Assuming that passes, I can have an update to you no later than May 3rd, so it will be ready for the May 29th meeting.

As a procedural question, should I just send you a revised version of the rule reflecting the changes like I would have prior to your initial review?

On another note, I'm also anticipating that during the May 2nd meeting that the SBE will formally propose a permanent rule on paid parental leave to replace the existing temporary rule, 16 NCAC 06C .0408. When an agency proposes a permanent rule to replace a temporary rule, should it just be formatted as a new rule just like any other, or should there be some indication of how the permanent rule differs from the temporary rule? To be clear, the temporary rule was a new rule, not an amendment to an existing rule.

Thanks so much,

Ryan

On Apr 22, 2024, at 3:21 PM, Ascher, Seth M <seth.ascher@oah.nc.gov> wrote:

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Burgos, Alexander N

Subject: FW: [External] Re: 16 NCAC 06C .0602 Objection Letter

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Monday, April 22, 2024 3:21 PM
To: Collins, Ryan <Ryan.Collins@dpi.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: 16 NCAC 06C .0602 Objection Letter

Ryan,

To follow up on the SBE rule currently on the RRC's agenda, at this point I am planning to recommend that the RRC take no action at the April 30th meeting. However, if there is not an updated version of the rule for the May 29th meeting, I may recommend that the Commission return the rule at that time (applying the timelines as though this were a permanent rule under G.S. 150B-21.12).

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

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Burgos, Alexander N

Subject: FW: [External] Re: RFC for March SBE Temporary Rules

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Tuesday, March 26, 2024 2:09 PM

To: Collins, Ryan <Ryan.Collins@dpi.nc.gov>; Brewington, Denyse <Denyse.Brewington@dpi.nc.gov>

Cc: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] Re: RFC for March SBE Temporary Rules

Ryan,

I'm not sure if G.S. 115C-270.35(a) is necessary, but I do not see a problem with adding it. I don't think it changes my overall analysis. If you want to update it before the meeting, please send me a version adding it. You can also raise it at the meeting and the Commission can approve adding it if they approve the rule.

The timelines for responding to objections to temporary rules were updated in last years budget. That is S.L. 2023-134, section 21.2(a). The relevant language starts at page 510 on this version:

<https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2023-2024/SL2023-134.pdf>

I should be in my office until about 6 today if you have any further questions.

Sincerely,

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: RFC for March SBE Temporary Rules

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Tuesday, March 26, 2024 11:51 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Brewington, Denyse <Denyse.Brewington@dpi.nc.gov>
Cc: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: RFC for March SBE Temporary Rules

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Hi Seth,

One more thing - in reading your staff opinion I noticed you raised a question of authority for 16 NCAC 06C .0602(2).

I would like to highlight the following statutes:

"The State Board of Education shall have **entire control of licensing all applicants for professional educator positions in all public schools of North Carolina**, subject to the requirements of this Article. The State Board shall adopt rules for the issuance, renewal, and extension of all licenses and shall determine and fix the salary for each grade and type of license which it authorizes." G.S. 115C-270.5(a) (emphasis added).

"The State Board shall adopt rules to establish the **reasons and procedures for the suspension and revocation of licenses**, subject to the requirements of this section." G.S. 115C-270.35(a) (emphasis added).

In my view, these two statutes taken together clearly establish the SBE's authority to establish rules of professional conduct that bind licensed educators, including the "reasons" that a license can be suspended revoked. As it pertains to the current issue, that would include failing to uphold the "Personal Conduct" standard. I realize that doesn't necessarily resolve the ambiguity question, but hopefully it clarifies the SBE's authority to adopt the rule.

I did not include G.S. 116C-270.35(a) in the authority citation for 16 NCAC 06C .0602 specifically, but it appears in the other rules in that section. I can add it as a technical correction if you think it would be beneficial.

I'm about to step out to lunch but am available this afternoon if you would like to schedule at time to talk via phone.

Best,

Ryan

Burgos, Alexander N

Subject: FW: [External] Re: RFC for March SBE Temporary Rules
Attachments: 16 NCAC 06E .0201 (Definitions).docx; 16 NCAC 06E .0204 (Administration of Interscholastic Athletics).docx

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Tuesday, March 26, 2024 11:37 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Brewington, Denyse <Denyse.Brewington@dpi.nc.gov>
Cc: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: RFC for March SBE Temporary Rules

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Seth,

Thank you for this information and for sharing a copy of the staff opinion.

I plan to attend the RRC meeting tomorrow in person and will be prepared to answer questions and defend the SBE's position as necessary. In response to your specific questions:

1. I do not anticipate interconnectivity issues that would delay implementation of the other rules. Given that 16 NCAC 06C .0602 is an amendment to an existing rule, rather than an entirely new rule, if there is an objection the SBE would continue to rely on the existing rule until such time as an amendment is approved.
2. Given the concerns you have outlined, I would most likely I would need to go back to the SBE to approve any changes to 16 NCAC 06C .0602 that would satisfy any objection to it as currently written. That likely would not occur until the SBE meeting in early May.

If I need to seek additional approval from the SBE for changes, how would that effect the SBE's ability to amend the rule under temporary procedures?

I've also attached the corrected versions of 06E .0201 and 06E .0204. My apologies for sending the wrong ones earlier.

Best,

Ryan

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

Assistant General Counsel

North Carolina State Board of Education

ryan.collins@dpi.nc.gov

984.236.2255 (o)



NORTH CAROLINA
State Board of Education
Department of Public Instruction

1 16 NCAC 06E .0201 is adopted under temporary procedures as follows:

2
3 **SECTION .0200 – INTERSCHOLASTIC ATHLETICS**

4
5 **16 NCAC 06E .0201 DEFINITIONS**

6 As used in this Section, the following definitions apply:

7 (1) “Administering organization” is defined in G.S. 115C-407.50(1).

8 (2) “Aggrieved party” means a student, coach, participating school, PSU, or other party that is directly and
9 adversely affected by a final decision of an administering organization that applies or enforces the rules
10 established by this Section, including a determination of ineligibility under Rule ~~.0207~~ 0207, a penalty imposed
11 under Rule ~~.0209~~ .0209, or a finding of undue influence or a recruiting violation under Rule .0210. If a student
12 is affected, the student’s parent shall be allowed to appeal the final decision pursuant to Rule ~~.0210~~ .0215.

13 (3) “Bona fide purpose” means for a purpose not primarily related to participation in interscholastic athletics.

14 (4) “High school” means a public school offering education in Grades 9 through 12 or 10 through 12.

15 (5) “Initial entry” means:

16 (A) a student’s first day of attendance at a participating school in which the student is enrolled as
17 recorded by that school; or

18 (B) the first day on which a student practices or otherwise participates as a member of an interscholastic
19 athletics team at a participating school.

20 (6) “Interscholastic athletics” or “interscholastic athletic activity” means any extracurricular athletic activity
21 that:

22 (A) involves students in any ~~grade between 6 and 12~~; Grades 6 through 12;

23 (B) is sponsored by an individual school, PSU, or administering organization; and

24 (C) includes students from more than one school or PSU.

25 (7) “Junior high school” means a public school offering education in Grades 7 through 9.

26 (8) “Local superintendent” means the superintendent of a local school administrative unit, as provided in
27 Chapter 115C, Article 18 of the General Statutes, or the staff member with the highest decision-making authority
28 for a PSU, if there is no superintendent.

29 (9) “Middle school” means a public school offering education in Grades 6 through 8.

30 (10) “Parent” is defined in G.S. ~~115C-407.50(6)~~ 115C-407.50(6).

31 (11) “Participating school” ~~is defined in G.S. 115C-407.50(7)~~. means a middle school, junior high school, or
32 high school that elects to participate in interscholastic athletic activities.

33 (12) “Principal” means a school administrator employed as the principal of a school, as provided in Chapter
34 115C, Article 19 of the General Statutes, or the staff member with the highest decision-making authority at a
35 school, if there is no principal.

36 (13) “Public school unit” or “PSU” is defined in G.S. 115C-5(7a).

37 (14) “Student” means a person enrolled in Grade 6 through 12 in any public school.

1

2 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*
3 *115C-407.65; 116-235(b);*

4 *Temporary Adoption Eff. July 1, 2024.*

1 16 NCAC 06E .0204 is amended under temporary procedures as follows:

2
3 **16 NCAC 06E .0204 ADMINISTRATION OF INTERSCHOLASTIC ATHLETICS AND**
4 **ADMINISTERING ORGANIZATIONS FOR HIGH SCHOOL ATHLETICS**

5 (a) Definitions:

6 (1) ~~—"Administering organization" is defined in G.S. 115C 407.50(1).~~

7 (2) ~~—"Participating school" is defined in G.S. 115C 407.50(7).~~

8 (3) ~~—"Public school unit" (PSU) is defined in G.S. 115C 5(7a).~~

9 ~~(b) PSUs are authorized to determine whether and to what extent students in grades 6-12 through 12 may participate~~
10 ~~in interscholastic athletics, provided students in grade 6 are not eligible to participate in tackle football. This Rule~~
11 ~~shall not apply to charter school athletic programs in kindergarten through grade 8.~~

12 (c) ~~To participate in public school interscholastic athletics, a student shall meet the following requirements:~~

13 (1) ~~A student who attends a school supervised by a local board of education shall only participate in the~~
14 ~~school to which the student is assigned under G.S. 115C 366. A student enrolled in a charter,~~
15 ~~regional, statewide public school, or school operated by the University of North Carolina, shall meet~~
16 ~~all the enrollment criteria for that school and attend that school. If a student is over the age~~
17 ~~requirements, for the school the student attends, the student may participate at the school to which~~
18 ~~the student would be assigned or attend at the next higher grade level.~~

19 (2) ~~A student shall meet the age requirements at each grade level to participate. PSUs shall determine~~
20 ~~the age of participating students based on a preponderance of the evidence known to them. A student~~
21 ~~ineligible to participate at one grade level due to age shall be eligible to participate at the next higher~~
22 ~~grade level only, provided no student shall be eligible to participate at the middle school level for a~~
23 ~~period lasting longer than six consecutive semesters, beginning with the student's entry into grade~~
24 ~~6, and no student shall be eligible to participate at the high school level for more than eight~~
25 ~~consecutive semesters, beginning with the student's first entry into grade 9 or participation on a high~~
26 ~~school team, whichever occurs first.~~

27 (A) ~~A student shall not participate on a grade 6, 7, or 8 team if the student becomes 15 years of~~
28 ~~age on or before August 31 of that school year.~~

29 (B) ~~A student shall not participate on a grade 9 through 12 team if the student becomes 19 years~~
30 ~~of age on or before August 31 of that school year.~~

31 ~~(d) To be eligible to participate during any semester in grades 6, 7, or 8, the student shall have passed at least one less~~
32 ~~course than the number of required core courses the prior semester and meet promotion standards established by the~~
33 ~~PSU, provided a student who is promoted from grade 5 to grade 6 shall be deemed to have satisfied the requirement~~
34 ~~set forth in this Paragraph to participate in the first semester of grade 6. To be eligible to compete during any semester~~
35 ~~in grades 9 through 12, the student shall have passed at least five courses (or the equivalent for non-traditional school~~
36 ~~schedules) the prior semester and meet promotion standards established by the PSU, provided a student who is~~

1 promoted from grade 8 to grade 9 shall be deemed to have satisfied the requirement set forth in this Paragraph to
2 participate in the first semester of grade 9.

3 (e) ~~To be eligible to participate, a student shall receive a medical examination every 395 days by a licensed physician,~~
4 ~~nurse practitioner, or physician assistant, subject to the provisions of G.S. 90-9.1, G.S. 90-9.2, G.S. 90-9.3, G.S. 90-~~
5 ~~18.1, and G.S. 90-18.2.~~

6 (f) A student shall not participate in interscholastic athletics after any of the following:

7 (1) ~~graduation, except that the student may continue to participate in playoff and state championship~~
8 ~~contests in spring sports after graduation;~~

9 (2) ~~signing a professional athletic contract, except that the student may continue to participate in any~~
10 ~~sport for which the student has not signed a professional contract;~~

11 (3) ~~receiving remuneration as a participant in an athletic contest, except that the student may accept a~~
12 ~~gift, merchandise, trophy, or other thing of value, provided:~~

13 (A) ~~the value does not exceed two hundred fifty dollars (\$250.00) per student per sports season;~~

14 (B) ~~the item is totally consumable and nontransferable, or labeled in a permanent manner, for~~
15 ~~example, monogrammed or engraved items; and~~

16 (C) ~~the item is approved by the student's principal and superintendent; or~~

17 (4) ~~participating on an all star team or in an all star game that is not sanctioned by the administering~~
18 ~~organization of which the student's school is a member, provided the student shall be ineligible only~~
19 ~~for the specific sport involved.~~

20 (g) Each PSU shall require the principal of a school that participates in interscholastic athletics to sign and date a list
21 of eligible students for each sport. The PSU shall maintain copy of the most current list in the principal's office and
22 the office of the superintendent.

23 (h) A PSU shall impose at least the following penalties on a student, coach, or school official in grades 6 through 12
24 who is ejected from an interscholastic athletic contest:

25 (1) ~~for the first offense, the person shall be reprimanded and suspended from participating in for the next~~
26 ~~game at that level of play (varsity or junior varsity);~~

27 (2) ~~for a second offense, the person shall be placed on probation and suspended from participating in~~
28 ~~for the next two games at that level of play (varsity or junior varsity);~~

29 (3) ~~for a third offense, the person shall be suspended for one calendar year; and~~

30 (4) ~~a coach who is suspended shall not coach any team for any grade level during the period of~~
31 ~~suspension.~~

32 Penalties are cumulative from sport to sport and from sport season to sport season. If no member of the school's
33 coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.

34 (i)(a) ~~PSUs~~ Public school units may allow ~~their schools~~ high schools under their jurisdiction to belong to an
35 administering organization designated by the ~~State Board of Education~~ Superintendent of Public Instruction
36 ("Superintendent").

1 ~~(j)~~(b) An administering organization that has entered into a memorandum of understanding with the ~~State Board of~~
2 ~~Education Superintendent~~ for the purpose of administering interscholastic athletics under this ~~Rule-Section~~ shall apply
3 and enforce all of the requirements of this ~~Rule-Section~~. An administering organization shall provide training and
4 resources to ensure that all students, parents, and PSU personnel involved in the administration of interscholastic
5 athletics understand and comply with the provisions of this Section.

6 ~~(k)~~(c) ~~The State Board of Education shall delegate to an administering organization its authority over participating~~
7 ~~schools to: If the Superintendent enters a memorandum of understanding with one or more administering organizations~~
8 consistent with G.S. 115C-407.61, the SBE shall delegate to the administering organization(s) its authority over
9 participating high schools to:

10 (1) ~~waive any student eligibility requirement contained in this Rule, if it finds in a particular case that~~
11 ~~the requirement fails to promote academic progress, health, safety, and fair play, or it works an~~
12 ~~undue hardship on a student who has lost eligibility due to circumstances that made participation~~
13 ~~impossible such as prolonged illness or injury or if a waiver is necessary to reasonably accommodate~~
14 ~~a student's disability, as required under the Americans with Disabilities Act, U.S.C. § 1201 et seq.;~~

15 (1) Apply and enforce student participation rules, as established in Rule .0207 of this Section.

16 (2) ~~[waive]~~ **Waive** any student participation rule as applied to a specific student, in accordance with
17 Rule .0207, Paragraph (k) of this Section.

18 (3) Apply and enforce student health and safety requirements, as established in Rule .0205 of this
19 Section.

20 ~~(2)~~(4) ~~adopt, Adopt, apply, and enforce penalty rules, as defined in G.S. 115C-407.55(3); G.S. 115C-~~
21 ~~407.55(3), that establish a system of demerits that includes reprimands, probations, suspensions,~~
22 ~~forfeitures of contests, forfeitures of titles, and disqualifications; disqualifications, consistent with~~
23 Rule .0209 of this Section.

24 ~~(3)~~(5) ~~adopt, Adopt, apply, and enforce administrative rules, as defined in G.S. 115C-407.55(5); G.S.~~
25 115C-407.55(5).

26 ~~(4)~~(6) ~~adopt, Adopt, apply, and enforce gameplay rules, as defined in G.S. 115C-407.55(6); and G.S. 115C-~~
27 407.55(6).

28 ~~(5)~~(7) ~~establish and collect~~ Collect from all its members a uniform membership fee of either:

29 (A) one thousand dollars (\$1,000) for each participating school, or

30 (B) one dollar (\$1.00) for each student enrolled in a participating school.

31 ~~(j)~~(d) An administering organization shall:

32 (1) ~~enter~~ Enter into a memorandum of understanding, consistent with the requirements of G.S. 115C-
33 407.55(8) and 115C-407.61, with the ~~State Board of Education Superintendent~~ no later than March 15
34 prior to the academic year in which it is to begin administering interscholastic athletics and no later than
35 the March 15 before the expiration of an existing memorandum of understanding;

36 (2) ~~submit~~ Submit an audit report signed by an independent certified public accountant or accounting firm,
37 which is in good standing with the North Carolina State Board of Certified Public Accountant Examiners

1 and performs no other tasks or functions for the administering organization besides the annual audit, to
2 the State Board of Education no later than March 15 each year;

3 (3) ~~broadcast~~ Broadcast the meetings of its membership and board of directors in a manner that is announced
4 on its website and which may be viewed electronically by any member of the public;

5 (4) ~~provide~~ Provide to the State Board of Education within 30 days any requested organizational records,
6 such as, financial information, annual audit reports, and any matters related to or impacting participating
7 schools;

8 (5) ~~enter~~ Enter into written agreements with PSUs that allow their eligible schools to participate in
9 interscholastic ~~sports, athletics,~~ which agreements shall include an explanation of the fees to be charged,
10 the obligations of the PSU and participating schools, penalties for the violation of this ~~Rule at the high~~
11 ~~school level~~ Section that may be imposed, and an explanation of the process to file an appeal pursuant
12 to Rule .0215 of this Section; and

13 (6) ~~publish~~ Publish the organization's rules through a link on the home page of its website.

14 (e) Any person or PSU seeking to inquire about or report a violation of any rule administered by an administering
15 organization shall direct the initial inquiry or report to the appropriate administering organization in accordance with
16 the procedures adopted by the administering organization. For any matter involving the enforcement of any
17 interscholastic athletics rule provided by this Section, the administering organization shall render a final decision in
18 writing within ten (10) business days. An aggrieved party seeking to file an appeal of a final decision of an
19 administering organization with the Superintendent shall do so in accordance with Rule .0215 of this Section.

20 (f) A PSU, participating school, PSU employee, or student seeking to report allegations of intimidation or harassment
21 by an administering organization shall file a report with the Superintendent. The report shall be in writing and include
22 a detailed description of the factual basis for the allegations.

23 (g) In the event that the Superintendent is unable to enter a memorandum of understanding with one or more
24 administering organizations in accordance with this Rule, the State Board of Education shall delegate all authority and
25 responsibility provided to an administering organization by this Section to the Superintendent.

26 (h) The Superintendent shall be responsible for general oversight of interscholastic athletic activities at participating
27 middle and junior high schools. Public school units shall apply and enforce the requirements of this Section for
28 participating middle and junior high schools under their jurisdiction. A PSU may also waive any student participation
29 rule as applied to a specific student enrolled at a middle or junior high school under the jurisdiction of the PSU, in
30 accordance with Rule .0207, Paragraph (k) of this Section.

31 ~~(m) The State Board of Education will appoint an appeals board to hear and act upon appeals from final decisions of~~
32 ~~an administering organization, or from the Department of Public Instruction if necessary pursuant to G.S. 115C-~~
33 ~~407.60(b), regarding student eligibility, penalties, fees imposed, retaliation, or discrimination. Panels of no fewer than~~
34 ~~three members of the appeals board may hear and decide matters on behalf of the board. A PSU aggrieved by a final~~
35 ~~decision of the administering organization may file an appeal with the State Board of Education's Office of General~~
36 ~~Counsel within five days after receipt of the administering organization's final decision. The final decision shall be~~
37 ~~mailed to the Superintendent or board of trustees of the PSU.~~

1 ~~(1) The administering organization's final decision shall contain:~~

2 ~~(A) findings of fact;~~

3 ~~(B) conclusions of law, including citation to any rules related to the decision;~~

4 ~~(C) a description of any penalties; and~~

5 ~~(D) a statement that the PSU may file a notice of appeal within five days of receipt of the~~
6 ~~administering organization's decision by mailing the notice to the State Board of Education's~~
7 ~~Office of General Counsel, 301 S. Wilmington Street, Raleigh, N.C. 27601, and emailing a~~
8 ~~copy of the notice of appeal to Office of General for the State Board of Education.~~

9 ~~(2) The PSU's appeal shall:~~

10 ~~(A) be in writing;~~

11 ~~(B) include a description of the facts of the dispute;~~

12 ~~(C) include any evidence submitted to the administering organization; and~~

13 ~~(D) present an argument explaining with the PSU believes the administering organization's final~~
14 ~~decision was not based on substantial evidence as defined in G.S. 150B-2(8c) or is affected by~~
15 ~~an error of law.~~

16 ~~(3) The administering organization may file a response to the PSU's submissions within five days. The panel~~
17 ~~may shorten the time for filing the administering organization's response if the decision affects a~~
18 ~~student's or coach's eligibility to participate in an intervening athletic contest.~~

19 ~~(4) All documents filed in the appeal shall be simultaneously served on all parties in the manner prescribed~~
20 ~~in G.S. 1A-1, Rule 5 of the North Carolina Rules of Civil Procedure.~~

21 ~~(5) Any hearing shall be recorded.~~

22 ~~(6) No later than 30 days after the State Board of Education's receipt of the appeal, a panel of the appeals~~
23 ~~board shall issue its decision. The panel shall affirm the administering organization's final decision~~
24 ~~unless a majority of the panel determines that the final decision is not supported by substantial evidence~~
25 ~~or is affected by an error of law.~~

26 ~~(7) The panel's decision shall be final.~~

27 ~~(n) The PSU that has jurisdiction over a school may impose penalties in addition to those required by an administering~~
28 ~~organization.~~

29
30 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50, 115C-407.55; 115C-407.60;*
31 *115C-407.65; 116-235(b);*

32 *Emergency Adoption Eff. August 20, 2019;*

33 *Amended Eff. March 1, 2021;*

34 *Temporary Amendment Eff. July 1, 2022;*

35 *Amended Eff. July 1, 2023;*

36 *Temp. Amend. Eff. July 1, 2024.*

37

Burgos, Alexander N

Subject: FW: [External] Re: RFC for March SBE Temporary Rules

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Tuesday, March 26, 2024 9:52 AM

To: Collins, Ryan <Ryan.Collins@dpi.nc.gov>; Brewington, Denyse <Denyse.Brewington@dpi.nc.gov>

Cc: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] Re: RFC for March SBE Temporary Rules

Ryan,

The versions of 16 NCAC 06E .0201 and 16 NCAC 06E .0204 you sent on March 19 do not have the corrections you indicated in the response my RFC. Please send updated versions of those two rules.

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: RFC for March SBE Temporary Rules
Attachments: Staff Opinion 16 NCAC 06C .0602.doc

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Monday, March 25, 2024 7:21 PM
To: Collins, Ryan <Ryan.Collins@dpi.nc.gov>; Brewington, Denyse <Denyse.Brewington@dpi.nc.gov>
Cc: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: RFC for March SBE Temporary Rules

Ryan,

Thank you for your timely and thorough response on these rules. With the exception of 16 NCAC 06C .0602, I anticipate recommending approval of the revised rules. Note that I do intend to look over the rules again tomorrow for typos or technical issues that may have arisen, but anticipate that if I find any, we can quickly resolve them.

With regards to 16 NCAC 06C .0602, your response raises novel legal questions that I anticipate the Commission will need discuss at the meeting Wednesday. As you can see from the attached staff opinion, in the timeframe allotted for temporary rules, I have not reached a definitive recommendation. Instead, I have attempted to lay out both sides of the issue in the staff opinion. Given that I expect discussion on this rule Wednesday, I would recommend that you or someone else from the agency be prepared to speak or answer questions at Wednesday's meeting.

Given that an objection is possible on Wednesday, two questions you may want to specifically consider:

- 1) If the RRC objects to .0602, are there interconnectivity issues that should delay the implementation of the other 6C rules?
- 2) If the RRC objects to .0602 solely because of the issues with .0602(2), are there potential technical changes that the SBE could offer? It is possible that either striking .0602(2) or incorporating additional language could address a potential objection.

I'm happy to discuss this with you further tomorrow if you have any questions.

Sincerely,

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: RFC for March SBE Temporary Rules
Attachments: SBE March Temp Rules RFC (with agency responses).docx; 16 NCAC 06C .0602 (Standards of Professional Conduct).docx; 16 NCAC 06C .0603 (Investigation of Alleged Misconduct by a Licensed Professional Educator or License Applicant).docx; 16 NCAC 06C .0604 (Denying or Sanctioning a License).docx; 16 NCAC 06C .0605 (Disciplinary Sanctions).docx; 16 NCAC 06C .0606 (Voluntary Surrender of a License).docx; 16 NCAC 06C .0607 (Reinstatement of or Reconsideration for a License).docx; 16 NCAC 06C .0608 (Reporting Requirements for PSU Administrators).docx; 16 NCAC 06E .0201 (Definitions).docx; 16 NCAC 06E .0204 (Administration of Interscholastic Athletics).docx; 16 NCAC 06E .0205 (Student Health and Safety Requirements).docx; 16 NCAC 06E .0207 (Student Participation Rules).docx; 16 NCAC 06E .0215 (Appeals).docx

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Tuesday, March 19, 2024 4:47 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Brewington, Denyse <Denyse.Brewington@dpi.nc.gov>
Cc: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] Re: RFC for March SBE Temporary Rules

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.

Hi Seth,

Thank you for the feedback!

I've attached a copy of the Request for Changes with my responses. I believe that I have addressed all of your comments. I've also attached revised versions of those rules that have been updated in response to your requests. Let me know if there is anything you want to discuss further.

Best,

Ryan

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

Assistant General Counsel

North Carolina State Board of Education

ryan.collins@dpi.nc.gov

984.236.2255 (o)



NORTH CAROLINA
State Board of Education
Department of Public Instruction

1 16 NCAC 06C .0602 is amended under temporary procedures as follows:

2
3 **16 NCAC 06C .0602 STANDARDS OF PROFESSIONAL CONDUCT**
4

5 ~~(a) The standards [Standards of Professional Conduct (“Standards”)] listed in this Section shall be generally accepted~~
6 ~~for the education profession and shall be the basis for State Board review of [reviewing the] performance of~~
7 ~~professional educators. [educators by the State Board of Education (“SBE”).] These standards shall establish~~
8 ~~mandatory prohibitions and requirements for educators. Violation of these standards [Standards] shall subject an~~
9 ~~educator to investigation and disciplinary action by the SBE or LEA. [any public school unit by which the educator is~~
10 ~~employed.]~~

11 ~~(b) Professional educators shall adhere to the standards of professional conduct contained [Standards as set forth] in~~
12 ~~this Rule. Any intentional act or omission that violates these standards [Standards] is prohibited.~~

13 ~~This Rule establishes uniform Standards of Professional Conduct (“Standards”) for professional educators in North~~
14 ~~Carolina, which apply to all persons who hold a professional educator license issued pursuant to this Subchapter and~~
15 ~~Chapter 115C, Article 17E of the General Statutes. These Standards shall be the basis for reviewing the performance~~
16 ~~or professional educators by the State Board of Education (“SBE”). Violation of these Standards shall be grounds for~~
17 ~~disciplinary sanctions against a professional educator’s license as provided in this Section.~~

18 ~~(1) Generally recognized professional standards. Recognized Professional Standards. The educator shall adhere~~
19 ~~to and practice the professional standards of all federal, state, and local governing bodies. [with oversight~~
20 ~~of public education] with public education oversight.~~

21 ~~(2) Personal conduct. Conduct. The educator shall serve as a positive role model for students, parents, and the~~
22 ~~community. Because the educator is entrusted with the care and education of small children and adolescents, the~~
23 ~~educator shall demonstrate a high standard of personal character and conduct. The educator is entrusted with the~~
24 ~~care and education of children and adolescents. As a result, the educator shall demonstrate a high standard of~~
25 ~~personal character and conduct and shall serve as a positive role model for students, parents, and the community.~~

26 ~~(3) Conduct with Students. The educator shall treat all students with respect and maintain appropriate~~
27 ~~professional boundaries with all students, regardless of whether that student is directly under the care or~~
28 ~~supervision of the educator. [The] Specifically the, educator shall not engage in any of the following conduct~~
29 ~~toward or in the presence of a student:~~

30 ~~(A) Use of profane, vulgar, or demeaning language.~~

31 ~~(B) Intentional or reckless exposure of students to profane, vulgar, or sexually explicit material except as part~~
32 ~~of age-appropriate classroom instruction or other pedagogical practice.~~

33 ~~[(B) Intentional solicitation.] (C) Solicitation, encouragement, or consummation of a romantic, physical, or~~
34 ~~sexual relationship with a [student,] student in any form, whether written, verbal, or physical. As used in this~~
35 ~~context, “solicitation” or “encouragement” shall include engaging in a pattern of flirtatious behavior; efforts~~
36 ~~to gain access to, or time alone with, a student with no clear educational or school-related objective; provision~~
37 ~~of individualized or specialized treatment, including tangible or monetary gifts, to a student that does not~~

1 comply with generally recognized professional standards for educators; or any other behavior that could be
2 perceived by a rational observer as excessively personal or intimate in the context of the educator-student
3 relationship.

4 ~~[(C)]~~ (D) Solicitation, encouragement, or consummation of sexual contact with a student.

5 ~~[(D)]~~ (E) Sexual harassment, as defined in 34 C.F.R. 106.30(a).

6 ~~[(E)]~~ (F) Child abuse, as defined in G.S. 14-318.2 or G.S. 14-318.4.

7 (4) Alcohol and Controlled Substances. The educator shall not be under the influence of, possess, use, or consume
8 an alcoholic beverage or a controlled substance, as defined in G.S. 90-95, on school premises, at a school-
9 sponsored activity, or when otherwise discharging the educator's professional duties, unless the educator has a
10 prescription from a licensed medical professional authorizing such use. The educator shall not furnish alcoholic
11 beverages or controlled substances to a student, except for the administration of medication prescribed by a
12 ~~licensee~~ licensed medical professional in accordance with the educator's professional duties.

13 ~~(3)~~(5) Honesty. The educator shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation
14 in the performance of the educator's professional duties, including the following:

15 (A) ~~statement~~ statements or representations of professional qualifications;

16 (B) application or recommendation for professional employment, promotion, or licensure;

17 (C) ~~application or recommendation~~ applications or recommendations for college or university admission,
18 scholarship, grant, academic award, or similar benefit;

19 (D) ~~representation~~ statements or representations of completion of college or staff development credit;

20 (E) evaluation or grading of students or school personnel;

21 (F) submission of financial or program compliance reports submitted to state, federal, or other governmental
22 agencies;

23 (G) submission of information in the course of an official inquiry by the ~~employing LEA or the SBE~~ related
24 to facts of unprofessional misconduct, provided, however, SBE or the educator's employing PSU into
25 allegations of professional misconduct, provided that an educator shall be given adequate notice of the
26 allegations and may be represented by legal counsel; and

27 (H) submission of information in the course of an investigation into school related criminal activity by a law
28 enforcement agency, child protective services, or any other agency with the ~~right authority to investigate,~~
29 ~~regarding school related criminal activity; provided, however, investigate, provided that an educator shall be~~
30 ~~entitled to decline to give evidence may~~ refuse decline to provide information to law enforcement if such
31 evidence ~~may tend to~~ could incriminate the educator ~~as that term is defined by the Fifth Amendment to in~~
32 violation of the educator's rights under the U.S. Constitution, United States Constitution or North Carolina
33 Constitution.

34 (6) Compliance with Criminal Laws. The educator shall not violate the criminal laws of this State, the United
35 States, or any other state or territory under the jurisdiction of the United States.

36 ~~(4)~~(7) Proper remunerative conduct. Remunerative Conduct. The educator shall not solicit current students or
37 parents of students to purchase equipment, supplies, or services from the educator in a private remunerative

1 capacity. An educator shall not tutor for remuneration students currently assigned to the educator's classes, unless
2 approved by the local superintendent. An educator shall not accept any compensation, benefit, or thing of value
3 other than the educator's regular compensation for the performance of any service that the educator is required to
4 render in the course and scope of the educator's employment. This Rule shall not restrict performance of any
5 overtime or supplemental services at the request of the ~~LEA; PSU,~~ nor shall it ~~apply to or~~ restrict the acceptance
6 of gifts ~~or tokens of minimal value offered and accepted openly~~ from students, parents, or other persons in
7 recognition or appreciation of ~~service,~~the educator's professional service, provided the gift is given and received
8 freely, openly, and without expectation of favor or advantage to the donor in return.

9 ~~(5) Conduct with students. The educator shall treat all students with respect. The educator shall not commit any~~
10 ~~abusive act or sexual exploitation with, to, or in the presence of a student, whether or not that student is or has~~
11 ~~been under the care or supervision of that educator, as defined below:~~

12 (A) any use of language that is considered profane, vulgar, or demeaning;

13 (B) any sexual act;

14 (C) any solicitation of a sexual act, whether written, verbal, or physical;

15 (D) any act of child abuse, as defined by law;

16 (E) any act of sexual harassment, as defined by law; and

17 (F) ~~any intentional solicitation, encouragement, or consummation of a romantic or physical relationship with~~
18 ~~a student, or any sexual contact with a student. The term "romantic relationship" shall include dating any~~
19 ~~student.~~

20 ~~(6)(8) Confidential information. Information.~~ The educator shall keep ~~in confidence~~ confidential all personally
21 identifiable information regarding students or their family members that the educator has ~~been~~ obtained in the
22 course of professional service, unless disclosure is required or permitted by law ~~or professional standards,~~ or is
23 necessary for the personal safety of the student or others.

24 ~~(7)(9) Rights of [others.] Others.~~ The educator shall not willfully or maliciously violate the constitutional or civil
25 rights of a student, parent/legal parent or legal guardian, or colleague.

26 ~~(8)(10) Required reports. Reports.~~ The educator shall make all reports required by G.S. 115C-Chapter 115C of
27 the General Statutes.

28 ~~(9) Alcohol or controlled substance abuse. The educator shall not:~~

29 (A) ~~be under the influence of, possess, use, or consume on school premises or at a school sponsored activity~~
30 ~~a controlled substance as defined by G.S. 90-95, the Controlled Substances Act, without a prescription~~
31 ~~authorizing such use;~~

32 (B) ~~be under the influence of, possess, use, or consume an alcoholic beverage or a controlled substance on~~
33 ~~school premises or at a school sponsored activity involving students; or~~

34 (C) ~~furnish alcohol or a controlled substance to any student except as indicated in the professional duties of~~
35 ~~administering legally prescribed medications.~~

36 ~~(10) Compliance with criminal laws. The educator shall not commit any act referred to in G.S. 115C-332 and any~~
37 ~~felony under the laws of the United States or of any state.~~

1 (11) ~~Public funds and property.~~ Funds and Property. The educator shall not misuse public funds or ~~property, funds~~
2 ~~of a school-related organization, or colleague's funds.~~ property or any funds belonging to an organization affiliated
3 with the school or PSU. The educator shall account for funds collected from students, colleagues, ~~or parents/legal~~
4 ~~guardians.~~ parents, or legal guardians of students. The educator shall not submit fraudulent requests for
5 reimbursement, expenses, or pay.

6 (12) ~~Scope of professional practice.~~ Professional Practice. The educator shall not perform any ~~act as an employee~~
7 ~~in a position~~ professional duty or function for which licensure is required by ~~the rules of the SBE or by G.S. 115C~~
8 ~~or the North Carolina General Statutes this Chapter or by Chapter 115C of the General Statutes~~ during any period
9 in which the educator's license ~~has been~~ is suspended or revoked.

10 (13) ~~Conduct related to ethical violations.~~ Abuse of Authority. The educator shall not directly or indirectly use or
11 threaten to use any official authority or influence in any manner that ~~tends to discourage, restrain, interfere with,~~
12 ~~coerce, or discriminate~~ discourages, restrains, coerces, interferes with, or discriminates against any subordinate
13 or any licensee who in good faith ~~reports, discloses, divulges, reports~~ or otherwise brings to the attention of ~~an~~
14 ~~LEA, a PSU,~~ the SBE, or any other public agency authorized to take remedial action, any facts or information
15 relative to the actual or suspected violation of any law or rule regulating the duties of persons serving in the public
16 school system, including ~~but not limited to these Rules.~~ those established by this Section.

17
18 *History Note:* Authority G.S. ~~115C-295.3; 115C-12(9); 115C-270.5; 115C-307;~~
19 Eff. May 1, 1998.
20 Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].
21

1 16 NCAC 06C .0603 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06C .0603 INVESTIGATION OF ALLEGED MISCONDUCT BY A LICENSED**
4 **PROFESSIONAL EDUCATOR OR LICENSE APPLICANT**
5

6 (a) Upon receipt of allegations and substantiating information regarding a respondent that **may would** provide cause
7 for imposing disciplinary sanctions on a **license licensee** or denying an application for a license under Rule .0604 of
8 this Section, the Superintendent of Public Instruction (“Superintendent”) shall investigate the allegations to determine
9 if such action is warranted. The Superintendent shall investigate allegations or information from any source in a
10 position to provide such information, including a PSU, State agency, court or other tribunal, or other credible person
11 or institution. The Superintendent shall also consider information disclosed by a license applicant in the application.

12 (b) The Superintendent is authorized to utilize the power conferred upon the State Board of Education (“SBE”) under
13 G.S. 115C-270.35(e), including the power to subpoena documents, secure witness testimony, or hire investigators, for
14 the purpose of conducting investigations under this Rule.

15 (c) If the Superintendent finds cause to impose disciplinary sanctions on a **license licensee** or deny a license application
16 for any of the reasons described in Rule .0604 of this Section, the Superintendent shall ~~prepare, on behalf of the SBE,~~
17 prepare a proposed order containing findings of fact, conclusions of law, and the proposed sanction(s) or denial.

18 (d) The Superintendent shall provide the respondent with a copy of the proposed order and notify the respondent that
19 the proposed sanctions or denial described in the order shall become final unless the respondent commences an
20 administrative proceeding under Chapter 150B, Article 3 of the General Statutes within 60 days of the notice. The
21 Superintendent shall send the notice via electronic mail and certified mail to the latest addresses provided to the SBE,
22 and the 60-day time limitation shall commence on the date of electronic delivery or placement of the notice in an
23 official depository of the United States Postal Service, whichever is earlier, in accordance with G.S. 150B-23(f).

24 (e) If the respondent commences administrative proceedings, the SBE shall stay the proposed order until receipt of a
25 final decision or order under G.S. 150B-34. If the respondent does not commence proceedings within the 60-day time
26 limitation, the proposed order shall become final, and the Superintendent shall take all necessary actions to enforce
27 the order.

28
29 *History Note: Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 150B-22; 150B-23;*
30 *Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].*
31

1 16 NCAC 06C .0604 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06C .0604 DENYING A LICENSE OR SANCTIONING A LICENSEE**

4
5 (a) The State Board of Education (~~“SBE”~~, or its authorized designee, (~~“SBE”~~) may, following an investigation in
6 accordance with Rule .0603 of this Section, impose disciplinary sanctions on a person who holds a license issued by
7 the Department of Public Instruction or deny an application for any such license if the SBE ~~or designee~~ finds, by a
8 preponderance of the evidence, that the respondent has done any of the following:

- 9 (1) Engaged in fraud, material misrepresentation, or concealment in an application for the license.
10 (2) Become ineligible for the license due to changes or corrections in the license documentation.
11 (3) Been convicted of a crime in any state, federal, or territorial court of the United States, including military
12 tribunals.
13 (4) Been dismissed by a local board of education, pursuant to G.S. 115C-325(e)(1) or 115C-325.4, or by the
14 governing body of any other PSU.
15 (5) Resigned from employment with a PSU without thirty calendar days’ notice, except with the prior consent
16 of the superintendent.
17 (6) Had a professional educator license or other occupational license revoked or suspended in North Carolina or
18 another state due to a finding of misconduct by the relevant occupational licensing board or agency.
19 (7) Failed to report suspected child abuse in accordance with G.S. 115C-400 or other suspicion of professional
20 misconduct by a licensed employee in accordance with Rule .0608 of this Section.
21 (8) Violated the Testing Code of Ethics, codified at 16 NCAC 06D .0311.
22 (9) Engaged in any other illegal, unethical, or lascivious conduct, or otherwise violated the Standards of
23 Professional Conduct as described in Rule .0602 of this Section.

24 (b) When deciding whether to impose disciplinary sanctions or deny an application for a license, the SBE ~~or designee~~
25 shall consider the following factors:

- 26 (1) The existence of a reasonable and adverse relationship between the underlying misconduct and the ability of
27 the respondent to perform the respondent’s professional duties as an educator.
28 (2) The severity of the misconduct.
29 (3) The impact of the misconduct on students, other educators, and the school community.
30 (4) The respondent’s degree of culpability in the misconduct.
31 (5) The degree of remorse exhibited by the respondent for the misconduct.
32 (6) Any evidence of reformed behavior on the part of the respondent.
33 (7) Subsequent incidents of misconduct by the respondent or the probability of future misconduct.

34 (c) If the SBE ~~or designee~~ determines that sanctions against a current license licensee are warranted, it shall impose
35 sanctions in accordance with Rule .0605 of this Section.

1 *History Note:* *Authority G.S. 115C-12(9); 115C-174.11; 115C-174.12; 115C-270.5; 115C-270.30; 115C-270.35;*
2 *150B-22; 150B-23;*
3 *Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].*

1 16 NCAC 06C .0605 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06C .0605 DISCIPLINARY SANCTIONS**
4

5 (a) Upon finding of a basis for imposing disciplinary sanctions against a ~~respondent's license~~ respondent under Rule
6 .0604 following an investigation under Rule .0603 of this Section, the State Board of Education ("SBE") may impose
7 any of the following sanctions:

- 8 (1) Written ~~Warning~~ Warning;
9 (2) Written ~~Reprimand~~ Reprimand;
10 (3) Suspension for a Defined ~~Term~~ Term; or
11 (4) ~~Revocation~~ Revocation.

12 (b) In addition to one of the sanctions listed in Paragraph (a), the SBE may impose additional conditions upon a
13 respondent—including requirements that the respondent complete additional CEUs, continuing education credits
14 beyond those required by G.S. 115C-270.30, community service hours, or other activities—if the purpose of the
15 condition is remedial, relevant to the misconduct giving rise to the sanction, and designed to reduce the possibility of
16 recidivism.

17 (c) Notwithstanding Rule .0603 of this Section or Paragraph (a) of this Rule, the SBE shall summarily suspend the
18 license of a respondent if the SBE finds that the public health, safety, or welfare requires emergency action and
19 incorporates those findings in the order prepared in accordance with Rule .0603 of this Section. A finding that a
20 respondent has been charged in the General Court of Justice with any ~~crime~~ crime, the conviction for which would
21 result in automatic revocation of the respondent's license under G.S. ~~115C-270.35(b)~~ 115C-270.35(b), shall be
22 considered prima facie evidence in satisfaction of this Paragraph. Following the summary suspension, the SBE shall
23 promptly commence a disciplinary investigation and proceedings in accordance with Rules .0603 and .0604 of this
24 Section.

25 (d) The ~~SBE~~ Department of Public Instruction ("DPI") shall, upon expiration of the 60-day time limitation described
26 in Rule .0603(e) of this Section, publish the sanction and a brief description of the basis for the sanction on ~~the~~
27 ~~Department of Public Instruction ("DPI")~~ its website and report it to the National Association of State Directors of
28 Teacher Education and Certification, except that this requirement shall not apply to a Written Warning. ~~The SBE DPI~~
29 shall not disclose any information related to the sanction that is considered confidential under Chapter 115C, Article
30 21A of the General Statutes or is otherwise protected from disclosure under State or federal law.

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33 *History Note:* Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 150B-3; 150B-22; 150B-23;
34 *Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].*

1 16 NCAC 06C .0606 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06C .0606 VOLUNTARY SURRENDER OF A LICENSE**

4
5 (a) An individual licensed under Chapter 115C, Article 17E of the General Statutes may notify the State Board of
6 Education (~~“SBE”~~) (“SBE”), or its authorized designee, in writing of the individual’s intention to voluntarily surrender
7 the individual’s license to the SBE.

8 (b) The SBE or designee may accept the voluntary surrender of a license in lieu of pursuing revocation of the license
9 if, following an investigation in accordance with Rule .0603 of this Section, the SBE or designee determines that the
10 surrender of the license will not compromise public safety. The Superintendent of Public Instruction shall ~~prepare, on~~
11 ~~behalf of the SBE,~~ prepare a proposed order containing findings of fact and conclusions of law demonstrating that
12 circumstances exist that would justify pursuing revocation of the respondent’s license. The Superintendent shall
13 provide the respondent with a copy of the proposed order and notify the respondent that the respondent’s license will
14 be revoked ~~unless the respondent challenges any of the factual findings contained in the order~~ within 10 days of the
15 notice. The Superintendent shall send the notice via electronic mail and certified mail to the latest addresses provided
16 to the ~~SBE, SBE.~~

17 (c) The ~~SBE~~ Department of Public Instruction (“DPI”) shall, upon expiration of the 10-day time limitation described
18 in Paragraph (b), publish the revocation and a brief description of the basis for the revocation on ~~the Department of~~
19 ~~Public Instruction (“DPI”)~~ its website and report it to the National Association of State Directors of Teacher Education
20 and Certification. DPI shall not disclose any information related to the revocation that is considered confidential under
21 Chapter 115C, Article 21A of the General Statutes or is otherwise protected from disclosure under State or federal
22 law.

23
24
25 *History Note:* Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 150B-22; 150B-23;
26 *Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].*

1 16 NCAC 06C .0607 is adopted under temporary procedures as follows:
2

3 **16 NCAC 06C .0607 REINSTATEMENT OF OR RECONSIDERATION FOR A LICENSE**
4

5 (a) A respondent whose license has been revoked or whose application for a license has been denied under this Section
6 may seek reinstatement of the revoked license or reconsideration of the license application no sooner than 12 months
7 after the effective date of the revocation or denial.

8 (b) The respondent shall submit a request to the State Board of Education (“SBE”) in writing that includes a statement
9 describing why the circumstances that led to the revocation or denial do not or no longer justify prohibiting the
10 respondent from holding a license.

11 (c) The SBE may deny the request, grant the request, or grant the request on a probationary basis. If the SBE grants
12 the request on a probationary basis, the respondent’s license status shall be subject to review by the SBE one year
13 from the date that the license is granted, and the respondent shall comply with any conditions the SBE may impose.
14

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16 History Note: Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 150B-22; 150B-23;
17 Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].

1 16 NCAC 06C .0608 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06C .0608 REPORTING REQUIREMENTS FOR PSU ADMINISTRATORS**

4
5 (a) For purposes of this Rule, the following definitions apply:

6 (1) “Misconduct” means either:

7 (A) Conduct that justifies automatic revocation of a license under G.S. 115C-270.35(b);

8 (B) Conduct that has resulted in a criminal charge or indictment for any of the crimes listed in G.S.
9 115C-270.35(b); or

10 (C) Conduct involving the physical or sexual abuse of a child or a student. “Physical abuse” means the
11 infliction of physical injury other than by accident or in self-defense. “Sexual abuse” means any
12 sexual contact with a child or student, regardless of the presence or absence of consent.

13 (2) “PSU administrator” means a superintendent, associate superintendent, assistant superintendent, personnel
14 administrator, principal, school director, or head of school employed by a PSU.

15 ~~(a) (b)~~ In addition to any duty to report suspected child abuse under ~~G.S. 115C-400~~, G.S. 115C-400 or other provision
16 of law, any PSU administrator who knows, has reason to believe, or has actual notice of a complaint that a professional
17 educator licensed under Chapter 115C, Article 17E of the General Statutes has engaged in ~~conduct that would justify~~
18 ~~the automatic revocation of the license under G.S. 115C-270.35(b), or which involves the physical abuse of a child as~~
19 ~~defined in G.S. 14-318.2 or G.S. 14-318.4, misconduct, as defined in Subparagraph (a)(1), that results in the dismissal,~~
20 ~~disciplinary action against, dismissal, suspension with pay, suspension without pay, or resignation of the educator~~
21 ~~shall report the misconduct in writing to the State Board of Education (“SBE”) within five calendar days of the~~
22 ~~dismissal, determination of disciplinary action, dismissal, suspension, or acceptance of resignation. the educator’s~~
23 ~~resignation by the local superintendent. If an educator resigns within 30 days of a complaint for misconduct or during~~
24 ~~an ongoing investigation of a complaint, the alleged misconduct is presumed to have resulted in the resignation.~~

25 ~~(c) If an employee resigns within 30 days of a complaint for misconduct or during an ongoing investigation of a~~
26 ~~complaint, the misconduct is presumed to have resulted in the resignation.~~

27 ~~(e) Any PSU administrator who knows, has reason to believe, or has actual notice of a complaint that an employee~~
28 ~~licensed under Chapter 115C, Article 17E of the General Statutes has engaged in conduct that would otherwise justify~~
29 ~~disciplinary sanctions against the employee’s license under Rule .0604 of this Subchapter shall report the conduct in~~
30 ~~writing to the SBE within 30 days of dismissal, determination of disciplinary action, or acceptance of resignation.~~

31 (c) If a PSU demotes, dismisses, or accepts the resignation of a professional educator licensed under Chapter 115C,
32 Article 17E of the General Statutes as a result of conduct that is not covered by Paragraph (b) of this Rule but that
33 may otherwise justify disciplinary sanctions against the employee under Rule .0604 of this Section, a PSU
34 administrator for that PSU shall report the conduct in writing to the SBE within 30 calendar days of the demotion,
35 dismissal, or resignation of the employee.

36 (d) For purposes of this Rule, “PSU administrator” shall include any superintendent, associate superintendent, assistant
37 superintendent, personnel administrator, principal, or head of school employed by a PSU.

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(d) If one PSU administrator submits a single report on behalf of the PSU pursuant to the requirements of this Rule, that report shall satisfy the reporting obligations of all individuals who may have reporting obligations under this Rule or under G.S. 115C-326.20.

History Note: Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 115C-326.20; 150B-22; 150B-23; Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].

1 16 NCAC 06E .0201 is adopted under temporary procedures as follows:

2
3 **SECTION .0200 – INTERSCHOLASTIC ATHLETICS**

4
5 **16 NCAC 06E .0201 DEFINITIONS**

6 As used in this Section, the following definitions apply:

7 (1) “Administering organization” is defined in G.S. 115C-407.50(1).

8 (2) “Aggrieved party” means a student, coach, participating school, PSU, or other party that is directly and
9 adversely affected by a final decision of an administering organization that applies or enforces the rules
10 established by this Section, including a determination of ineligibility under Rule ~~.0207~~ 0207, a penalty imposed
11 under Rule ~~.0209~~ .0209, or a finding of undue influence or a recruiting violation under Rule .0210. If a student
12 is affected, the student’s parent shall be allowed to appeal the final decision pursuant to Rule ~~.0210~~ .0215.

13 (3) “Bona fide purpose” means for a purpose not primarily related to participation in interscholastic athletics.

14 (4) “High school” means a public school offering education in Grades 9 through 12 or 10 through 12.

15 (5) “Initial entry” means:

16 (A) a student’s first day of attendance at a participating school in which the student is enrolled as
17 recorded by that school; or

18 (B) the first day on which a student practices or otherwise participates as a member of an interscholastic
19 athletics team at a participating school.

20 (6) “Interscholastic athletics” or “interscholastic athletic activity” means any extracurricular athletic activity
21 that:

22 (A) involves students in any grade between 6 and 12;

23 (B) is sponsored by an individual school, PSU, or administering organization; and

24 (C) includes students from more than one school or PSU.

25 (7) “Junior high school” means a public school offering education in Grades 7 through 9.

26 (8) “Local superintendent” means the superintendent of a local school administrative unit, as provided in
27 Chapter 115C, Article 18 of the General Statutes, or the staff member with the highest decision-making authority
28 for a PSU, if there is no superintendent.

29 (9) “Middle school” means a public school offering education in Grades 6 through 8.

30 (10) “Parent” is defined in G.S. 115C-407.50(6)

31 (11) “Participating school” ~~is defined in G.S. 115C-407.50(7).~~ means a middle school, junior high school, or
32 high school that elects to participate in interscholastic athletic activities.

33 (12) “Principal” means a school administrator employed as the principal of a school, as provided in Chapter
34 115C, Article 19 of the General Statutes, or the staff member with the highest decision-making authority at a
35 school, if there is no principal.

36 (13) “Public school unit” or “PSU” is defined in G.S. 115C-5(7a).

37 (14) “Student” means a person enrolled in Grade 6 through 12 in any public school.

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2 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*
3 *115C-407.65; 116-235(b);*

4 *Temporary Adoption Eff. July 1, 2024.*

1 16 NCAC 06E .0204 is amended under temporary procedures as follows:

2
3 **16 NCAC 06E .0204 ADMINISTRATION OF INTERSCHOLASTIC ATHLETICS AND**
4 **ADMINISTERING ORGANIZATIONS FOR HIGH SCHOOL ATHLETICS**

5 (a) Definitions:

6 (1) ~~—"Administering organization" is defined in G.S. 115C 407.50(1).~~

7 (2) ~~—"Participating school" is defined in G.S. 115C 407.50(7).~~

8 (3) ~~—"Public school unit" (PSU) is defined in G.S. 115C 5(7a).~~

9 (b) ~~PSUs are authorized to determine whether and to what extent students in grades 6-12 through 12 may participate~~
10 ~~in interscholastic athletics, provided students in grade 6 are not eligible to participate in tackle football. This Rule~~
11 ~~shall not apply to charter school athletic programs in kindergarten through grade 8.~~

12 (c) ~~To participate in public school interscholastic athletics, a student shall meet the following requirements:~~

13 (1) ~~A student who attends a school supervised by a local board of education shall only participate in the~~
14 ~~school to which the student is assigned under G.S. 115C 366. A student enrolled in a charter,~~
15 ~~regional, statewide public school, or school operated by the University of North Carolina, shall meet~~
16 ~~all the enrollment criteria for that school and attend that school. If a student is over the age~~
17 ~~requirements, for the school the student attends, the student may participate at the school to which~~
18 ~~the student would be assigned or attend at the next higher grade level.~~

19 (2) ~~A student shall meet the age requirements at each grade level to participate. PSUs shall determine~~
20 ~~the age of participating students based on a preponderance of the evidence known to them. A student~~
21 ~~ineligible to participate at one grade level due to age shall be eligible to participate at the next higher~~
22 ~~grade level only, provided no student shall be eligible to participate at the middle school level for a~~
23 ~~period lasting longer than six consecutive semesters, beginning with the student's entry into grade~~
24 ~~6, and no student shall be eligible to participate at the high school level for more than eight~~
25 ~~consecutive semesters, beginning with the student's first entry into grade 9 or participation on a high~~
26 ~~school team, whichever occurs first.~~

27 (A) ~~A student shall not participate on a grade 6, 7, or 8 team if the student becomes 15 years of~~
28 ~~age on or before August 31 of that school year.~~

29 (B) ~~A student shall not participate on a grade 9 through 12 team if the student becomes 19 years~~
30 ~~of age on or before August 31 of that school year.~~

31 (d) ~~To be eligible to participate during any semester in grades 6, 7, or 8, the student shall have passed at least one less~~
32 ~~course than the number of required core courses the prior semester and meet promotion standards established by the~~
33 ~~PSU, provided a student who is promoted from grade 5 to grade 6 shall be deemed to have satisfied the requirement~~
34 ~~set forth in this Paragraph to participate in the first semester of grade 6. To be eligible to compete during any semester~~
35 ~~in grades 9 through 12, the student shall have passed at least five courses (or the equivalent for non-traditional school~~
36 ~~schedules) the prior semester and meet promotion standards established by the PSU, provided a student who is~~

1 promoted from grade 8 to grade 9 shall be deemed to have satisfied the requirement set forth in this Paragraph to
2 participate in the first semester of grade 9.

3 (e) ~~To be eligible to participate, a student shall receive a medical examination every 395 days by a licensed physician,
4 nurse practitioner, or physician assistant, subject to the provisions of G.S. 90-9.1, G.S. 90-9.2, G.S. 90-9.3, G.S. 90-
5 18.1, and G.S. 90-18.2.~~

6 (f) A student shall not participate in interscholastic athletics after any of the following:

7 (1) ~~graduation, except that the student may continue to participate in playoff and state championship
8 contests in spring sports after graduation;~~

9 (2) ~~signing a professional athletic contract, except that the student may continue to participate in any
10 sport for which the student has not signed a professional contract;~~

11 (3) ~~receiving remuneration as a participant in an athletic contest, except that the student may accept a
12 gift, merchandise, trophy, or other thing of value, provided:~~

13 (A) ~~the value does not exceed two hundred fifty dollars (\$250.00) per student per sports season;~~

14 (B) ~~the item is totally consumable and nontransferable, or labeled in a permanent manner, for
15 example, monogrammed or engraved items; and~~

16 (C) ~~the item is approved by the student's principal and superintendent; or~~

17 (4) ~~participating on an all star team or in an all star game that is not sanctioned by the administering
18 organization of which the student's school is a member, provided the student shall be ineligible only
19 for the specific sport involved.~~

20 (g) ~~Each PSU shall require the principal of a school that participates in interscholastic athletics to sign and date a list
21 of eligible students for each sport. The PSU shall maintain copy of the most current list in the principal's office and
22 the office of the superintendent.~~

23 (h) ~~A PSU shall impose at least the following penalties on a student, coach, or school official in grades 6 through 12
24 who is ejected from an interscholastic athletic contest:~~

25 (1) ~~for the first offense, the person shall be reprimanded and suspended from participating in for the next
26 game at that level of play (varsity or junior varsity);~~

27 (2) ~~for a second offense, the person shall be placed on probation and suspended from participating in
28 for the next two games at that level of play (varsity or junior varsity);~~

29 (3) ~~for a third offense, the person shall be suspended for one calendar year; and~~

30 (4) ~~a coach who is suspended shall not coach any team for any grade level during the period of
31 suspension.~~

32 ~~Penalties are cumulative from sport to sport and from sport season to sport season. If no member of the school's
33 coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.~~

34 (i) ~~(a) PSUs—Public school units may allow their schools—high schools under their jurisdiction to belong to an
35 administering organization designated by the State Board of Education, Superintendent of Public Instruction
36 (“Superintendent”).~~

1 ~~(j)~~(b) An administering organization that has entered into a memorandum of understanding with the ~~State Board of~~
2 ~~Education Superintendent~~ for the purpose of administering interscholastic athletics under this ~~Rule Section~~ shall apply
3 and enforce all of the requirements of this ~~Rule Section~~. An administering organization shall provide training and
4 resources to ensure that all students, parents, and PSU personnel involved in the administration of interscholastic
5 athletics understand and comply with the provisions of this Section.

6 ~~(k)~~(c) ~~The State Board of Education shall delegate to an administering organization its authority over participating~~
7 ~~schools to: If the Superintendent enters a memorandum of understanding with one or more administering organizations~~
8 consistent with G.S. 115C-407.61, the SBE shall delegate to the administering organization(s) its authority over
9 participating high schools to:

10 (1) ~~waive any student eligibility requirement contained in this Rule, if it finds in a particular case that~~
11 ~~the requirement fails to promote academic progress, health, safety, and fair play, or it works an~~
12 ~~undue hardship on a student who has lost eligibility due to circumstances that made participation~~
13 ~~impossible such as prolonged illness or injury or if a waiver is necessary to reasonably accommodate~~
14 ~~a student's disability, as required under the Americans with Disabilities Act, U.S.C. § 1201 et seq.;~~

15 (1) Apply and enforce student participation rules, as established in Rule .0207 of this Section.

16 (2) waive any student participation rule as applied to a specific student, in accordance with Rule .0207,
17 Paragraph (k) of this Section.

18 (3) Apply and enforce student health and safety requirements, as established in Rule .0205 of this
19 Section.

20 ~~(2)~~(4) ~~adopt, Adopt, apply, and enforce penalty rules, as defined in G.S. 115C-407.55(3); G.S. 115C-~~
21 ~~407.55(3), that establish a system of demerits that includes reprimands, probations, suspensions,~~
22 ~~forfeitures of contests, forfeitures of titles, and disqualifications; disqualifications, consistent with~~
23 Rule .0209 of this Section.

24 ~~(3)~~(5) ~~adopt, Adopt, apply, and enforce administrative rules, as defined in G.S. 115C-407.55(5); G.S.~~
25 115C-407.55(5).

26 ~~(4)~~(6) ~~adopt, Adopt, apply, and enforce gameplay rules, as defined in G.S. 115C-407.55(6); and G.S. 115C-~~
27 407.55(6).

28 ~~(5)~~(7) ~~establish and collect~~ Collect from all its members a uniform membership fee of either:

29 (A) one thousand dollars (\$1,000) for each participating school, or

30 (B) one dollar (\$1.00) for each student enrolled in a participating school.

31 ~~(j)~~(d) An administering organization shall:

32 (1) ~~enter~~ Enter into a memorandum of understanding, consistent with the requirements of G.S. 115C-
33 407.55(8) and 115C-407.61, with the ~~State Board of Education Superintendent~~ no later than March 15
34 prior to the academic year in which it is to begin administering interscholastic athletics and no later than
35 the March 15 before the expiration of an existing memorandum of understanding;

36 (2) ~~submit~~ Submit an audit report signed by an independent certified public accountant or accounting firm,
37 which is in good standing with the North Carolina State Board of Certified Public Accountant Examiners

1 and performs no other tasks or functions for the administering organization besides the annual audit, to
2 the State Board of Education no later than March 15 each year;

3 (3) ~~broadcast~~ Broadcast the meetings of its membership and board of directors in a manner that is announced
4 on its website and which may be viewed electronically by any member of the public;

5 (4) ~~provide~~ Provide to the State Board of Education within 30 days any requested organizational records,
6 such as, financial information, annual audit reports, and any matters related to or impacting participating
7 schools;

8 (5) ~~enter~~ Enter into written agreements with PSUs that allow their eligible schools to participate in
9 interscholastic ~~sports, athletics,~~ which agreements shall include an explanation of the fees to be charged,
10 the obligations of the PSU and participating schools, penalties for the violation of this ~~Rule at the high~~
11 ~~school level~~ Section that may be imposed, and an explanation of the process to file an appeal pursuant
12 to Rule .0215 of this Section; and

13 (6) ~~publish~~ Publish the organization's rules through a link on the home page of its website.

14 (e) Any person or PSU seeking to inquire about or report a violation of any rule administered by an administering
15 organization shall direct the initial inquiry or report to the appropriate administering organization in accordance with
16 the procedures adopted by the administering organization. For any matter involving the enforcement of any
17 interscholastic athletics rule provided by this Section, the administering organization shall render a final decision in
18 writing within ten (10) business days. An aggrieved party seeking to file an appeal of a final decision of an
19 administering organization with the Superintendent shall do so in accordance with Rule .0215 of this Section.

20 (f) A PSU, participating school, PSU employee, or student seeking to report allegations of intimidation or harassment
21 by an administering organization shall file a report with the Superintendent. The report shall be in writing and include
22 a detailed description of the factual basis for the allegations.

23 (g) In the event that the Superintendent is unable to enter a memorandum of understanding with one or more
24 administering organizations in accordance with this Rule, the State Board of Education shall delegate all authority and
25 responsibility provided to an administering organization by this Section to the Superintendent.

26 (h) The Superintendent shall be responsible for general oversight of interscholastic athletic activities at participating
27 middle and junior high schools. Public school units shall apply and enforce the requirements of this Section for
28 participating middle and junior high schools under their jurisdiction. A PSU may also waive any student participation
29 rule as applied to a specific student enrolled at a middle or junior high school under the jurisdiction of the PSU, in
30 accordance with Rule .0207, Paragraph (k) of this Section.

31 ~~(m) The State Board of Education will appoint an appeals board to hear and act upon appeals from final decisions of~~
32 ~~an administering organization, or from the Department of Public Instruction if necessary pursuant to G.S. 115C-~~
33 ~~407.60(b), regarding student eligibility, penalties, fees imposed, retaliation, or discrimination. Panels of no fewer than~~
34 ~~three members of the appeals board may hear and decide matters on behalf of the board. A PSU aggrieved by a final~~
35 ~~decision of the administering organization may file an appeal with the State Board of Education's Office of General~~
36 ~~Counsel within five days after receipt of the administering organization's final decision. The final decision shall be~~
37 ~~mailed to the Superintendent or board of trustees of the PSU.~~

1 ~~(1) The administering organization's final decision shall contain:~~

2 ~~(A) findings of fact;~~

3 ~~(B) conclusions of law, including citation to any rules related to the decision;~~

4 ~~(C) a description of any penalties; and~~

5 ~~(D) a statement that the PSU may file a notice of appeal within five days of receipt of the~~
6 ~~administering organization's decision by mailing the notice to the State Board of Education's~~
7 ~~Office of General Counsel, 301 S. Wilmington Street, Raleigh, N.C. 27601, and emailing a~~
8 ~~copy of the notice of appeal to Office of General for the State Board of Education.~~

9 ~~(2) The PSU's appeal shall:~~

10 ~~(A) be in writing;~~

11 ~~(B) include a description of the facts of the dispute;~~

12 ~~(C) include any evidence submitted to the administering organization; and~~

13 ~~(D) present an argument explaining with the PSU believes the administering organization's final~~
14 ~~decision was not based on substantial evidence as defined in G.S. 150B 2(8c) or is affected by~~
15 ~~an error of law.~~

16 ~~(3) The administering organization may file a response to the PSU's submissions within five days. The panel~~
17 ~~may shorten the time for filing the administering organization's response if the decision affects a~~
18 ~~student's or coach's eligibility to participate in an intervening athletic contest.~~

19 ~~(4) All documents filed in the appeal shall be simultaneously served on all parties in the manner prescribed~~
20 ~~in G.S. 1A 1, Rule 5 of the North Carolina Rules of Civil Procedure.~~

21 ~~(5) Any hearing shall be recorded.~~

22 ~~(6) No later than 30 days after the State Board of Education's receipt of the appeal, a panel of the appeals~~
23 ~~board shall issue its decision. The panel shall affirm the administering organization's final decision~~
24 ~~unless a majority of the panel determines that the final decision is not supported by substantial evidence~~
25 ~~or is affected by an error of law.~~

26 ~~(7) The panel's decision shall be final.~~

27 ~~(n) The PSU that has jurisdiction over a school may impose penalties in addition to those required by an administering~~
28 ~~organization.~~

29
30 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50, 115C-407.55; 115C-407.60;*
31 *115C-407.65; 116-235(b);*
32 *Emergency Adoption Eff. August 20, 2019;*
33 *Amended Eff. March 1, 2021;*
34 *Temporary Amendment Eff. July 1, 2022;*
35 *Amended Eff. July 1, 2023;*
36 *Temp. Amend. Eff. July 1, 2024.*
37

1 16 NCAC 06E .0205 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06E .0205 STUDENT HEALTH AND SAFETY REQUIREMENTS FOR**
4 **INTERSCHOLASTIC ATHLETIC COMPETITION**
5

6 (a) For purposes of this Rule, a concussion is defined as a traumatic brain injury caused by a direct or indirect impact
7 to the head that results in disruption of normal brain function, which may or may not result in loss of consciousness.

8 (b) An administering organization shall, on an annual basis, provide a concussion and head injury information sheet
9 to all coaches, school nurses, athletic directors, first responders, volunteers, and students who participate ~~in~~
10 interscholastic athletic activities, and the parents or legal guardians of those students. The information shall include:

- 11 (1) The definitions and symptoms of concussions and head injuries;
- 12 (2) A description of the physiology and the potential short-term and long-term effects of concussions and other
13 head injuries;
- 14 (3) The medical return-to-play protocol for post-concussion participation in interscholastic athletic activities;
15 and
- 16 (4) Any other information deemed necessary by the PSU.

17 (c) School employees, first responders, volunteers, and students shall sign the information sheet and return it to the
18 coach before participating in interscholastic athletic activities, including tryouts, practices, or competition. Parents
19 shall sign the information sheet and return it to the coach before a child may participate in any such interscholastic
20 athletic activities. The signed sheets shall be maintained in accordance with Rule .0207, Paragraph (b) of this Section.

21 (d) If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with
22 concussion, the student shall be removed from the activity at the time and shall not be allowed to return to play or
23 practice that day. A student removed from play for exhibiting signs or symptoms consistent with concussion shall not
24 return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such
25 participation from one of the following:

- 26 (1) A physician licensed under Chapter 90, Article 1 of the General Statutes with training in concussion
27 management;
- 28 (2) A neuropsychologist licensed under Chapter 90, Article 18A of the General Statutes with training in
29 concussion management and working in consultation with a physician licensed under Chapter 90, Article 34
30 of the General Statutes;
- 31 (3) An athletic trainer licensed under Chapter 90, Article 34 of the General Statutes;
- 32 (4) A physician assistant, consistent with the limitations of G.S. 90-18.1; or
- 33 (5) A nurse practitioner, consistent with the limitations of G.S. 90-18.2.

34 (e) Each participating school shall develop a venue-specific emergency action plan to deal with serious injuries and
35 acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan must be:

- 36 (1) In writing;
- 37 (2) Reviewed by an athletic trainer licensed under Chapter 90, Article 34 of the General Statutes;

- 1 (3) Approved by the principal of the school;
- 2 (4) Distributed to all appropriate personnel;
- 3 (5) Posted conspicuously for community and parental awareness at all athletic-sponsored venues; and
- 4 (6) Reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses,
- 5 athletic directors, and volunteers for interscholastic athletic activities.

6 (f) Each participating school’s emergency management plan shall include:

- 7 (1) A delineation of roles;
- 8 (2) Methods of communication;
- 9 (3) Available emergency equipment; and
- 10 (4) Access to and plan for emergency transport.

11 (g) Each school shall maintain complete and accurate records of its compliance with the requirements of this Rule.

12

13 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-*
14 *407.50; 115C-407.55; 115C-407.57; 115C-407.58; 115C-407.60;*
15 *Temporary Rule Eff. July 1, 2024.*

1 16 NCAC 06E .0207 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06E .0207 STUDENT PARTICIPATION RULES FOR INTERSCHOLASTIC ATHLETICS**

4 (a) A student ~~in grades 6 through 12~~ shall not participate in interscholastic athletics on behalf of a North Carolina
5 public school unless the student has satisfied the eligibility requirements set forth in this Rule. PSUs are authorized to
6 determine whether and to what extent students ~~in grades 6 through 12~~ under their jurisdiction may participate in
7 interscholastic athletics, not inconsistent with the requirements of this Rule.

8 (b) Each PSU shall require the principal of a participating school to sign and date a list of eligible students for each
9 sport. The PSU shall maintain a copy of the most current list in the principal's office and the office of the
10 superintendent.

11 (c) Residency Requirements

12 (1) For purposes of this Rule, a student's primary residence shall be determined as follows:

13 (A) If the student lives with both parents, the residence of both parents.

14 (B) If the student lives with a single parent, the residence of that parent.

15 (C) If the student's parents are separated or divorced, the residence of the parent to whom a court of
16 competent jurisdiction has awarded primary custody of the student. If no custody order has been
17 entered, the student's primary residence shall be deemed to be that at which the student is residing
18 more than half-time at the beginning of the school year.

19 (D) If a student lives with an individual to whom a court of competent jurisdiction has awarded legal
20 guardianship of the student, the residence of that individual.

21 (E) If a student has been emancipated in accordance with Chapter 7B, Article 35 of the General Statutes,
22 the student's residence at the time of emancipation.

23 (F) If a student is a foreign national participating in a foreign exchange program authorized by federal
24 and state law, the residence to which the student is assigned by the program or host PSU.

25 (2) A student shall not participate in interscholastic athletics following a change in primary residence unless ~~it is~~
26 the change was made for a bona fide purpose, purpose and with the intent that it be permanent. A bona fide
27 ~~purpose means that the change in primary residence was made with the intent that it be permanent and not~~
28 ~~primarily for athletic purposes.~~ An administering organization shall resolve, by a preponderance of the
29 evidence, any disputes regarding a high school student's primary residence or whether a change in a student's
30 primary residence was for a bona fide purpose.

31 (d) Enrollment Requirements

32 (1) A student who attends a school supervised by a local board of education shall only participate in
33 interscholastic athletics on behalf of the school to which the student is assigned under G.S. 115C-366.

34 (2) A student enrolled in a charter school, regional statewide public school, or school operated by the University
35 of North Carolina shall meet all the enrollment criteria for that school and attend that school. A student who
36 attends a school described in this Subparagraph shall not participate in interscholastic athletics on behalf of
37 that school unless the student's primary residence is within either:

1 (A) the county in which the school is located, or

2 (B) twenty-five (25) miles of the school as determined by an administering organization.

- 3 (3) A local board of education may by policy allow ~~students who are~~ a person who is enrolled in Grade 6 through
4 12 in a home school, as defined in G.S. 115C-563(a), and whose primary residence is within the board's
5 jurisdiction to participate in interscholastic athletics on behalf of a participating school under the board's
6 jurisdiction, provided that the board either agrees to cover any ~~home school student~~ such person whom it
7 allows to participate under its catastrophic athletic accident insurance policy or verifies that the ~~student person~~
8 is independently covered by catastrophic accident insurance.

9 (e) Transfer Requirements

- 10 (1) After a student's initial entry into ~~grade~~ Grade 9, and absent a change in residence for a bona fide purpose as
11 provided in Paragraph (c) of this Rule:

12 (A) a student who transfers from one school to another school within the same PSU shall not participate
13 in interscholastic athletics for 365 calendar days following the student's enrollment in the new
14 school, unless the governing authority of the PSU has adopted a policy allowing immediate
15 eligibility for students who are assigned by the PSU to a different school within the same PSU.

16 (B) a student who transfers from a school in one PSU to a school in a different PSU shall not participate
17 in interscholastic athletics for 365 calendar days following the student's enrollment in the new
18 school, except by mutual agreement of the governing authorities of each PSU.

- 19 (2) ~~If~~ After a student's initial entry into Grade 9, if a student transfers to a new school within 365 calendar days
20 after that school hires a coach for an interscholastic athletics team who was previously employed as a coach
21 for an equivalent sport by the school from which the student is transferring, the student shall be ineligible to
22 participate in interscholastic athletics for that ~~sport. sport~~ for 365 calendar days following the student's
23 enrollment in the new school. An administering organization may waive this ~~requirement upon petition by~~
24 ~~the student's PSU if restriction~~ it determines by a preponderance of the evidence that the student's transfer
25 was for a bona fide purpose. for a bona fide purpose.

- 26 (3) A student who receives priority enrollment as the child of a full-time employee of a charter school pursuant
27 to G.S. 115C-218.45(f)(3) shall not be eligible to participate in interscholastic athletics for that charter school
28 if the Department of Public Instruction determines that the parent's employment was a fraudulent basis for
29 the student's priority enrollment. A student determined to be ineligible under this Subparagraph shall be
30 ~~ineligibility~~ ineligible to participate in interscholastic athletics for 365 calendar days following discovery of
31 the violation.

- 32 (4) For purposes of this Paragraph, if a student transfers from a public school to a nonpublic school, including a
33 home school as defined in G.S. 115C-563(a), and within 365 calendar days transfers to a different public
34 school, the transfer from the nonpublic school shall be treated as a transfer from a public school.

- 35 (5) A student who transfers to the North Carolina School of Science and Mathematics is exempt from the
36 requirements of this Paragraph upon initial entry into that school.

1 (6) No student shall participate in more than one season of interscholastic athletics per year in the same sport,
2 regardless of the school on behalf of which the student participated.

3 (f) Scholastic Requirements

4 (1) To be eligible to participate in interscholastic athletics, a student must be in good academic standing. For
5 purposes of this Rule, a student shall be deemed to be in good academic standing under the following
6 circumstances:

7 (A) The student ~~has no more than nine unexcused absences in the current school year;~~ attended at least 85
8 percent of the total number of instructional days in the PSU during the previous semester;

9 (B) The student passed at least 70 percent of the courses taken in the preceding semester; and

10 (C) The student is ~~on track to advance to the next grade level or graduate~~ making sufficient progress toward
11 meeting the academic and curricular requirements of the PSU and the State Board of Education to be
12 promoted to the next grade level or to graduate within the next calendar year.

13 (2) For the purpose of determining good academic standing during the fall semester, a student may count courses
14 that the student passed in a summer school session in which the student was enrolled during the same calendar
15 year toward the total number of courses passed in the preceding spring semester, provided that summer school
16 courses shall not affect the total number of courses attempted in the preceding spring semester.

17 ~~(2)~~ (3) A student who is promoted from ~~grade~~ Grade 5 to ~~grade~~ Grade 6 shall be deemed to have satisfied the
18 requirements set forth in this Paragraph to participate in the first semester of ~~grade~~ Grade 6.

19 ~~(3)~~ (4) A student who is promoted from ~~grade~~ Grade 8 to ~~grade~~ Grade 9 shall be deemed to have satisfied the
20 requirements set forth in this Paragraph to participate in the first semester of ~~grade~~ Grade 9.

21 (5) For interscholastic athletic activities occurring between July 1, 2024, and December 31, 2024, any student
22 who has satisfied the requirements of 16 NCAC 06E .0204(d), as it was written on June 30, 2024, shall be deemed
23 to have satisfied the requirements of this Paragraph.

24 (g) Age Requirements

25 (1) Each PSU shall determine the age of a student participating in interscholastic athletics based on a
26 preponderance of the evidence known to the PSU.

27 (2) A student who is ineligible to participate at one grade level due to age shall be eligible to participate at the
28 next higher grade level only, subject to the following restrictions: provided that a student:

29 (A) ~~A student shall~~ Shall be eligible to participate at the middle school level for no more than six
30 consecutive semesters, beginning with the student's initial entry into Grade 6.

31 (B) ~~A student shall~~ Shall be eligible to participate at the high school level for no more than eight
32 consecutive semesters, beginning with the student's initial entry into Grade 9.

33 (C) ~~A student shall~~ Shall not participate on a ~~grade 6, 7, or 8~~ middle school team if the student becomes
34 15 years of age before August 31 of that school year.

35 (D) ~~A student shall~~ Shall not participate on a ~~grade 7, 8, or 9~~ junior high school team if the student
36 becomes 16 years of age on or before August 31 of that school year.

1 (E) ~~A student shall~~ Shall not participate on ~~any grade 9, 10, 11, or 12~~ a high school team if the student
2 becomes 19 years of age on or before August 31 of that school year.

3 (3) A student in ~~grade~~ Grade 6 shall not participate in tackle football.

4 (h) Biological Requirements. All students participating in interscholastic athletics shall comply with the biological
5 participation requirements as provided in G.S. 115C-407.59.

6 (i) Medical Requirements. To be eligible to participate in interscholastic athletics, a student shall receive a medical
7 examination every 395 days by a licensed physician, nurse practitioner, or physician assistant, subject to the provisions
8 of ~~G.S. 90-9.1, G.S. 90-9.2, G.S. 90-9.3, G.S. 90-18.1, and G.S. 90-18.2.~~ Chapter 90 of the General Statutes.

9 (j) A student shall not participate in interscholastic athletics after pleading guilty or “no contest” to, or being ~~finally~~
10 convicted of, a felony under the laws of North Carolina, the United States, or any other state. Prior to deeming the
11 student ineligible, an administering organization shall receive a certified copy of a criminal record reflecting the
12 conviction and verify that the student is the same individual identified in the criminal record.

13 (k) An administering organization shall, in an individual student’s case, waive any eligibility requirement contained
14 in this Rule ~~upon a petition by the student’s PSU and a finding by the administering organization~~ if it finds that
15 enforcing the requirement:

16 (1) fails to promote academic progress, health, safety, and fair play;

17 (2) works an undue hardship on a student who has lost eligibility due to circumstances that made participation
18 impossible, such as prolonged illness or injury; or

19 (3) prevents the reasonable accommodation of a student’s disability, as required by the Americans with
20 Disabilities Act, 42 U.S.C. § 12101 et seq.

21
22 *History Note:* Authority ~~G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;~~
23 ~~115C-407.65; 116-235(b)~~

24 *Temporary Rule Eff. July 1, 2024.*

1 16 NCAC 06E .0215 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06E .0215 APPEALS**

4 (a) The Superintendent of Public Instruction (“Superintendent”) shall appoint an independent interscholastic athletics
5 appeals board (“appeals board”) to hear and act upon appeals from a final decision of an administering ~~organization,~~
6 organization or PSU, or from the Department of Public Instruction if necessary pursuant to Rule .0204, Paragraph (g)
7 of this Section, regarding student eligibility to participate in interscholastic athletics; violations of limitations on
8 recruiting or undue influence; penalties or fees imposed on students, coaches, or participating schools; ~~retaliation, or~~
9 ~~discrimination, or other enforcement of rules pursuant to this Section.~~

10 (b) The administering organization’s final decision shall contain:

- 11 (1) Findings of fact.
12 (2) Conclusions of law, including citation to and a copy of any rules related to the decision.
13 (3) A description of any penalties imposed.
14 (4) A statement that the aggrieved party may file a notice of appeal within five days of receipt of the
15 administering organization’s decision by sending the notice to the Superintendent via ~~email and~~
16 electronic mail or the United States Postal Service.

17 ~~(b)~~ (c) An aggrieved party may file an appeal with the Superintendent within five days after receipt of the administering
18 organization’s final decision. The final decision shall be mailed to the aggrieved party, with a copy to the local
19 superintendent and principal with jurisdiction over the aggrieved party.

20 (d) The aggrieved party’s appeal shall:

- 21 (1) Be in ~~writing;~~ writing.
22 (2) Include a description of the facts of the ~~dispute;~~ dispute.
23 (3) Include any evidence submitted to the administering ~~organization, and~~ organization.
24 (4) Present an argument explaining with the aggrieved party believes the administering organization’s final
25 decision was not based on substantial evidence, as defined in G.S. 150B-2(8c), or is affected by an error
26 of law.

27 (e) The administering organization may file a response to the aggrieved party’s submissions within five days. The
28 ~~panel appeals board~~ may shorten the time for filing the administering organization’s response if the decision affects a
29 student’s or coach’s eligibility to participate in an intervening athletic contest.

30 (f) All documents filed in the appeal shall be simultaneously served on all parties via email and the United States
31 Postal Service. If the aggrieved party is a student, parent, or coach, the parties shall also ~~serve~~ provide copies of the
32 documents ~~on~~ via electronic mail or the United States Postal Service to the local superintendent and principal with
33 jurisdiction over the aggrieved party.

34 (g) Panels of no fewer than three members of the appeals board may hear and decide matters on behalf of the appeals
35 board. The panel may conduct a live hearing in person or via teleconference. Any hearing so conducted shall be
36 recorded.

1 (h) No later than 30 days after the Superintendent’s receipt of the appeal, the panel shall issue its decision. The panel
2 shall affirm the administering organization’s final decision unless a majority of the panel determines that the final
3 decision is not supported by substantial evidence or is affected by an error of law. The panel may also remand the
4 decision to the administering organization for further review if there is an intervening change in any relevant law or
5 if the panel determines that additional information is necessary to inform its decision.

6 (i) The Superintendent, or the Superintendent’s authorized designee, may stay a determination of ineligibility or a
7 penalty imposed by the administering organization pending the final decision of the appeals board.

8 ~~(j)~~ (j) The panel’s decision shall be final.

9

10 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*
11 *115C-407.65; 116-235(b);*
12 *Temporary Rule Eff. July 1, 2024.*

**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: State Board of Education

RULE CITATION: 16 NCAC 06C .0602

DEADLINE FOR RECEIPT: March 22, 2024

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 lines 19-20, consider changing “with oversight of public education” to “with public education oversight”. I.e. “bodies [with oversight of public education] with public education oversight.”

I have made this change.

On lines 24-25, “demonstrate a high standard of personal character and conduct and shall serve as a positive role model” seems impermissibly vague. Are there further definitions or clarifications somewhere else, or that can be added?

*This language has been part of the Standards of Professional Conduct since they were adopted in 1998 and was designed to capture language from the opinion of the North Carolina Supreme Court in *Faulkner v. New Bern-Craven Board of Education*, 311 N.C. 42 (1984).¹ *Faulkner* involved a career (tenure) teacher who was dismissed by a local board of education after a finding that he had, among other things, “consumed some form of alcohol beverages at school, or, at least, has had the odor of alcohol on his breath at school during instructional hours” on multiple occasions spanning two school years. *Id.* at 48. The board based its dismissal on G.S. 115C-325(e)(1)f., which provides that a career teacher may be dismissed for “[h]abitual or excessive use of alcohol or nonmedical use of a controlled substance[.]” In holding that the local board’s decision was supported by substantial evidence and fell within the meaning of the statutory provision, the Court observed:*

Our inquiry focuses on the intent of the legislature with specific application to teachers who are entrusted with the care of small children and adolescents. We do not hesitate to conclude that these men and women are intended by parents, citizenry, and lawmakers alike to serve as good examples for their young charges. Their character and conduct may be expected to be above

¹ The amendments to this Standard reflected in the adopted rule are simply a revision to the sentence structure to make it more grammatically sound; the substance has not changed.

Seth Ascher

Commission Counsel

Date submitted to agency: March 14, 2024

those of the average individual not working in so sensitive a relationship as that of teacher to pupil. It is not inappropriate or unreasonable to hold our teachers to a higher standard of personal conduct, given the youthful ideals they are supposed to foster and elevate.

Id. at 69 (emphasis added). In the *Faulkner* case, as in licensure discipline cases in which the SBE has invoked the “Personal Conduct” standard in the past, whether an educator has violated the standard is a fact-specific inquiry based on the unique circumstances and evidence in each case.

Other professional licensing bodies rely on similarly broad language that has been upheld by North Carolina appellate courts. In the seminal case of *In re Willis*, the North Carolina Board of Law Examiners denied the petitioner’s application to take the bar exam after finding that the petitioner, among other things, was discharged from the Air Force for “continuous poor performance, indifferent attitude, lack of responsibility, immaturity and low order of intellect and potential;” was twice charged and once convicted with driving under the influence; was arrested on suspicion of burglary in Maryland; and had an unsatisfied judgment against him by a local bank due to an outstanding automobile payment. 288 N.C. 1, 5–6 (1975). Following a hearing in which the petitioner appeared before the Board, the Board concluded that the petitioner had “not satisfied the Board that he is possessed of good moral character and entitled to the high regard and confidence of the public.” *Id.* at 6. The Court rejected the applicant’s claim that the “good moral character” standard was unconstitutionally vague, concluding that, “the term ‘good moral character,’ although broad, has been so extensively used as a standard that its long usage and the caselaw surrounding that usage have given the term well-defined contours which make it a constitutionally appropriate standard.” *Id.* at 11. The Court further determined that,

[w]hile a State cannot exclude a person from the practice of law for reasons that contravene the Due Process or Equal Protection Clauses of the Fourteenth Amendment, a State can require high standards for admission to the bar, including good moral character and proficiency in the laws, so long as the qualifying standards have a rational connection with the applicant’s fitness or capacity to practice the law.

Id. at 14. Finally, the Court noted that

“[S]atisfaction of the requirement of moral character involves an exercise of delicate judgment on the part of those who reach a conclusion, having heard and seen the applicant for admission, a judgment of which may be said as it was of ‘many honest and sensible judgments’ in a different context that it expresses ‘an intuition of experience which outruns analysis and sums up many unnamed and tangible impressions,—impressions which may lie beneath consciousness without losing their worth.’ ”

Id. at 19 (quoting *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 248 (1957) (Frankfurter, J., concurring)). Possession of “good moral character” continues to be part of the State Bar’s admission requirements today. *See* 27 NCAC 01F .0103(1).

Other licensing boards in North Carolina likewise require evidence of “good moral character” or “good moral conduct” in decisions regarding a license. *See*, e.g., 21 NCAC 03 .0102 (athletic trainers); 21 NCAC 31 .0201 (marriage and family therapists); 21 NCAC 32B .1303 (physicians); 21 NCAC 64 .0307 (speech and language pathologists and audiologists). In *Devalle v. North Carolina Sheriffs’ and Education Training Standards Commission*, the defendant Commission revoked the plaintiff’s justice officer certification in April 2016 after he was terminated by the State Highway Patrol for spending extended periods of time at home when he was supposed to be on duty. 289 N.C. App. 12, 14 (2023). In August 2017, after obtaining new employment with a county sheriff’s office, the plaintiff applied once again for certification, but in January 2019, the Commission denied his certification indefinitely on the grounds that the plaintiff “[n]o longer possess[ed] the good moral character required of all judicial officers.” *Id.* at 14–15. Although the Court of Appeals ultimately reversed the Commission’s decision on other grounds, it acknowledged the holding in *Willis* that “[w]hile vague, the ‘good moral character’ standard is not ‘an unconstitutional standard.’” *Id.* at 21 (quoting *Willis*, 288 N.C. at 11).

North Carolina courts have applied these analytical principals in the professional educator context as well. In *Barringer v. Caldwell County Board of Education*, a local board of education dismissed a career teacher on grounds of “immorality” under G.S. 115C-325(e)(1)b. after the teacher was arrested for brandishing a shotgun and carrying a concealed weapon outside a local pool hall. 123 N.C. App. 373, 375–76 (1996). On appeal, the teacher argued that G.S. 115C-325(e)(1)b. was “unconstitutionally vague because it fails to give fair warning of what conduct is prohibited, fails to require a nexus between conduct and teaching performance, and permits erratic and prejudiced exercises of authority.” *Id.* at 377. The Court of Appeals rejected the teacher’s argument, first observing that,

the United States Supreme Court has held that a civil statute overcomes a challenge on grounds of vagueness merely by conveying a “sufficiently definite warning as to the proscribed conduct within measured by common understanding and practices,” and that “difficulty in determining whether certain marginal offenses are within the meaning of the language under attack as vague does not automatically render a statute unconstitutional for indefiniteness.”

Id. at 378 (quoting *Jordan v. De George*, 341 U.S. 223, 231–32 (1951)). Quoting *Willis*, the Court of Appeals noted that,

our North Carolina Supreme Court has stated that terminology such as “good moral character” denoting acceptable and unacceptable standards of behavior has been “so extensively used as a standard that its long usage and the case law surrounding that usage have given the term well-defined

contours which make it a constitutionally appropriate standard.”

Id. at 378–79 (quoting 288 N.C. at 11). The Court of Appeals cited similar findings by other state supreme courts interpreting identical provisions in statutes related to teacher discipline, including a conclusion by the Kansas Supreme Court that,

“[i]t would indeed be difficult, not to say impractical, in carrying out the purpose of [a Kansas law permitting revocation of a teacher certification for ‘immorality’], for the legislature to list each and every specific act or course of conduct which might constitute such unprofessional conduct Nor does any such failure leave the statute subject to attack on grounds of vagueness or indefiniteness.”

Id. at 380 (quoting *Hainline v. Bond*, 250 Kan. 217, 227, 842 P.2d 959, 967 (1992)). *See also Frison v. Frankling Cnty. Bd. Of Educ.*, 596 F.2d 1192, 1194 (4th Cir. 1979) (holding that North Carolina laws “prescribing a teacher’s speech and conduct are necessarily broad; they cannot possibly mention every specific kind of misconduct,” and, as a result, a demoted career teacher “had sufficient notice that her conduct [reading intercepted student note containing ‘vulgar colloquialisms’ out loud to class] was unacceptable.”). After concluding that the use of the term “immorality” was not unconstitutionally vague, the Court of Appeals determined that the local board had properly dismissed the teacher because “a reasonable public school teacher of ordinary intelligence and utilizing common understanding” would know that the conduct in which the teacher engaged in this case would “reflect to the teacher’s young charges a poor example manifesting approval of violence and taking the law into one’s own hands, consequently placing the teacher’s professional position in jeopardy.” *Id.* at 382 (internal citations and quotations omitted).

In light of this case law, the SBE believes that the phrase “demonstrate a high standard of personal character and conduct and shall serve as a positive role model” is a permissible standard. It provides the SBE with the necessary flexibility to address a broad spectrum of potential unprofessional conduct by licensed educators that could bear on their fitness for the education profession without the impractical obligation to “list each and every specific act or course of conduct which might constitute such unprofessional conduct.” *Hainline*, 250 Kan. at 227, 842 P.2d at 967. At the same time, it will give licensed educators adequate notice of the type of behavior that could subject them to disciplinary action by the SBE. State law offers some guidance, *see, e.g.*, G.S. 115C-307(b) (“It shall be the duty of all teachers . . . to encourage temperance, morality, industry, and neatness”), but, as in *Faulkner*, *Willis*, *Barringer*, each case will involve a fact specific inquiry.

Moreover, Rule 16 NCAC 06C .0604 ensures that a finding of a violation of this Standard by itself is not sufficient to warrant disciplinary action. That the SBE must also consider a list of seven factors, including “[t]he existence of a reasonable and adverse relationship between the underlying misconduct and the ability of the respondent to perform the respondent’s professional duties as an educator.” 16 NCAC 06C .0604(b)(7). The requirement of a nexus between the conduct and an individual’s qualifications as an educator echoes the comments of our state appellate courts in cases like *Willis* and *Barringer*. The SBE’s determination of

Seth Ascher
Commission Counsel

Date submitted to agency: March 14, 2024

whether a teacher has violated this Standard, just like the determination of whether an applicant for admission to the bar satisfies the “good moral character” requirement, “involves an exercise of delicate judgment on the part of those who reach a conclusion, having heard and seen the [respondent].” *Willis*, 288. N.C. at 19 (internal citation omitted).

Of course, if a respondent disagrees with the SBE’s conclusion that the respondent’s conduct violates this standard and justifies disciplinary action after consideration of all of the relevant factors in 16 NCAC 06 .0604(b), that individual has the right to challenge the decision in the Office of Administrative Hearings on the grounds listed in G.S. 150B-23(a).

In item 3, lines 26-29, the relationship between the first and second sentence is not clear. Are the items in the list starting on line 30 examples of the kinds of behavior that would violate professional boundaries? A list of specific conduct that can be disciplined? Consider, on line 28, something like “Specifically [The] the educator shall not” or “For example, [The] the educator shall not”.

The items listed are examples of that type of behavior. I have accepted your first suggestion and added the word “Specifically” at the beginning of the second sentence.

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: State Board of Education

RULE CITATION: 16 NCAC 06C .0603

DEADLINE FOR RECEIPT: March 22, 2024

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, I'm not sure what "substantiating information" means in this context. Particularly, I can't tell if this is meant to be a standard to be met before the superintendent is required to investigate, or if it is just meaning that some support for factual allegations must be provided. Could someone provide an allegation without substantiating information or with insufficient substantiating information, and then a superintendent would not be obligated to investigate? I can't tell how this is meant to work but consider either providing further definition or standard for "substantiating information" or rewriting to remove that concept.

The receipt of "substantiating information" is a threshold requirement before the Superintendent launches an investigation. The purpose of this requirement is to make clear that base allegations, without any evidentiary support, will not trigger an investigation. The Superintendent and SBE regularly receive complaints from parents or members of the public about licensed educators that have no basis in fact or are based entirely on hearsay, and the Superintendent does not have the resources to chase down every allegation. As a result, some amount of substantiating information must be included with the allegations.

This language appears in current rule 16 NCAC 06C .0374, which was adopted by the SBE and approved by RRC in 2020: "(a) Upon the receipt of a written request and substantiating information from anyone in a position to present credible information as a basis for the suspension or revocation of a person's license, the Superintendent of Public Instruction shall conduct an investigation sufficient to determine whether cause exists to believe that the person's license should be suspended or revoked." New rule 16 NCAC 06C .0603 will replace this rule and is designed to maintain that threshold standard for launching an investigation.

On line 6, replace may with would. I.e. "respondent that ~~may~~ would provide cause."

I have made this change.

On line 7, are disciplinary sanctions imposed on a "license" or a "licensee"? This looks like a typo, but it appears in several rules.

Seth Ascher

Commission Counsel

Date submitted to agency: March 14, 2024

The sanctions are imposed on the licensee. I have fixed this throughout the rules.

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: March 14, 2024

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

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06C .0604

DEADLINE FOR RECEIPT: March 22, 2024

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Where does the SBE get authority to delegate the disciplinary authority to a designee? G.S. 115C-270.35(b), (c), and (d) all seem to indicate that the SBE itself has to make disciplinary decisions, although (e) clearly contemplates delegating investigation.

After additional internal discussion, the SBE has concluded that the delegation language is not necessary, and it has therefore been removed.

In the title and on lines 6 and 34, are disciplinary sanctions imposed on a "license" or a "licensee"? This looks like a typo, but it appears in several rules.

The sanctions are imposed on the licensee. I have fixed this throughout the rules.

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: State Board of Education

RULE CITATION: 16 NCAC 06C .0605

DEADLINE FOR RECEIPT: March 22, 2024

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

Where does the SBE get authority to delegate the disciplinary authority to a designee? G.S. 115C-270.35(b), (c), and (d) all seem to indicate that the SBE itself has to make disciplinary decisions, although (e) clearly contemplates delegating investigation.

After additional internal discussion, the SBE has concluded that the delegation language is not necessary, and it has therefore been removed.

On lines 5, are disciplinary sanctions imposed on a “respondent’s license” or a “respondent licensee”? This looks like a typo, but it appears in several rules.

The sanctions are imposed on the licensee. I have fixed this throughout the rules.

For the list in 8-11, there should be semicolons after 1 and 2, “~~Term~~ Term; or” at the end of item 3, and a period at the end of item 4.

I have made these changes.

Add commas on lines 20 and 21, “any crime crime, the” and “G.S. 115C-270.35(b) 115C-270.35(b).”

I have made these changes.

On line 23, what is meant by promptly? Is there a specific timeline that the Board envisions?

The addition of this provision is intended to codify in SBE rules authority it already possesses under the APA. The phrase “promptly commence” comes directly from G.S. 150B-3(c) and is not defined in the statute. In practice, at the time the SBE notifies the respondent of the suspension, it offers the respondent three options: (1) proceed with the SBE’s usual disciplinary process by contacting the SBE Office of General Counsel within 30 days of the notice; (2) postpone additional proceedings until the conclusion of any pending criminal

Seth Ascher

Commission Counsel

Date submitted to agency: March 14, 2024

proceedings (as contemplated in the rule, these have been the only circumstances in which the SBE has exercised the summary suspension authority), during which time the license remains suspended; or (3) voluntarily surrender the respondent's license. In my experience respondents have always chosen Option (2) or (3). Option (2) makes sense for criminal defendants—although the Fifth Amendment right against self-incrimination does not apply to SBE disciplinary proceedings, any statements or evidence offered by the defendant during those proceedings could potentially be used against the defendant in their criminal case and therefore they often do not want to participate in the SBE process while the criminal proceedings are pending.

I have not yet encountered a case in which a respondent has chosen Option 1, but if they did, the SBE would commence its proceedings as soon as the respondent provided that notice.

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: March 14, 2024

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

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06C .0606

DEADLINE FOR RECEIPT: March 22, 2024

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 16, the comma should be a period: "SBE, SBE."

I have corrected this typo.

On line 20 there is a typo. Do you mean "SBE and DPI"

This was a typo from when I was making the changes from proposal to adoption. It is supposed to just say "DPI" and I have fixed this.

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: State Board of Education

RULE CITATION: 16 NCAC 06C .0607

DEADLINE FOR RECEIPT: March 22, 2024

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 11, "~~(b)~~ (c)"

I have fixed this typo.

In the third item, starting on line 11, where does the SBE get authority to delegate the disciplinary authority to a designee? G.S. 115C-270.35(b), (c), and (d) all seem to indicate that the SBE itself has to make disciplinary decisions, although (e) clearly contemplates delegating investigation.

After additional internal discussion, the SBE has concluded that the delegation language is not necessary, and it has therefore been removed.

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: March 14, 2024

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

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06C .0608

DEADLINE FOR RECEIPT: March 22, 2024

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 33, are disciplinary sanctions imposed on an "employee's license" or a "licensed employee"? This looks like a typo, but it appears in several rules.

The sanctions are imposed on the licensee. I have fixed this throughout the rules.

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: State Board of Education

RULE CITATION: 16 NCAC 06E .0201

DEADLINE FOR RECEIPT: March 22, 2024

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 22, consider replacing with “involves students in grades 6 through 12;”. As written, it could be read to exclude students in grades 6 and 12.

I have made this change.

On line 30, you are missing a period: “~~115C-407.50(6)~~ 115C-407.50(6).”

I have fixed this typo.

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: State Board of Education

RULE CITATION: 16 NCAC 06E .0204

DEADLINE FOR RECEIPT: March 22, 2024

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

On page 3, line 16, item (c)(2): “[~~waive~~] Waive”.

I have fixed this typo.

On page 3, lines 28-30, item (c)(7), it is unclear who decides which membership fee to pay and how. That is, does the superintendent decide which fee the association is allowed to charge? Does the association decide which fee it wants to charge? Or does the school decide which fee it wants to charge?

The administering organization decides which fee to charge. When the General Assembly first established the concept of an “administering organization” in S.L. 2021-184 and required the SBE to enter MOUs with these organizations to administer interscholastic athletics, the SBE had relationships with two such organizations—the North Carolina High School Athletic Association and the Carolina Athletic Association for Schools of Choice. The NCHSAA is by far the larger of the two organizations and has historically charged a fee of \$1.00 per student per member school. The CAA4SC, by contrast, is a much smaller organization with approximately 20 charter schools with small enrollment. As a result, utilizing the \$1.00 per student fee structure would have generated too small of an operating budget to make the organization viable, so it has historically charged \$1,000 per member school. The rule was written in this way to accommodate those organizations and allow them to utilize their preferred fee structure.

This language appears in the current version of 16 NCAC 06C .0204 that was adopted by the SBE and approved by RRC in 2023. The only change was removing the words “Establish and” to make clear that the administering organization was not setting the fee, only choosing from one of two options.

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: March 14, 2024

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

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06E .0205

DEADLINE FOR RECEIPT: March 22, 2024

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 9, “volunteers, and students who”

I have fixed this typo.

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: State Board of Education

RULE CITATION: 16 NCAC 06E .0207

DEADLINE FOR RECEIPT: March 22, 2024

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Is item (e)(2), page 2, lines 19-24, meant to be a permanent ineligibility? It has no time period, which most of the others do.

I have clarified that the ineligibility is for 365 calendar days, consistent with other rules.

On page 3, line 16, you have a typo where "Gr" was left in before deleting "grade".

I have fixed this typo.

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: State Board of Education

RULE CITATION: 16 NCAC 06E .0215

DEADLINE FOR RECEIPT: March 22, 2024

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

On line 5, I don't think you meant to strike through organization.

I did because it was adding the words "or PSU" between "organization" and the comma, I just forgot to put the word organization back in. I've fixed this.

On line 17, "~~(b)~~(c)".

I have fixed this typo.

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: RFC for March SBE Temporary Rules
Attachments: SBE March Temp Rules RFC (with agency responses).docx; 16 NCAC 06C .0602 (Standards of Professional Conduct).docx; 16 NCAC 06C .0603 (Investigation of Alleged Misconduct by a Licensed Professional Educator or License Applicant).docx; 16 NCAC 06C .0604 (Denying or Sanctioning a License).docx; 16 NCAC 06C .0605 (Disciplinary Sanctions).docx; 16 NCAC 06C .0606 (Voluntary Surrender of a License).docx; 16 NCAC 06C .0607 (Reinstatement of or Reconsideration for a License).docx; 16 NCAC 06C .0608 (Reporting Requirements for PSU Administrators).docx; 16 NCAC 06E .0201 (Definitions).docx; 16 NCAC 06E .0204 (Administration of Interscholastic Athletics).docx; 16 NCAC 06E .0205 (Student Health and Safety Requirements).docx; 16 NCAC 06E .0207 (Student Participation Rules).docx; 16 NCAC 06E .0215 (Appeals).docx

From: Ryan Collins <Ryan.Collins@dpi.nc.gov>
Sent: Tuesday, March 19, 2024 4:47 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Brewington, Denyse <Denyse.Brewington@dpi.nc.gov>
Cc: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] Re: RFC for March SBE Temporary Rules

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.

Hi Seth,

Thank you for the feedback!

I've attached a copy of the Request for Changes with my responses. I believe that I have addressed all of your comments. I've also attached revised versions of those rules that have been updated in response to your requests. Let me know if there is anything you want to discuss further.

Best,

Ryan

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

Assistant General Counsel

North Carolina State Board of Education

ryan.collins@dpi.nc.gov

984.236.2255 (o)



NORTH CAROLINA
State Board of Education
Department of Public Instruction

**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: State Board of Education

RULE CITATION: 16 NCAC 06C .0602

DEADLINE FOR RECEIPT: March 22, 2024

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 lines 19-20, consider changing “with oversight of public education” to “with public education oversight”. I.e. “bodies [with oversight of public education] with public education oversight.”

I have made this change.

On lines 24-25, “demonstrate a high standard of personal character and conduct and shall serve as a positive role model” seems impermissibly vague. Are there further definitions or clarifications somewhere else, or that can be added?

*This language has been part of the Standards of Professional Conduct since they were adopted in 1998 and was designed to capture language from the opinion of the North Carolina Supreme Court in *Faulkner v. New Bern-Craven Board of Education*, 311 N.C. 42 (1984).¹ *Faulkner* involved a career (tenure) teacher who was dismissed by a local board of education after a finding that he had, among other things, “consumed some form of alcohol beverages at school, or, at least, has had the odor of alcohol on his breath at school during instructional hours” on multiple occasions spanning two school years. *Id.* at 48. The board based its dismissal on G.S. 115C-325(e)(1)f., which provides that a career teacher may be dismissed for “[h]abitual or excessive use of alcohol or nonmedical use of a controlled substance[.]” In holding that the local board’s decision was supported by substantial evidence and fell within the meaning of the statutory provision, the Court observed:*

Our inquiry focuses on the intent of the legislature with specific application to teachers who are entrusted with the care of small children and adolescents. We do not hesitate to conclude that these men and women are intended by parents, citizenry, and lawmakers alike to serve as good examples for their young charges. Their character and conduct may be expected to be above

¹ The amendments to this Standard reflected in the adopted rule are simply a revision to the sentence structure to make it more grammatically sound; the substance has not changed.

Seth Ascher

Commission Counsel

Date submitted to agency: March 14, 2024

those of the average individual not working in so sensitive a relationship as that of teacher to pupil. It is not inappropriate or unreasonable to hold our teachers to a higher standard of personal conduct, given the youthful ideals they are supposed to foster and elevate.

Id. at 69 (emphasis added). In the *Faulkner* case, as in licensure discipline cases in which the SBE has invoked the “Personal Conduct” standard in the past, whether an educator has violated the standard is a fact-specific inquiry based on the unique circumstances and evidence in each case.

Other professional licensing bodies rely on similarly broad language that has been upheld by North Carolina appellate courts. In the seminal case of *In re Willis*, the North Carolina Board of Law Examiners denied the petitioner’s application to take the bar exam after finding that the petitioner, among other things, was discharged from the Air Force for “continuous poor performance, indifferent attitude, lack of responsibility, immaturity and low order of intellect and potential;” was twice charged and once convicted with driving under the influence; was arrested on suspicion of burglary in Maryland; and had an unsatisfied judgment against him by a local bank due to an outstanding automobile payment. 288 N.C. 1, 5–6 (1975). Following a hearing in which the petitioner appeared before the Board, the Board concluded that the petitioner had “not satisfied the Board that he is possessed of good moral character and entitled to the high regard and confidence of the public.” *Id.* at 6. The Court rejected the applicant’s claim that the “good moral character” standard was unconstitutionally vague, concluding that, “the term ‘good moral character,’ although broad, has been so extensively used as a standard that its long usage and the caselaw surrounding that usage have given the term well-defined contours which make it a constitutionally appropriate standard.” *Id.* at 11. The Court further determined that,

[w]hile a State cannot exclude a person from the practice of law for reasons that contravene the Due Process or Equal Protection Clauses of the Fourteenth Amendment, a State can require high standards for admission to the bar, including good moral character and proficiency in the laws, so long as the qualifying standards have a rational connection with the applicant’s fitness or capacity to practice the law.

Id. at 14. Finally, the Court noted that

“[S]atisfaction of the requirement of moral character involves an exercise of delicate judgment on the part of those who reach a conclusion, having heard and seen the applicant for admission, a judgment of which may be said as it was of ‘many honest and sensible judgments’ in a different context that it expresses ‘an intuition of experience which outruns analysis and sums up many unnamed and tangible impressions,—impressions which may lie beneath consciousness without losing their worth.’ ”

Id. at 19 (quoting *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 248 (1957) (Frankfurter, J., concurring)). Possession of “good moral character” continues to be part of the State Bar’s admission requirements today. *See* 27 NCAC 01F .0103(1).

Other licensing boards in North Carolina likewise require evidence of “good moral character” or “good moral conduct” in decisions regarding a license. *See*, e.g., 21 NCAC 03 .0102 (athletic trainers); 21 NCAC 31 .0201 (marriage and family therapists); 21 NCAC 32B .1303 (physicians); 21 NCAC 64 .0307 (speech and language pathologists and audiologists). In *Devalle v. North Carolina Sheriffs’ and Education Training Standards Commission*, the defendant Commission revoked the plaintiff’s justice officer certification in April 2016 after he was terminated by the State Highway Patrol for spending extended periods of time at home when he was supposed to be on duty. 289 N.C. App. 12, 14 (2023). In August 2017, after obtaining new employment with a county sheriff’s office, the plaintiff applied once again for certification, but in January 2019, the Commission denied his certification indefinitely on the grounds that the plaintiff “[n]o longer possess[ed] the good moral character required of all judicial officers.” *Id.* at 14–15. Although the Court of Appeals ultimately reversed the Commission’s decision on other grounds, it acknowledged the holding in *Willis* that “[w]hile vague, the ‘good moral character’ standard is not ‘an unconstitutional standard.’” *Id.* at 21 (quoting *Willis*, 288 N.C. at 11).

North Carolina courts have applied these analytical principals in the professional educator context as well. In *Barringer v. Caldwell County Board of Education*, a local board of education dismissed a career teacher on grounds of “immorality” under G.S. 115C-325(e)(1)b. after the teacher was arrested for brandishing a shotgun and carrying a concealed weapon outside a local pool hall. 123 N.C. App. 373, 375–76 (1996). On appeal, the teacher argued that G.S. 115C-325(e)(1)b. was “unconstitutionally vague because it fails to give fair warning of what conduct is prohibited, fails to require a nexus between conduct and teaching performance, and permits erratic and prejudiced exercises of authority.” *Id.* at 377. The Court of Appeals rejected the teacher’s argument, first observing that,

the United States Supreme Court has held that a civil statute overcomes a challenge on grounds of vagueness merely by conveying a “sufficiently definite warning as to the proscribed conduct within measured by common understanding and practices,” and that “difficulty in determining whether certain marginal offenses are within the meaning of the language under attack as vague does not automatically render a statute unconstitutional for indefiniteness.”

Id. at 378 (quoting *Jordan v. De George*, 341 U.S. 223, 231–32 (1951)). Quoting *Willis*, the Court of Appeals noted that,

our North Carolina Supreme Court has stated that terminology such as “good moral character” denoting acceptable and unacceptable standards of behavior has been “so extensively used as a standard that its long usage and the case law surrounding that usage have given the term well-defined

contours which make it a constitutionally appropriate standard.”

Id. at 378–79 (quoting 288 N.C. at 11). The Court of Appeals cited similar findings by other state supreme courts interpreting identical provisions in statutes related to teacher discipline, including a conclusion by the Kansas Supreme Court that,

“[i]t would indeed be difficult, not to say impractical, in carrying out the purpose of [a Kansas law permitting revocation of a teacher certification for ‘immorality’], for the legislature to list each and every specific act or course of conduct which might constitute such unprofessional conduct Nor does any such failure leave the statute subject to attack on grounds of vagueness or indefiniteness.”

Id. at 380 (quoting *Hainline v. Bond*, 250 Kan. 217, 227, 842 P.2d 959, 967 (1992)). *See also Frison v. Frankling Cnty. Bd. Of Educ.*, 596 F.2d 1192, 1194 (4th Cir. 1979) (holding that North Carolina laws “prescribing a teacher’s speech and conduct are necessarily broad; they cannot possibly mention every specific kind of misconduct,” and, as a result, a demoted career teacher “had sufficient notice that her conduct [reading intercepted student note containing ‘vulgar colloquialisms’ out loud to class] was unacceptable.”). After concluding that the use of the term “immorality” was not unconstitutionally vague, the Court of Appeals determined that the local board had properly dismissed the teacher because “a reasonable public school teacher of ordinary intelligence and utilizing common understanding” would know that the conduct in which the teacher engaged in this case would “reflect to the teacher’s young charges a poor example manifesting approval of violence and taking the law into one’s own hands, consequently placing the teacher’s professional position in jeopardy.” *Id.* at 382 (internal citations and quotations omitted).

In light of this case law, the SBE believes that the phrase “demonstrate a high standard of personal character and conduct and shall serve as a positive role model” is a permissible standard. It provides the SBE with the necessary flexibility to address a broad spectrum of potential unprofessional conduct by licensed educators that could bear on their fitness for the education profession without the impractical obligation to “list each and every specific act or course of conduct which might constitute such unprofessional conduct.” *Hainline*, 250 Kan. at 227, 842 P.2d at 967. At the same time, it will give licensed educators adequate notice of the type of behavior that could subject them to disciplinary action by the SBE. State law offers some guidance, *see, e.g.*, G.S. 115C-307(b) (“It shall be the duty of all teachers . . . to encourage temperance, morality, industry, and neatness”), but, as in *Faulkner*, *Willis*, *Barringer*, each case will involve a fact specific inquiry.

Moreover, Rule 16 NCAC 06C .0604 ensures that a finding of a violation of this Standard by itself is not sufficient to warrant disciplinary action. That the SBE must also consider a list of seven factors, including “[t]he existence of a reasonable and adverse relationship between the underlying misconduct and the ability of the respondent to perform the respondent’s professional duties as an educator.” 16 NCAC 06C .0604(b)(7). The requirement of a nexus between the conduct and an individual’s qualifications as an educator echoes the comments of our state appellate courts in cases like *Willis* and *Barringer*. The SBE’s determination of

Seth Ascher
Commission Counsel

Date submitted to agency: March 14, 2024

whether a teacher has violated this Standard, just like the determination of whether an applicant for admission to the bar satisfies the “good moral character” requirement, “involves an exercise of delicate judgment on the part of those who reach a conclusion, having heard and seen the [respondent].” *Willis*, 288. N.C. at 19 (internal citation omitted).

Of course, if a respondent disagrees with the SBE’s conclusion that the respondent’s conduct violates this standard and justifies disciplinary action after consideration of all of the relevant factors in 16 NCAC 06 .0604(b), that individual has the right to challenge the decision in the Office of Administrative Hearings on the grounds listed in G.S. 150B-23(a).

In item 3, lines 26-29, the relationship between the first and second sentence is not clear. Are the items in the list starting on line 30 examples of the kinds of behavior that would violate professional boundaries? A list of specific conduct that can be disciplined? Consider, on line 28, something like “Specifically [The] the educator shall not” or “For example, [The] the educator shall not”.

The items listed are examples of that type of behavior. I have accepted your first suggestion and added the word “Specifically” at the beginning of the second sentence.

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: State Board of Education

RULE CITATION: 16 NCAC 06C .0603

DEADLINE FOR RECEIPT: March 22, 2024

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, I'm not sure what "substantiating information" means in this context. Particularly, I can't tell if this is meant to be a standard to be met before the superintendent is required to investigate, or if it is just meaning that some support for factual allegations must be provided. Could someone provide an allegation without substantiating information or with insufficient substantiating information, and then a superintendent would not be obligated to investigate? I can't tell how this is meant to work but consider either providing further definition or standard for "substantiating information" or rewriting to remove that concept.

The receipt of "substantiating information" is a threshold requirement before the Superintendent launches an investigation. The purpose of this requirement is to make clear that base allegations, without any evidentiary support, will not trigger an investigation. The Superintendent and SBE regularly receive complaints from parents or members of the public about licensed educators that have no basis in fact or are based entirely on hearsay, and the Superintendent does not have the resources to chase down every allegation. As a result, some amount of substantiating information must be included with the allegations.

This language appears in current rule 16 NCAC 06C .0374, which was adopted by the SBE and approved by RRC in 2020: "(a) Upon the receipt of a written request and substantiating information from anyone in a position to present credible information as a basis for the suspension or revocation of a person's license, the Superintendent of Public Instruction shall conduct an investigation sufficient to determine whether cause exists to believe that the person's license should be suspended or revoked." New rule 16 NCAC 06C .0603 will replace this rule and is designed to maintain that threshold standard for launching an investigation.

On line 6, replace may with would. I.e. "respondent that ~~may~~ would provide cause."

I have made this change.

On line 7, are disciplinary sanctions imposed on a "license" or a "licensee"? This looks like a typo, but it appears in several rules.

Seth Ascher

Commission Counsel

Date submitted to agency: March 14, 2024

The sanctions are imposed on the licensee. I have fixed this throughout the rules.

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: March 14, 2024

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

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06C .0604

DEADLINE FOR RECEIPT: March 22, 2024

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Where does the SBE get authority to delegate the disciplinary authority to a designee? G.S. 115C-270.35(b), (c), and (d) all seem to indicate that the SBE itself has to make disciplinary decisions, although (e) clearly contemplates delegating investigation.

After additional internal discussion, the SBE has concluded that the delegation language is not necessary, and it has therefore been removed.

In the title and on lines 6 and 34, are disciplinary sanctions imposed on a "license" or a "licensee"? This looks like a typo, but it appears in several rules.

The sanctions are imposed on the licensee. I have fixed this throughout the rules.

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: State Board of Education

RULE CITATION: 16 NCAC 06C .0605

DEADLINE FOR RECEIPT: March 22, 2024

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

Where does the SBE get authority to delegate the disciplinary authority to a designee? G.S. 115C-270.35(b), (c), and (d) all seem to indicate that the SBE itself has to make disciplinary decisions, although (e) clearly contemplates delegating investigation.

After additional internal discussion, the SBE has concluded that the delegation language is not necessary, and it has therefore been removed.

On lines 5, are disciplinary sanctions imposed on a “respondent’s license” or a “respondent licensee”? This looks like a typo, but it appears in several rules.

The sanctions are imposed on the licensee. I have fixed this throughout the rules.

For the list in 8-11, there should be semicolons after 1 and 2, “~~Term~~ Term; or” at the end of item 3, and a period at the end of item 4.

I have made these changes.

Add commas on lines 20 and 21, “any crime crime, the” and “G.S. 115C-270.35(b) 115C-270.35(b).”

I have made these changes.

On line 23, what is meant by promptly? Is there a specific timeline that the Board envisions?

The addition of this provision is intended to codify in SBE rules authority it already possesses under the APA. The phrase “promptly commence” comes directly from G.S. 150B-3(c) and is not defined in the statute. In practice, at the time the SBE notifies the respondent of the suspension, it offers the respondent three options: (1) proceed with the SBE’s usual disciplinary process by contacting the SBE Office of General Counsel within 30 days of the notice; (2) postpone additional proceedings until the conclusion of any pending criminal

Seth Ascher

Commission Counsel

Date submitted to agency: March 14, 2024

proceedings (as contemplated in the rule, these have been the only circumstances in which the SBE has exercised the summary suspension authority), during which time the license remains suspended; or (3) voluntarily surrender the respondent's license. In my experience respondents have always chosen Option (2) or (3). Option (2) makes sense for criminal defendants—although the Fifth Amendment right against self-incrimination does not apply to SBE disciplinary proceedings, any statements or evidence offered by the defendant during those proceedings could potentially be used against the defendant in their criminal case and therefore they often do not want to participate in the SBE process while the criminal proceedings are pending.

I have not yet encountered a case in which a respondent has chosen Option 1, but if they did, the SBE would commence its proceedings as soon as the respondent provided that notice.

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: March 14, 2024

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

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06C .0606

DEADLINE FOR RECEIPT: March 22, 2024

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 16, the comma should be a period: "SBE, SBE."

I have corrected this typo.

On line 20 there is a typo. Do you mean "SBE and DPI"

This was a typo from when I was making the changes from proposal to adoption. It is supposed to just say "DPI" and I have fixed this.

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: State Board of Education

RULE CITATION: 16 NCAC 06C .0607

DEADLINE FOR RECEIPT: March 22, 2024

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 11, "~~(b)~~ (c)"

I have fixed this typo.

In the third item, starting on line 11, where does the SBE get authority to delegate the disciplinary authority to a designee? G.S. 115C-270.35(b), (c), and (d) all seem to indicate that the SBE itself has to make disciplinary decisions, although (e) clearly contemplates delegating investigation.

After additional internal discussion, the SBE has concluded that the delegation language is not necessary, and it has therefore been removed.

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: March 14, 2024

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

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06C .0608

DEADLINE FOR RECEIPT: March 22, 2024

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 33, are disciplinary sanctions imposed on an "employee's license" or a "licensed employee"? This looks like a typo, but it appears in several rules.

The sanctions are imposed on the licensee. I have fixed this throughout the rules.

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: State Board of Education

RULE CITATION: 16 NCAC 06E .0201

DEADLINE FOR RECEIPT: March 22, 2024

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 22, consider replacing with “involves students in grades 6 through 12;”. As written, it could be read to exclude students in grades 6 and 12.

I have made this change.

On line 30, you are missing a period: “~~115C-407.50(6)~~ 115C-407.50(6).”

I have fixed this typo.

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: State Board of Education

RULE CITATION: 16 NCAC 06E .0204

DEADLINE FOR RECEIPT: March 22, 2024

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 page 3, line 16, item (c)(2): “[~~waive~~] Waive”.

I have fixed this typo.

On page 3, lines 28-30, item (c)(7), it is unclear who decides which membership fee to pay and how. That is, does the superintendent decide which fee the association is allowed to charge? Does the association decide which fee it wants to charge? Or does the school decide which fee it wants to charge?

The administering organization decides which fee to charge. When the General Assembly first established the concept of an “administering organization” in S.L. 2021-184 and required the SBE to enter MOUs with these organizations to administer interscholastic athletics, the SBE had relationships with two such organizations—the North Carolina High School Athletic Association and the Carolina Athletic Association for Schools of Choice. The NCHSAA is by far the larger of the two organizations and has historically charged a fee of \$1.00 per student per member school. The CAA4SC, by contrast, is a much smaller organization with approximately 20 charter schools with small enrollment. As a result, utilizing the \$1.00 per student fee structure would have generated too small of an operating budget to make the organization viable, so it has historically charged \$1,000 per member school. The rule was written in this way to accommodate those organizations and allow them to utilize their preferred fee structure.

This language appears in the current version of 16 NCAC 06C .0204 that was adopted by the SBE and approved by RRC in 2023. The only change was removing the words “Establish and” to make clear that the administering organization was not setting the fee, only choosing from one of two options.

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: March 14, 2024

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

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06E .0205

DEADLINE FOR RECEIPT: March 22, 2024

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 9, “volunteers, and students who”

I have fixed this typo.

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: State Board of Education

RULE CITATION: 16 NCAC 06E .0207

DEADLINE FOR RECEIPT: March 22, 2024

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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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Is item (e)(2), page 2, lines 19-24, meant to be a permanent ineligibility? It has no time period, which most of the others do.

I have clarified that the ineligibility is for 365 calendar days, consistent with other rules.

On page 3, line 16, you have a typo where "Gr" was left in before deleting "grade".

I have fixed this typo.

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: State Board of Education

RULE CITATION: 16 NCAC 06E .0215

DEADLINE FOR RECEIPT: March 22, 2024

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, I don't think you meant to strike through organization.

I did because it was adding the words "or PSU" between "organization" and the comma, I just forgot to put the word organization back in. I've fixed this.

On line 17, "~~(b)~~(c)".

I have fixed this typo.

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

1 16 NCAC 06C .0602 is amended under temporary procedures as follows:

2
3 **16 NCAC 06C .0602 STANDARDS OF PROFESSIONAL CONDUCT**

4
5 ~~(a) The standards [Standards of Professional Conduct (“Standards”)] listed in this Section shall be generally accepted~~
6 ~~for the education profession and shall be the basis for State Board review of [reviewing the] performance of~~
7 ~~professional educators. [educators by the State Board of Education (“SBE”).] These standards shall establish~~
8 ~~mandatory prohibitions and requirements for educators. Violation of these standards [Standards] shall subject an~~
9 ~~educator to investigation and disciplinary action by the SBE or LEA. [any public school unit by which the educator is~~
10 ~~employed.]~~

11 ~~(b) Professional educators shall adhere to the standards of professional conduct contained [Standards as set forth] in~~
12 ~~this Rule. Any intentional act or omission that violates these standards [Standards] is prohibited.~~

13 ~~This Rule establishes uniform Standards of Professional Conduct (“Standards”) for professional educators in North~~
14 ~~Carolina, which apply to all persons who hold a professional educator license issued pursuant to this Subchapter and~~
15 ~~Chapter 115C, Article 17E of the General Statutes. These Standards shall be the basis for reviewing the performance~~
16 ~~or professional educators by the State Board of Education (“SBE”). Violation of these Standards shall be grounds for~~
17 ~~disciplinary sanctions against a professional educator’s license as provided in this Section.~~

18 ~~(1) Generally recognized professional standards. Recognized Professional Standards. The educator shall adhere~~
19 ~~to and practice the professional standards of all federal, state, and local governing bodies. [with oversight~~
20 ~~of public education] with public education oversight.~~

21 ~~(2) Personal conduct. Conduct. The educator shall serve as a positive role model for students, parents, and the~~
22 ~~community. Because the educator is entrusted with the care and education of small children and adolescents, the~~
23 ~~educator shall demonstrate a high standard of personal character and conduct. The educator is entrusted with the~~
24 ~~care and education of children and adolescents. As a result, the educator shall demonstrate a high standard of~~
25 ~~personal character and conduct and shall serve as a positive role model for students, parents, and the community.~~

26 ~~(3) Conduct with Students. The educator shall treat all students with respect and maintain appropriate~~
27 ~~professional boundaries with all students, regardless of whether that student is directly under the care or~~
28 ~~supervision of the educator. [The] Specifically the, educator shall not engage in any of the following conduct~~
29 ~~toward or in the presence of a student:~~

30 ~~(A) Use of profane, vulgar, or demeaning language.~~

31 ~~(B) Intentional or reckless exposure of students to profane, vulgar, or sexually explicit material except as part~~
32 ~~of age-appropriate classroom instruction or other pedagogical practice.~~

33 ~~[(B) Intentional solicitation.] (C) Solicitation, encouragement, or consummation of a romantic, physical, or~~
34 ~~sexual relationship with a [student,] student in any form, whether written, verbal, or physical. As used in this~~
35 ~~context, “solicitation” or “encouragement” shall include engaging in a pattern of flirtatious behavior; efforts~~
36 ~~to gain access to, or time alone with, a student with no clear educational or school-related objective; provision~~
37 ~~of individualized or specialized treatment, including tangible or monetary gifts, to a student that does not~~

1 comply with generally recognized professional standards for educators; or any other behavior that could be
2 perceived by a rational observer as excessively personal or intimate in the context of the educator-student
3 relationship.

4 ~~[(C)]~~ (D) Solicitation, encouragement, or consummation of sexual contact with a student.

5 ~~[(D)]~~ (E) Sexual harassment, as defined in 34 C.F.R. 106.30(a).

6 ~~[(E)]~~ (F) Child abuse, as defined in G.S. 14-318.2 or G.S. 14-318.4.

7 (4) Alcohol and Controlled Substances. The educator shall not be under the influence of, possess, use, or consume
8 an alcoholic beverage or a controlled substance, as defined in G.S. 90-95, on school premises, at a school-
9 sponsored activity, or when otherwise discharging the educator's professional duties, unless the educator has a
10 prescription from a licensed medical professional authorizing such use. The educator shall not furnish alcoholic
11 beverages or controlled substances to a student, except for the administration of medication prescribed by a
12 ~~licensee~~ licensed medical professional in accordance with the educator's professional duties.

13 ~~(3)~~(5) Honesty. The educator shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation
14 in the performance of the educator's professional duties, including the following:

15 (A) ~~statement~~ statements or representations of professional qualifications;

16 (B) application or recommendation for professional employment, promotion, or licensure;

17 (C) ~~application or recommendation~~ applications or recommendations for college or university admission,
18 scholarship, grant, academic award, or similar benefit;

19 (D) ~~representation~~ statements or representations of completion of college or staff development credit;

20 (E) evaluation or grading of students or school personnel;

21 (F) submission of financial or program compliance reports submitted to state, federal, or other governmental
22 agencies;

23 (G) submission of information in the course of an official inquiry by the ~~employing LEA or the SBE~~ related
24 to facts of unprofessional misconduct, provided, however, SBE or the educator's employing PSU into
25 allegations of professional misconduct, provided that an educator shall be given adequate notice of the
26 allegations and may be represented by legal counsel; and

27 (H) submission of information in the course of an investigation into school related criminal activity by a law
28 enforcement agency, child protective services, or any other agency with the ~~right authority to investigate,~~
29 regarding school related criminal activity; provided, however, investigate, provided that an educator shall be
30 entitled to decline to give evidence may ~~refuse~~ decline to provide information to law enforcement if such
31 evidence may tend to could incriminate the educator as that term is defined by the Fifth Amendment to in
32 violation of the educator's rights under the U.S. Constitution, United States Constitution or North Carolina
33 Constitution.

34 (6) Compliance with Criminal Laws. The educator shall not violate the criminal laws of this State, the United
35 States, or any other state or territory under the jurisdiction of the United States.

36 ~~(4)~~(7) Proper remunerative conduct. Remunerative Conduct. The educator shall not solicit current students or
37 parents of students to purchase equipment, supplies, or services from the educator in a private remunerative

1 capacity. An educator shall not tutor for remuneration students currently assigned to the educator's classes, unless
2 approved by the local superintendent. An educator shall not accept any compensation, benefit, or thing of value
3 other than the educator's regular compensation for the performance of any service that the educator is required to
4 render in the course and scope of the educator's employment. This Rule shall not restrict performance of any
5 overtime or supplemental services at the request of the ~~LEA; PSU,~~ nor shall it ~~apply to or~~ restrict the acceptance
6 of gifts ~~or tokens of minimal value offered and accepted openly~~ from students, parents, or other persons in
7 recognition or appreciation of ~~service,~~the educator's professional service, provided the gift is given and received
8 freely, openly, and without expectation of favor or advantage to the donor in return.

9 ~~(5) Conduct with students. The educator shall treat all students with respect. The educator shall not commit any~~
10 ~~abusive act or sexual exploitation with, to, or in the presence of a student, whether or not that student is or has~~
11 ~~been under the care or supervision of that educator, as defined below:~~

12 (A) any use of language that is considered profane, vulgar, or demeaning;

13 (B) any sexual act;

14 (C) any solicitation of a sexual act, whether written, verbal, or physical;

15 (D) any act of child abuse, as defined by law;

16 (E) any act of sexual harassment, as defined by law; and

17 (F) ~~any intentional solicitation, encouragement, or consummation of a romantic or physical relationship with~~
18 ~~a student, or any sexual contact with a student. The term "romantic relationship" shall include dating any~~
19 ~~student.~~

20 ~~(6)(8) Confidential information. Information.~~ The educator shall keep ~~in confidence~~ confidential all personally
21 identifiable information regarding students or their family members that the educator has ~~been~~ obtained in the
22 course of professional service, unless disclosure is required or permitted by law ~~or professional standards,~~ or is
23 necessary for the personal safety of the student or others.

24 ~~(7)(9) Rights of [others.] Others.~~ The educator shall not willfully or maliciously violate the constitutional or civil
25 rights of a student, parent/legal parent or legal guardian, or colleague.

26 ~~(8)(10) Required reports. Reports.~~ The educator shall make all reports required by G.S. 115C-Chapter 115C of
27 the General Statutes.

28 ~~(9) Alcohol or controlled substance abuse. The educator shall not:~~

29 (A) ~~be under the influence of, possess, use, or consume on school premises or at a school sponsored activity~~
30 ~~a controlled substance as defined by G.S. 90-95, the Controlled Substances Act, without a prescription~~
31 ~~authorizing such use;~~

32 (B) ~~be under the influence of, possess, use, or consume an alcoholic beverage or a controlled substance on~~
33 ~~school premises or at a school sponsored activity involving students; or~~

34 (C) ~~furnish alcohol or a controlled substance to any student except as indicated in the professional duties of~~
35 ~~administering legally prescribed medications.~~

36 ~~(10) Compliance with criminal laws. The educator shall not commit any act referred to in G.S. 115C-332 and any~~
37 ~~felony under the laws of the United States or of any state.~~

1 (11) ~~Public funds and property.~~ Funds and Property. The educator shall not misuse public funds or ~~property, funds~~
2 ~~of a school-related organization, or colleague's funds.~~ property or any funds belonging to an organization affiliated
3 with the school or PSU. The educator shall account for funds collected from students, colleagues, ~~or parents/legal~~
4 ~~guardians.~~ parents, or legal guardians of students. The educator shall not submit fraudulent requests for
5 reimbursement, expenses, or pay.

6 (12) ~~Scope of professional practice.~~ Professional Practice. The educator shall not perform any ~~act as an employee~~
7 ~~in a position~~ professional duty or function for which licensure is required by ~~the rules of the SBE or by G.S. 115C~~
8 ~~or the North Carolina General Statutes this Chapter or by Chapter 115C of the General Statutes~~ during any period
9 in which the educator's license ~~has been~~ is suspended or revoked.

10 (13) ~~Conduct related to ethical violations.~~ Abuse of Authority. The educator shall not directly or indirectly use or
11 threaten to use any official authority or influence in any manner that ~~tends to discourage, restrain, interfere with,~~
12 ~~coerce, or discriminate~~ discourages, restrains, coerces, interferes with, or discriminates against any subordinate
13 or any licensee who in good faith ~~reports, discloses, divulges, reports~~ or otherwise brings to the attention of ~~an~~
14 ~~LEA, a PSU,~~ the SBE, or any other public agency authorized to take remedial action, any facts or information
15 relative to the actual or suspected violation of any law or rule regulating the duties of persons serving in the public
16 school system, including ~~but not limited to these Rules.~~ those established by this Section.

17
18 *History Note:* Authority G.S. 115C-295.3; 115C-12(9); 115C-270.5; 115C-307;

19 Eff. May 1, 1998.

20 Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].

21

1 16 NCAC 06C .0603 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06C .0603 INVESTIGATION OF ALLEGED MISCONDUCT BY A LICENSED**
4 **PROFESSIONAL EDUCATOR OR LICENSE APPLICANT**
5

6 (a) Upon receipt of allegations and substantiating information regarding a respondent that **may would** provide cause
7 for imposing disciplinary sanctions on a **license licensee** or denying an application for a license under Rule .0604 of
8 this Section, the Superintendent of Public Instruction (“Superintendent”) shall investigate the allegations to determine
9 if such action is warranted. The Superintendent shall investigate allegations or information from any source in a
10 position to provide such information, including a PSU, State agency, court or other tribunal, or other credible person
11 or institution. The Superintendent shall also consider information disclosed by a license applicant in the application.

12 (b) The Superintendent is authorized to utilize the power conferred upon the State Board of Education (“SBE”) under
13 G.S. 115C-270.35(e), including the power to subpoena documents, secure witness testimony, or hire investigators, for
14 the purpose of conducting investigations under this Rule.

15 (c) If the Superintendent finds cause to impose disciplinary sanctions on a **license licensee** or deny a license application
16 for any of the reasons described in Rule .0604 of this Section, the Superintendent shall ~~prepare, on behalf of the SBE,~~
17 prepare a proposed order containing findings of fact, conclusions of law, and the proposed sanction(s) or denial.

18 (d) The Superintendent shall provide the respondent with a copy of the proposed order and notify the respondent that
19 the proposed sanctions or denial described in the order shall become final unless the respondent commences an
20 administrative proceeding under Chapter 150B, Article 3 of the General Statutes within 60 days of the notice. The
21 Superintendent shall send the notice via electronic mail and certified mail to the latest addresses provided to the SBE,
22 and the 60-day time limitation shall commence on the date of electronic delivery or placement of the notice in an
23 official depository of the United States Postal Service, whichever is earlier, in accordance with G.S. 150B-23(f).

24 (e) If the respondent commences administrative proceedings, the SBE shall stay the proposed order until receipt of a
25 final decision or order under G.S. 150B-34. If the respondent does not commence proceedings within the 60-day time
26 limitation, the proposed order shall become final, and the Superintendent shall take all necessary actions to enforce
27 the order.

28
29 *History Note: Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 150B-22; 150B-23;*
30 *Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].*
31

1 16 NCAC 06C .0604 is adopted under temporary procedures as follows:
2

3 **16 NCAC 06C .0604 DENYING A LICENSE OR SANCTIONING A LICENSEE**
4

5 (a) The State Board of Education (~~“SBE”~~, or its authorized designee, (~~“SBE”~~) may, following an investigation in
6 accordance with Rule .0603 of this Section, impose disciplinary sanctions on a person who holds a license issued by
7 the Department of Public Instruction or deny an application for any such license if the SBE ~~or designee~~ finds, by a
8 preponderance of the evidence, that the respondent has done any of the following:

- 9 (1) Engaged in fraud, material misrepresentation, or concealment in an application for the license.
- 10 (2) Become ineligible for the license due to changes or corrections in the license documentation.
- 11 (3) Been convicted of a crime in any state, federal, or territorial court of the United States, including military
12 tribunals.
- 13 (4) Been dismissed by a local board of education, pursuant to G.S. 115C-325(e)(1) or 115C-325.4, or by the
14 governing body of any other PSU.
- 15 (5) Resigned from employment with a PSU without thirty calendar days’ notice, except with the prior consent
16 of the superintendent.
- 17 (6) Had a professional educator license or other occupational license revoked or suspended in North Carolina or
18 another state due to a finding of misconduct by the relevant occupational licensing board or agency.
- 19 (7) Failed to report suspected child abuse in accordance with G.S. 115C-400 or other suspicion of professional
20 misconduct by a licensed employee in accordance with Rule .0608 of this Section.
- 21 (8) Violated the Testing Code of Ethics, codified at 16 NCAC 06D .0311.
- 22 (9) Engaged in any other illegal, unethical, or lascivious conduct, or otherwise violated the Standards of
23 Professional Conduct as described in Rule .0602 of this Section.

24 (b) When deciding whether to impose disciplinary sanctions or deny an application for a license, the SBE ~~or designee~~
25 shall consider the following factors:

- 26 (1) The existence of a reasonable and adverse relationship between the underlying misconduct and the ability of
27 the respondent to perform the respondent’s professional duties as an educator.
- 28 (2) The severity of the misconduct.
- 29 (3) The impact of the misconduct on students, other educators, and the school community.
- 30 (4) The respondent’s degree of culpability in the misconduct.
- 31 (5) The degree of remorse exhibited by the respondent for the misconduct.
- 32 (6) Any evidence of reformed behavior on the part of the respondent.
- 33 (7) Subsequent incidents of misconduct by the respondent or the probability of future misconduct.

34 (c) If the SBE ~~or designee~~ determines that sanctions against a current license licensee are warranted, it shall impose
35 sanctions in accordance with Rule .0605 of this Section.
36

1 *History Note: Authority G.S. 115C-12(9); 115C-174.11; 115C-174.12; 115C-270.5; 115C-270.30; 115C-270.35;*
2 *150B-22; 150B-23;*
3 *Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].*

1 16 NCAC 06C .0605 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06C .0605 DISCIPLINARY SANCTIONS**
4

5 (a) Upon finding of a basis for imposing disciplinary sanctions against a ~~respondent's license~~ respondent under Rule
6 .0604 following an investigation under Rule .0603 of this Section, the State Board of Education (“SBE”) may impose
7 any of the following sanctions:

- 8 (1) Written ~~Warning~~ Warning;
9 (2) Written ~~Reprimand~~ Reprimand;
10 (3) Suspension for a Defined ~~Term~~ Term; or
11 (4) ~~Revocation~~ Revocation.

12 (b) In addition to one of the sanctions listed in Paragraph (a), the SBE may impose additional conditions upon a
13 respondent—including requirements that the respondent complete additional CEUs, continuing education credits
14 beyond those required by G.S. 115C-270.30, community service hours, or other activities—if the purpose of the
15 condition is remedial, relevant to the misconduct giving rise to the sanction, and designed to reduce the possibility of
16 recidivism.

17 (c) Notwithstanding Rule .0603 of this Section or Paragraph (a) of this Rule, the SBE shall summarily suspend the
18 license of a respondent if the SBE finds that the public health, safety, or welfare requires emergency action and
19 incorporates those findings in the order prepared in accordance with Rule .0603 of this Section. A finding that a
20 respondent has been charged in the General Court of Justice with any ~~crime~~ crime, the conviction for which would
21 result in automatic revocation of the respondent’s license under G.S. ~~115C-270.35(b)~~ 115C-270.35(b), shall be
22 considered prima facie evidence in satisfaction of this Paragraph. Following the summary suspension, the SBE shall
23 promptly commence a disciplinary investigation and proceedings in accordance with Rules .0603 and .0604 of this
24 Section.

25 (d) The ~~SBE~~ Department of Public Instruction (“DPI”) shall, upon expiration of the 60-day time limitation described
26 in Rule .0603(e) of this Section, publish the sanction and a brief description of the basis for the sanction on ~~the~~
27 ~~Department of Public Instruction (“DPI”)~~ its website and report it to the National Association of State Directors of
28 Teacher Education and Certification, except that this requirement shall not apply to a Written Warning. ~~The SBE DPI~~
29 shall not disclose any information related to the sanction that is considered confidential under Chapter 115C, Article
30 21A of the General Statutes or is otherwise protected from disclosure under State or federal law.

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33 *History Note:* Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 150B-3; 150B-22; 150B-23;
34 *Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].*

1 16 NCAC 06C .0606 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06C .0606 VOLUNTARY SURRENDER OF A LICENSE**

4
5 (a) An individual licensed under Chapter 115C, Article 17E of the General Statutes may notify the State Board of
6 Education (~~“SBE”~~) (“SBE”), or its authorized designee, in writing of the individual’s intention to voluntarily surrender
7 the individual’s license to the SBE.

8 (b) The SBE or designee may accept the voluntary surrender of a license in lieu of pursuing revocation of the license
9 if, following an investigation in accordance with Rule .0603 of this Section, the SBE or designee determines that the
10 surrender of the license will not compromise public safety. The Superintendent of Public Instruction shall ~~prepare, on~~
11 ~~behalf of the SBE,~~ prepare a proposed order containing findings of fact and conclusions of law demonstrating that
12 circumstances exist that would justify pursuing revocation of the respondent’s license. The Superintendent shall
13 provide the respondent with a copy of the proposed order and notify the respondent that the respondent’s license will
14 be revoked ~~unless the respondent challenges any of the factual findings contained in the order~~ within 10 days of the
15 notice. The Superintendent shall send the notice via electronic mail and certified mail to the latest addresses provided
16 to the ~~SBE, SBE.~~

17 (c) The ~~SBE~~ Department of Public Instruction (“DPI”) shall, upon expiration of the 10-day time limitation described
18 in Paragraph (b), publish the revocation and a brief description of the basis for the revocation on ~~the Department of~~
19 ~~Public Instruction (“DPI”)~~ its website and report it to the National Association of State Directors of Teacher Education
20 and Certification. DPI shall not disclose any information related to the revocation that is considered confidential under
21 Chapter 115C, Article 21A of the General Statutes or is otherwise protected from disclosure under State or federal
22 law.

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25 *History Note: Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 150B-22; 150B-23;*
26 *Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].*

1 16 NCAC 06C .0607 is adopted under temporary procedures as follows:
2

3 **16 NCAC 06C .0607 REINSTATEMENT OF OR RECONSIDERATION FOR A LICENSE**
4

5 (a) A respondent whose license has been revoked or whose application for a license has been denied under this Section
6 may seek reinstatement of the revoked license or reconsideration of the license application no sooner than 12 months
7 after the effective date of the revocation or denial.

8 (b) The respondent shall submit a request to the State Board of Education (“SBE”) in writing that includes a statement
9 describing why the circumstances that led to the revocation or denial do not or no longer justify prohibiting the
10 respondent from holding a license.

11 (c) The SBE may deny the request, grant the request, or grant the request on a probationary basis. If the SBE grants
12 the request on a probationary basis, the respondent’s license status shall be subject to review by the SBE one year
13 from the date that the license is granted, and the respondent shall comply with any conditions the SBE may impose.
14

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16 History Note: Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 150B-22; 150B-23;
17 Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].

1 16 NCAC 06C .0608 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06C .0608 REPORTING REQUIREMENTS FOR PSU ADMINISTRATORS**

4
5 (a) For purposes of this Rule, the following definitions apply:

6 (1) “Misconduct” means either:

7 (A) Conduct that justifies automatic revocation of a license under G.S. 115C-270.35(b);

8 (B) Conduct that has resulted in a criminal charge or indictment for any of the crimes listed in G.S.
9 115C-270.35(b); or

10 (C) Conduct involving the physical or sexual abuse of a child or a student. “Physical abuse” means the
11 infliction of physical injury other than by accident or in self-defense. “Sexual abuse” means any
12 sexual contact with a child or student, regardless of the presence or absence of consent.

13 (2) “PSU administrator” means a superintendent, associate superintendent, assistant superintendent, personnel
14 administrator, principal, school director, or head of school employed by a PSU.

15 ~~(a) (b)~~ In addition to any duty to report suspected child abuse under ~~G.S. 115C-400~~, G.S. 115C-400 or other provision
16 of law, any PSU administrator who knows, has reason to believe, or has actual notice of a complaint that a professional
17 educator licensed under Chapter 115C, Article 17E of the General Statutes has engaged in ~~conduct that would justify~~
18 ~~the automatic revocation of the license under G.S. 115C-270.35(b), or which involves the physical abuse of a child as~~
19 ~~defined in G.S. 14-318.2 or G.S. 14-318.4, misconduct, as defined in Subparagraph (a)(1), that results in the dismissal,~~
20 ~~disciplinary action against, dismissal, suspension with pay, suspension without pay, or resignation of the educator~~
21 ~~shall report the misconduct in writing to the State Board of Education (“SBE”) within five calendar days of the~~
22 ~~dismissal, determination of disciplinary action, dismissal, suspension, or acceptance of resignation. the educator’s~~
23 ~~resignation by the local superintendent. If an educator resigns within 30 days of a complaint for misconduct or during~~
24 ~~an ongoing investigation of a complaint, the alleged misconduct is presumed to have resulted in the resignation.~~

25 ~~(c) If an employee resigns within 30 days of a complaint for misconduct or during an ongoing investigation of a~~
26 ~~complaint, the misconduct is presumed to have resulted in the resignation.~~

27 ~~(e) Any PSU administrator who knows, has reason to believe, or has actual notice of a complaint that an employee~~
28 ~~licensed under Chapter 115C, Article 17E of the General Statutes has engaged in conduct that would otherwise justify~~
29 ~~disciplinary sanctions against the employee’s license under Rule .0604 of this Subchapter shall report the conduct in~~
30 ~~writing to the SBE within 30 days of dismissal, determination of disciplinary action, or acceptance of resignation.~~

31 (c) If a PSU demotes, dismisses, or accepts the resignation of a professional educator licensed under Chapter 115C,
32 Article 17E of the General Statutes as a result of conduct that is not covered by Paragraph (b) of this Rule but that
33 may otherwise justify disciplinary sanctions against the employee under Rule .0604 of this Section, a PSU
34 administrator for that PSU shall report the conduct in writing to the SBE within 30 calendar days of the demotion,
35 dismissal, or resignation of the employee.

36 (d) For purposes of this Rule, “PSU administrator” shall include any superintendent, associate superintendent, assistant
37 superintendent, personnel administrator, principal, or head of school employed by a PSU.

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(d) If one PSU administrator submits a single report on behalf of the PSU pursuant to the requirements of this Rule, that report shall satisfy the reporting obligations of all individuals who may have reporting obligations under this Rule or under G.S. 115C-326.20.

History Note: Authority G.S. 115C-12(9); 115C-270.5; 115C-270.30; 115C-270.35; 115C-326.20; 150B-22; 150B-23;
Temporary Adoption Eff. [DATE DETERMINED BY G.S. 150B-21.3(a)].

1 16 NCAC 06E .0201 is adopted under temporary procedures as follows:
2

3 **SECTION .0200 – INTERSCHOLASTIC ATHLETICS**
4

5 **16 NCAC 06E .0201 DEFINITIONS**

6 As used in this Section, the following definitions apply:

7 (1) “Administering organization” is defined in G.S. 115C-407.50(1).

8 (2) “Aggrieved party” means a student, coach, participating school, PSU, or other party that is directly and
9 adversely affected by a final decision of an administering organization that applies or enforces the rules
10 established by this Section, including a determination of ineligibility under Rule ~~.0207~~ 0207, a penalty imposed
11 under Rule ~~.0209~~ .0209, or a finding of undue influence or a recruiting violation under Rule .0210. If a student
12 is affected, the student’s parent shall be allowed to appeal the final decision pursuant to Rule ~~.0210~~ .0215.

13 (3) “Bona fide purpose” means for a purpose not primarily related to participation in interscholastic athletics.

14 (4) “High school” means a public school offering education in Grades 9 through 12 or 10 through 12.

15 ~~(5)~~ (5) “Initial entry” means:

16 (A) a student’s first day of attendance at a participating school in which the student is enrolled as
17 recorded by that school; or

18 (B) the first day on which a student practices or otherwise participates as a member of an interscholastic
19 athletics team at a participating school.

20 ~~(6)~~ (6) “Interscholastic athletics” or “interscholastic athletic activity” means any extracurricular athletic activity
21 that:

22 (A) involves students in any grade between 6 and 12;

23 (B) is sponsored by an individual school, PSU, or administering organization; and

24 (C) includes students from more than one school or PSU.

25 (7) “Junior high school” means a public school offering education in Grades 7 through 9.

26 ~~(8)~~ (8) “Local superintendent” means the superintendent of a local school administrative unit, as provided in
27 Chapter 115C, Article 18 of the General Statutes, or the staff member with the highest decision-making authority
28 for a PSU, if there is no superintendent.

29 (9) “Middle school” means a public school offering education in Grades 6 through 8.

30 ~~(10)~~ (10) “Parent” is defined in G.S. 115C-407.50(6)

31 ~~(11)~~ (11) “Participating school” ~~is defined in G.S. 115C-407.50(7).~~ means a middle school, junior high school, or
32 high school that elects to participate in interscholastic athletic activities.

33 ~~(12)~~ (12) “Principal” means a school administrator employed as the principal of a school, as provided in Chapter
34 115C, Article 19 of the General Statutes, or the staff member with the highest decision-making authority at a
35 school, if there is no principal.

36 ~~(13)~~ (13) “Public school unit” or “PSU” is defined in G.S. 115C-5(7a).

37 (14) “Student” means a person enrolled in Grade 6 through 12 in any public school.

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2 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*
3 *115C-407.65; 116-235(b);*

4 *Temporary Adoption Eff. July 1, 2024.*

1 16 NCAC 06E .0204 is amended under temporary procedures as follows:

2
3 **16 NCAC 06E .0204 ADMINISTRATION OF INTERSCHOLASTIC ATHLETICS AND**
4 **ADMINISTERING ORGANIZATIONS FOR HIGH SCHOOL ATHLETICS**

5 (a) Definitions:

6 (1) ~~—"Administering organization" is defined in G.S. 115C 407.50(1).~~

7 (2) ~~—"Participating school" is defined in G.S. 115C 407.50(7).~~

8 (3) ~~—"Public school unit" (PSU) is defined in G.S. 115C 5(7a).~~

9 (b) ~~PSUs are authorized to determine whether and to what extent students in grades 6-12 through 12 may participate~~
10 ~~in interscholastic athletics, provided students in grade 6 are not eligible to participate in tackle football. This Rule~~
11 ~~shall not apply to charter school athletic programs in kindergarten through grade 8.~~

12 (c) ~~To participate in public school interscholastic athletics, a student shall meet the following requirements:~~

13 (1) ~~A student who attends a school supervised by a local board of education shall only participate in the~~
14 ~~school to which the student is assigned under G.S. 115C 366. A student enrolled in a charter,~~
15 ~~regional, statewide public school, or school operated by the University of North Carolina, shall meet~~
16 ~~all the enrollment criteria for that school and attend that school. If a student is over the age~~
17 ~~requirements, for the school the student attends, the student may participate at the school to which~~
18 ~~the student would be assigned or attend at the next higher grade level.~~

19 (2) ~~A student shall meet the age requirements at each grade level to participate. PSUs shall determine~~
20 ~~the age of participating students based on a preponderance of the evidence known to them. A student~~
21 ~~ineligible to participate at one grade level due to age shall be eligible to participate at the next higher~~
22 ~~grade level only, provided no student shall be eligible to participate at the middle school level for a~~
23 ~~period lasting longer than six consecutive semesters, beginning with the student's entry into grade~~
24 ~~6, and no student shall be eligible to participate at the high school level for more than eight~~
25 ~~consecutive semesters, beginning with the student's first entry into grade 9 or participation on a high~~
26 ~~school team, whichever occurs first.~~

27 (A) ~~A student shall not participate on a grade 6, 7, or 8 team if the student becomes 15 years of~~
28 ~~age on or before August 31 of that school year.~~

29 (B) ~~A student shall not participate on a grade 9 through 12 team if the student becomes 19 years~~
30 ~~of age on or before August 31 of that school year.~~

31 (d) ~~To be eligible to participate during any semester in grades 6, 7, or 8, the student shall have passed at least one less~~
32 ~~course than the number of required core courses the prior semester and meet promotion standards established by the~~
33 ~~PSU, provided a student who is promoted from grade 5 to grade 6 shall be deemed to have satisfied the requirement~~
34 ~~set forth in this Paragraph to participate in the first semester of grade 6. To be eligible to compete during any semester~~
35 ~~in grades 9 through 12, the student shall have passed at least five courses (or the equivalent for non-traditional school~~
36 ~~schedules) the prior semester and meet promotion standards established by the PSU, provided a student who is~~

1 promoted from grade 8 to grade 9 shall be deemed to have satisfied the requirement set forth in this Paragraph to
2 participate in the first semester of grade 9.

3 (e) ~~To be eligible to participate, a student shall receive a medical examination every 395 days by a licensed physician,~~
4 ~~nurse practitioner, or physician assistant, subject to the provisions of G.S. 90-9.1, G.S. 90-9.2, G.S. 90-9.3, G.S. 90-~~
5 ~~18.1, and G.S. 90-18.2.~~

6 (f) A student shall not participate in interscholastic athletics after any of the following:

7 (1) ~~graduation, except that the student may continue to participate in playoff and state championship~~
8 ~~contests in spring sports after graduation;~~

9 (2) ~~signing a professional athletic contract, except that the student may continue to participate in any~~
10 ~~sport for which the student has not signed a professional contract;~~

11 (3) ~~receiving remuneration as a participant in an athletic contest, except that the student may accept a~~
12 ~~gift, merchandise, trophy, or other thing of value, provided:~~

13 (A) ~~the value does not exceed two hundred fifty dollars (\$250.00) per student per sports season;~~

14 (B) ~~the item is totally consumable and nontransferable, or labeled in a permanent manner, for~~
15 ~~example, monogrammed or engraved items; and~~

16 (C) ~~the item is approved by the student's principal and superintendent; or~~

17 (4) ~~participating on an all star team or in an all star game that is not sanctioned by the administering~~
18 ~~organization of which the student's school is a member, provided the student shall be ineligible only~~
19 ~~for the specific sport involved.~~

20 (g) Each PSU shall require the principal of a school that participates in interscholastic athletics to sign and date a list
21 of eligible students for each sport. The PSU shall maintain copy of the most current list in the principal's office and
22 the office of the superintendent.

23 (h) A PSU shall impose at least the following penalties on a student, coach, or school official in grades 6 through 12
24 who is ejected from an interscholastic athletic contest:

25 (1) ~~for the first offense, the person shall be reprimanded and suspended from participating in for the next~~
26 ~~game at that level of play (varsity or junior varsity);~~

27 (2) ~~for a second offense, the person shall be placed on probation and suspended from participating in~~
28 ~~for the next two games at that level of play (varsity or junior varsity);~~

29 (3) ~~for a third offense, the person shall be suspended for one calendar year; and~~

30 (4) ~~a coach who is suspended shall not coach any team for any grade level during the period of~~
31 ~~suspension.~~

32 Penalties are cumulative from sport to sport and from sport season to sport season. If no member of the school's
33 coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.

34 (i)(a) ~~PSUs~~ Public school units may allow their schools high schools under their jurisdiction to belong to an
35 administering organization designated by the State Board of Education, Superintendent of Public Instruction
36 ("Superintendent").

1 ~~(j)~~(b) An administering organization that has entered into a memorandum of understanding with the ~~State Board of~~
2 ~~Education Superintendent~~ for the purpose of administering interscholastic athletics under this ~~Rule Section~~ shall apply
3 and enforce all of the requirements of this ~~Rule Section~~. An administering organization shall provide training and
4 resources to ensure that all students, parents, and PSU personnel involved in the administration of interscholastic
5 athletics understand and comply with the provisions of this Section.

6 ~~(k)~~(c) ~~The State Board of Education shall delegate to an administering organization its authority over participating~~
7 ~~schools to: If the Superintendent enters a memorandum of understanding with one or more administering organizations~~
8 consistent with G.S. 115C-407.61, the SBE shall delegate to the administering organization(s) its authority over
9 participating high schools to:

10 (1) ~~waive any student eligibility requirement contained in this Rule, if it finds in a particular case that~~
11 ~~the requirement fails to promote academic progress, health, safety, and fair play, or it works an~~
12 ~~undue hardship on a student who has lost eligibility due to circumstances that made participation~~
13 ~~impossible such as prolonged illness or injury or if a waiver is necessary to reasonably accommodate~~
14 ~~a student's disability, as required under the Americans with Disabilities Act, U.S.C. § 1201 et seq.;~~

15 (1) Apply and enforce student participation rules, as established in Rule .0207 of this Section.

16 (2) waive any student participation rule as applied to a specific student, in accordance with Rule .0207,
17 Paragraph (k) of this Section.

18 (3) Apply and enforce student health and safety requirements, as established in Rule .0205 of this
19 Section.

20 ~~(2)~~(4) ~~adopt, Adopt, apply, and enforce penalty rules, as defined in G.S. 115C-407.55(3); G.S. 115C-~~
21 ~~407.55(3), that establish a system of demerits that includes reprimands, probations, suspensions,~~
22 ~~forfeitures of contests, forfeitures of titles, and disqualifications; disqualifications, consistent with~~
23 Rule .0209 of this Section.

24 ~~(3)~~(5) ~~adopt, Adopt, apply, and enforce administrative rules, as defined in G.S. 115C-407.55(5); G.S.~~
25 115C-407.55(5).

26 ~~(4)~~(6) ~~adopt, Adopt, apply, and enforce gameplay rules, as defined in G.S. 115C-407.55(6); and G.S. 115C-~~
27 407.55(6).

28 ~~(5)~~(7) ~~establish and collect~~ Collect from all its members a uniform membership fee of either:

29 (A) one thousand dollars (\$1,000) for each participating school, or

30 (B) one dollar (\$1.00) for each student enrolled in a participating school.

31 ~~(j)~~(d) An administering organization shall:

32 (1) ~~enter~~ Enter into a memorandum of understanding, consistent with the requirements of G.S. 115C-
33 407.55(8) and 115C-407.61, with the ~~State Board of Education Superintendent~~ no later than March 15
34 prior to the academic year in which it is to begin administering interscholastic athletics and no later than
35 the March 15 before the expiration of an existing memorandum of understanding;

36 (2) ~~submit~~ Submit an audit report signed by an independent certified public accountant or accounting firm,
37 which is in good standing with the North Carolina State Board of Certified Public Accountant Examiners

1 and performs no other tasks or functions for the administering organization besides the annual audit, to
2 the State Board of Education no later than March 15 each year;

3 (3) ~~broadcast~~ Broadcast the meetings of its membership and board of directors in a manner that is announced
4 on its website and which may be viewed electronically by any member of the public;

5 (4) ~~provide~~ Provide to the State Board of Education within 30 days any requested organizational records,
6 such as, financial information, annual audit reports, and any matters related to or impacting participating
7 schools;

8 (5) ~~enter~~ Enter into written agreements with PSUs that allow their eligible schools to participate in
9 interscholastic ~~sports, athletics,~~ which agreements shall include an explanation of the fees to be charged,
10 the obligations of the PSU and participating schools, penalties for the violation of this ~~Rule at the high~~
11 ~~school level~~ Section that may be imposed, and an explanation of the process to file an appeal pursuant
12 to Rule .0215 of this Section; and

13 (6) ~~publish~~ Publish the organization's rules through a link on the home page of its website.

14 (e) Any person or PSU seeking to inquire about or report a violation of any rule administered by an administering
15 organization shall direct the initial inquiry or report to the appropriate administering organization in accordance with
16 the procedures adopted by the administering organization. For any matter involving the enforcement of any
17 interscholastic athletics rule provided by this Section, the administering organization shall render a final decision in
18 writing within ten (10) business days. An aggrieved party seeking to file an appeal of a final decision of an
19 administering organization with the Superintendent shall do so in accordance with Rule .0215 of this Section.

20 (f) A PSU, participating school, PSU employee, or student seeking to report allegations of intimidation or harassment
21 by an administering organization shall file a report with the Superintendent. The report shall be in writing and include
22 a detailed description of the factual basis for the allegations.

23 (g) In the event that the Superintendent is unable to enter a memorandum of understanding with one or more
24 administering organizations in accordance with this Rule, the State Board of Education shall delegate all authority and
25 responsibility provided to an administering organization by this Section to the Superintendent.

26 (h) The Superintendent shall be responsible for general oversight of interscholastic athletic activities at participating
27 middle and junior high schools. Public school units shall apply and enforce the requirements of this Section for
28 participating middle and junior high schools under their jurisdiction. A PSU may also waive any student participation
29 rule as applied to a specific student enrolled at a middle or junior high school under the jurisdiction of the PSU, in
30 accordance with Rule .0207, Paragraph (k) of this Section.

31 ~~(m) The State Board of Education will appoint an appeals board to hear and act upon appeals from final decisions of~~
32 ~~an administering organization, or from the Department of Public Instruction if necessary pursuant to G.S. 115C-~~
33 ~~407.60(b), regarding student eligibility, penalties, fees imposed, retaliation, or discrimination. Panels of no fewer than~~
34 ~~three members of the appeals board may hear and decide matters on behalf of the board. A PSU aggrieved by a final~~
35 ~~decision of the administering organization may file an appeal with the State Board of Education's Office of General~~
36 ~~Counsel within five days after receipt of the administering organization's final decision. The final decision shall be~~
37 ~~mailed to the Superintendent or board of trustees of the PSU.~~

- 1 ~~(1) The administering organization's final decision shall contain:~~
2 ~~(A) findings of fact;~~
3 ~~(B) conclusions of law, including citation to any rules related to the decision;~~
4 ~~(C) a description of any penalties; and~~
5 ~~(D) a statement that the PSU may file a notice of appeal within five days of receipt of the~~
6 ~~administering organization's decision by mailing the notice to the State Board of Education's~~
7 ~~Office of General Counsel, 301 S. Wilmington Street, Raleigh, N.C. 27601, and emailing a~~
8 ~~copy of the notice of appeal to Office of General for the State Board of Education.~~
- 9 ~~(2) The PSU's appeal shall:~~
10 ~~(A) be in writing;~~
11 ~~(B) include a description of the facts of the dispute;~~
12 ~~(C) include any evidence submitted to the administering organization; and~~
13 ~~(D) present an argument explaining with the PSU believes the administering organization's final~~
14 ~~decision was not based on substantial evidence as defined in G.S. 150B-2(8c) or is affected by~~
15 ~~an error of law.~~
- 16 ~~(3) The administering organization may file a response to the PSU's submissions within five days. The panel~~
17 ~~may shorten the time for filing the administering organization's response if the decision affects a~~
18 ~~student's or coach's eligibility to participate in an intervening athletic contest.~~
- 19 ~~(4) All documents filed in the appeal shall be simultaneously served on all parties in the manner prescribed~~
20 ~~in G.S. 1A-1, Rule 5 of the North Carolina Rules of Civil Procedure.~~
- 21 ~~(5) Any hearing shall be recorded.~~
- 22 ~~(6) No later than 30 days after the State Board of Education's receipt of the appeal, a panel of the appeals~~
23 ~~board shall issue its decision. The panel shall affirm the administering organization's final decision~~
24 ~~unless a majority of the panel determines that the final decision is not supported by substantial evidence~~
25 ~~or is affected by an error of law.~~
- 26 ~~(7) The panel's decision shall be final.~~
- 27 ~~(n) The PSU that has jurisdiction over a school may impose penalties in addition to those required by an administering~~
28 ~~organization.~~

29
30 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50, 115C-407.55; 115C-407.60;*
31 *115C-407.65; 116-235(b);*
32 *Emergency Adoption Eff. August 20, 2019;*
33 *Amended Eff. March 1, 2021;*
34 *Temporary Amendment Eff. July 1, 2022;*
35 *Amended Eff. July 1, 2023;*
36 *Temp. Amend. Eff. July 1, 2024.*
37

1 16 NCAC 06E .0205 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06E .0205 STUDENT HEALTH AND SAFETY REQUIREMENTS FOR**
4 **INTERSCHOLASTIC ATHLETIC COMPETITION**
5

6 (a) For purposes of this Rule, a concussion is defined as a traumatic brain injury caused by a direct or indirect impact
7 to the head that results in disruption of normal brain function, which may or may not result in loss of consciousness.

8 (b) An administering organization shall, on an annual basis, provide a concussion and head injury information sheet
9 to all coaches, school nurses, athletic directors, first responders, volunteers, and students who participate ~~in~~
10 interscholastic athletic activities, and the parents or legal guardians of those students. The information shall include:

- 11 (1) The definitions and symptoms of concussions and head injuries;
- 12 (2) A description of the physiology and the potential short-term and long-term effects of concussions and other
13 head injuries;
- 14 (3) The medical return-to-play protocol for post-concussion participation in interscholastic athletic activities;
15 and
- 16 (4) Any other information deemed necessary by the PSU.

17 (c) School employees, first responders, volunteers, and students shall sign the information sheet and return it to the
18 coach before participating in interscholastic athletic activities, including tryouts, practices, or competition. Parents
19 shall sign the information sheet and return it to the coach before a child may participate in any such interscholastic
20 athletic activities. The signed sheets shall be maintained in accordance with Rule .0207, Paragraph (b) of this Section.

21 (d) If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with
22 concussion, the student shall be removed from the activity at the time and shall not be allowed to return to play or
23 practice that day. A student removed from play for exhibiting signs or symptoms consistent with concussion shall not
24 return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such
25 participation from one of the following:

- 26 (1) A physician licensed under Chapter 90, Article 1 of the General Statutes with training in concussion
27 management;
- 28 (2) A neuropsychologist licensed under Chapter 90, Article 18A of the General Statutes with training in
29 concussion management and working in consultation with a physician licensed under Chapter 90, Article 34
30 of the General Statutes;
- 31 (3) An athletic trainer licensed under Chapter 90, Article 34 of the General Statutes;
- 32 (4) A physician assistant, consistent with the limitations of G.S. 90-18.1; or
- 33 (5) A nurse practitioner, consistent with the limitations of G.S. 90-18.2.

34 (e) Each participating school shall develop a venue-specific emergency action plan to deal with serious injuries and
35 acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan must be:

- 36 (1) In writing;
- 37 (2) Reviewed by an athletic trainer licensed under Chapter 90, Article 34 of the General Statutes;

- 1 (3) Approved by the principal of the school;
- 2 (4) Distributed to all appropriate personnel;
- 3 (5) Posted conspicuously for community and parental awareness at all athletic-sponsored venues; and
- 4 (6) Reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses,
- 5 athletic directors, and volunteers for interscholastic athletic activities.

6 (f) Each participating school’s emergency management plan shall include:

- 7 (1) A delineation of roles;
- 8 (2) Methods of communication;
- 9 (3) Available emergency equipment; and
- 10 (4) Access to and plan for emergency transport.

11 (g) Each school shall maintain complete and accurate records of its compliance with the requirements of this Rule.

12

13 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-*
14 *407.50; 115C-407.55; 115C-407.57; 115C-407.58; 115C-407.60;*
15 *Temporary Rule Eff. July 1, 2024.*

1 16 NCAC 06E .0207 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06E .0207 STUDENT PARTICIPATION RULES FOR INTERSCHOLASTIC ATHLETICS**

4 (a) A student ~~in grades 6 through 12~~ shall not participate in interscholastic athletics on behalf of a North Carolina
5 public school unless the student has satisfied the eligibility requirements set forth in this Rule. PSUs are authorized to
6 determine whether and to what extent students ~~in grades 6 through 12~~ under their jurisdiction may participate in
7 interscholastic athletics, not inconsistent with the requirements of this Rule.

8 (b) Each PSU shall require the principal of a participating school to sign and date a list of eligible students for each
9 sport. The PSU shall maintain a copy of the most current list in the principal's office and the office of the
10 superintendent.

11 (c) Residency Requirements

12 (1) For purposes of this Rule, a student's primary residence shall be determined as follows:

13 (A) If the student lives with both parents, the residence of both parents.

14 (B) If the student lives with a single parent, the residence of that parent.

15 (C) If the student's parents are separated or divorced, the residence of the parent to whom a court of
16 competent jurisdiction has awarded primary custody of the student. If no custody order has been
17 entered, the student's primary residence shall be deemed to be that at which the student is residing
18 more than half-time at the beginning of the school year.

19 (D) If a student lives with an individual to whom a court of competent jurisdiction has awarded legal
20 guardianship of the student, the residence of that individual.

21 (E) If a student has been emancipated in accordance with Chapter 7B, Article 35 of the General Statutes,
22 the student's residence at the time of emancipation.

23 (F) If a student is a foreign national participating in a foreign exchange program authorized by federal
24 and state law, the residence to which the student is assigned by the program or host PSU.

25 (2) A student shall not participate in interscholastic athletics following a change in primary residence unless ~~it is~~
26 the change was made for a bona fide purpose, purpose and with the intent that it be permanent. A bona fide
27 ~~purpose means that the change in primary residence was made with the intent that it be permanent and not~~
28 ~~primarily for athletic purposes.~~ An administering organization shall resolve, by a preponderance of the
29 evidence, any disputes regarding a high school student's primary residence or whether a change in a student's
30 primary residence was for a bona fide purpose.

31 (d) Enrollment Requirements

32 (1) A student who attends a school supervised by a local board of education shall only participate in
33 interscholastic athletics on behalf of the school to which the student is assigned under G.S. 115C-366.

34 (2) A student enrolled in a charter school, regional statewide public school, or school operated by the University
35 of North Carolina shall meet all the enrollment criteria for that school and attend that school. A student who
36 attends a school described in this Subparagraph shall not participate in interscholastic athletics on behalf of
37 that school unless the student's primary residence is within either:

1 (A) the county in which the school is located, or

2 (B) twenty-five (25) miles of the school as determined by an administering organization.

- 3 (3) A local board of education may by policy allow ~~students who are~~ a person who is enrolled in Grade 6 through
4 12 in a home school, as defined in G.S. 115C-563(a), and whose primary residence is within the board's
5 jurisdiction to participate in interscholastic athletics on behalf of a participating school under the board's
6 jurisdiction, provided that the board either agrees to cover any ~~home school student~~ such person whom it
7 allows to participate under its catastrophic athletic accident insurance policy or verifies that the ~~student person~~
8 is independently covered by catastrophic accident insurance.

9 (e) Transfer Requirements

- 10 (1) After a student's initial entry into ~~grade~~ Grade 9, and absent a change in residence for a bona fide purpose as
11 provided in Paragraph (c) of this Rule:

12 (A) a student who transfers from one school to another school within the same PSU shall not participate
13 in interscholastic athletics for 365 calendar days following the student's enrollment in the new
14 school, unless the governing authority of the PSU has adopted a policy allowing immediate
15 eligibility for students who are assigned by the PSU to a different school within the same PSU.

16 (B) a student who transfers from a school in one PSU to a school in a different PSU shall not participate
17 in interscholastic athletics for 365 calendar days following the student's enrollment in the new
18 school, except by mutual agreement of the governing authorities of each PSU.

- 19 (2) ~~If~~ After a student's initial entry into Grade 9, if a student transfers to a new school within 365 calendar days
20 after that school hires a coach for an interscholastic athletics team who was previously employed as a coach
21 for an equivalent sport by the school from which the student is transferring, the student shall be ineligible to
22 participate in interscholastic athletics for that ~~sport. sport~~ for 365 calendar days following the student's
23 enrollment in the new school. An administering organization may waive this ~~requirement upon petition by~~
24 ~~the student's PSU if restriction~~ it determines by a preponderance of the evidence that the student's transfer
25 was ~~for a bona fide purpose.~~ for a bona fide purpose.

- 26 (3) A student who receives priority enrollment as the child of a full-time employee of a charter school pursuant
27 to G.S. 115C-218.45(f)(3) shall not be eligible to participate in interscholastic athletics for that charter school
28 if the Department of Public Instruction determines that the parent's employment was a fraudulent basis for
29 the student's priority enrollment. A student determined to be ineligible under this Subparagraph shall be
30 ~~ineligibility~~ ineligible to participate in interscholastic athletics for 365 calendar days following discovery of
31 the violation.

- 32 (4) For purposes of this Paragraph, if a student transfers from a public school to a nonpublic school, including a
33 home school as defined in G.S. 115C-563(a), and within 365 calendar days transfers to a different public
34 school, the transfer from the nonpublic school shall be treated as a transfer from a public school.

- 35 (5) A student who transfers to the North Carolina School of Science and Mathematics is exempt from the
36 requirements of this Paragraph upon initial entry into that school.

1 (6) No student shall participate in more than one season of interscholastic athletics per year in the same sport,
2 regardless of the school on behalf of which the student participated.

3 (f) Scholastic Requirements

4 (1) To be eligible to participate in interscholastic athletics, a student must be in good academic standing. For
5 purposes of this Rule, a student shall be deemed to be in good academic standing under the following
6 circumstances:

7 (A) The student ~~has no more than nine unexcused absences in the current school year;~~ attended at least 85
8 percent of the total number of instructional days in the PSU during the previous semester;

9 (B) The student passed at least 70 percent of the courses taken in the preceding semester; and

10 (C) The student is ~~on track to advance to the next grade level or graduate~~ making sufficient progress toward
11 meeting the academic and curricular requirements of the PSU and the State Board of Education to be
12 promoted to the next grade level or to graduate within the next calendar year.

13 (2) For the purpose of determining good academic standing during the fall semester, a student may count courses
14 that the student passed in a summer school session in which the student was enrolled during the same calendar
15 year toward the total number of courses passed in the preceding spring semester, provided that summer school
16 courses shall not affect the total number of courses attempted in the preceding spring semester.

17 ~~(2)~~ (3) A student who is promoted from ~~grade~~ Grade 5 to ~~grade~~ Grade 6 shall be deemed to have satisfied the
18 requirements set forth in this Paragraph to participate in the first semester of ~~grade~~ Grade 6.

19 ~~(3)~~ (4) A student who is promoted from ~~grade~~ Grade 8 to ~~grade~~ Grade 9 shall be deemed to have satisfied the
20 requirements set forth in this Paragraph to participate in the first semester of ~~grade~~ Grade 9.

21 (5) For interscholastic athletic activities occurring between July 1, 2024, and December 31, 2024, any student
22 who has satisfied the requirements of 16 NCAC 06E .0204(d), as it was written on June 30, 2024, shall be deemed
23 to have satisfied the requirements of this Paragraph.

24 (g) Age Requirements

25 (1) Each PSU shall determine the age of a student participating in interscholastic athletics based on a
26 preponderance of the evidence known to the PSU.

27 (2) A student who is ineligible to participate at one grade level due to age shall be eligible to participate at the
28 next higher grade level only, subject to the following restrictions: provided that a student:

29 (A) ~~A student shall~~ Shall be eligible to participate at the middle school level for no more than six
30 consecutive semesters, beginning with the student's initial entry into Grade 6.

31 (B) ~~A student shall~~ Shall be eligible to participate at the high school level for no more than eight
32 consecutive semesters, beginning with the student's initial entry into Grade 9.

33 (C) ~~A student shall~~ Shall not participate on a ~~grade 6, 7, or 8~~ middle school team if the student becomes
34 15 years of age before August 31 of that school year.

35 (D) ~~A student shall~~ Shall not participate on a ~~grade 7, 8, or 9~~ junior high school team if the student
36 becomes 16 years of age on or before August 31 of that school year.

1 (E) ~~A student shall~~ Shall not participate on ~~any grade 9, 10, 11, or 12~~ a high school team if the student
2 becomes 19 years of age on or before August 31 of that school year.

3 (3) A student in ~~grade~~ Grade 6 shall not participate in tackle football.

4 (h) Biological Requirements. All students participating in interscholastic athletics shall comply with the biological
5 participation requirements as provided in G.S. 115C-407.59.

6 (i) Medical Requirements. To be eligible to participate in interscholastic athletics, a student shall receive a medical
7 examination every 395 days by a licensed physician, nurse practitioner, or physician assistant, subject to the provisions
8 of ~~G.S. 90-9.1, G.S. 90-9.2, G.S. 90-9.3, G.S. 90-18.1, and G.S. 90-18.2.~~ Chapter 90 of the General Statutes.

9 (j) A student shall not participate in interscholastic athletics after pleading guilty or “no contest” to, or being ~~finally~~
10 convicted of, a felony under the laws of North Carolina, the United States, or any other state. Prior to deeming the
11 student ineligible, an administering organization shall receive a certified copy of a criminal record reflecting the
12 conviction and verify that the student is the same individual identified in the criminal record.

13 (k) An administering organization shall, in an individual student’s case, waive any eligibility requirement contained
14 in this Rule ~~upon a petition by the student’s PSU and a finding by the administering organization~~ if it finds that
15 enforcing the requirement:

16 (1) fails to promote academic progress, health, safety, and fair play;

17 (2) works an undue hardship on a student who has lost eligibility due to circumstances that made participation
18 impossible, such as prolonged illness or injury; or

19 (3) prevents the reasonable accommodation of a student’s disability, as required by the Americans with
20 Disabilities Act, 42 U.S.C. § 12101 et seq.

21
22 *History Note:* *Authority* *G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*
23 *115C-407.65; 116-235(b)*

24 *Temporary Rule Eff. July 1, 2024.*

1 16 NCAC 06E .0215 is adopted under temporary procedures as follows:

2
3 **16 NCAC 06E .0215 APPEALS**

4 (a) The Superintendent of Public Instruction (“Superintendent”) shall appoint an independent interscholastic athletics
5 appeals board (“appeals board”) to hear and act upon appeals from a final decision of an administering ~~organization,~~
6 organization or PSU, or from the Department of Public Instruction if necessary pursuant to Rule .0204, Paragraph (g)
7 of this Section, regarding student eligibility to participate in interscholastic athletics; violations of limitations on
8 recruiting or undue influence; penalties or fees imposed on students, coaches, or participating schools; ~~retaliation, or~~
9 ~~discrimination, or other enforcement of rules pursuant to this Section.~~

10 (b) The administering organization’s final decision shall contain:

- 11 (1) Findings of fact.
12 (2) Conclusions of law, including citation to and a copy of any rules related to the decision.
13 (3) A description of any penalties imposed.
14 (4) A statement that the aggrieved party may file a notice of appeal within five days of receipt of the
15 administering organization’s decision by sending the notice to the Superintendent via ~~email and~~
16 electronic mail or the United States Postal Service.

17 ~~(b)~~ (c) An aggrieved party may file an appeal with the Superintendent within five days after receipt of the administering
18 organization’s final decision. The final decision shall be mailed to the aggrieved party, with a copy to the local
19 superintendent and principal with jurisdiction over the aggrieved party.

20 (d) The aggrieved party’s appeal shall:

- 21 (1) Be in ~~writing;~~ writing.
22 (2) Include a description of the facts of the ~~dispute;~~ dispute.
23 (3) Include any evidence submitted to the administering ~~organization, and~~ organization.
24 (4) Present an argument explaining with the aggrieved party believes the administering organization’s final
25 decision was not based on substantial evidence, as defined in G.S. 150B-2(8c), or is affected by an error
26 of law.

27 (e) The administering organization may file a response to the aggrieved party’s submissions within five days. The
28 ~~panel appeals board~~ may shorten the time for filing the administering organization’s response if the decision affects a
29 student’s or coach’s eligibility to participate in an intervening athletic contest.

30 (f) All documents filed in the appeal shall be simultaneously served on all parties via email and the United States
31 Postal Service. If the aggrieved party is a student, parent, or coach, the parties shall also ~~serve~~ provide copies of the
32 documents ~~on~~ via electronic mail or the United States Postal Service to the local superintendent and principal with
33 jurisdiction over the aggrieved party.

34 (g) Panels of no fewer than three members of the appeals board may hear and decide matters on behalf of the appeals
35 board. The panel may conduct a live hearing in person or via teleconference. Any hearing so conducted shall be
36 recorded.

1 (h) No later than 30 days after the Superintendent’s receipt of the appeal, the panel shall issue its decision. The panel
2 shall affirm the administering organization’s final decision unless a majority of the panel determines that the final
3 decision is not supported by substantial evidence or is affected by an error of law. The panel may also remand the
4 decision to the administering organization for further review if there is an intervening change in any relevant law or
5 if the panel determines that additional information is necessary to inform its decision.

6 (i) The Superintendent, or the Superintendent’s authorized designee, may stay a determination of ineligibility or a
7 penalty imposed by the administering organization pending the final decision of the appeals board.

8 ~~(j)~~ (j) The panel’s decision shall be final.

9

10 *History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*
11 *115C-407.65; 116-235(b);*
12 *Temporary Rule Eff. July 1, 2024.*

Burgos, Alexander N

From: Ascher, Seth M
Sent: Thursday, March 14, 2024 11:24 AM
To: Collins, Ryan; Brewington, Denyse
Cc: Wiggs, Travis C; Burgos, Alexander N
Subject: RFC for March SBE Temporary Rules
Attachments: SBE March Temp Rules RFC.docx

Good afternoon,

I'm the attorney who reviewed the Temporary Rules submitted by the State Board of Education for the March 2024 RRC meeting. The RRC will formally review these Rules at its meeting on Wednesday, March 27, 2024, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite 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 invites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Note that the document does not include rules where no changes are being requested. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on March 22, 2024. I will be out of town on March 21 and 22, so please make sure to include Travis Wiggs, another RRC counsel, when you send responses and updates.

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

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.

REQUEST FOR WAIVER OF RRC RULE

I request a waiver of RRC Rule **26 NCAC 02C .0102(13)**

Agency Requesting Waiver: State Board of Education

Person Requesting Waiver: Ryan Collins, Rulemaking Coordinator (on behalf of the State Board of Education)

Reason for Waiver: The State Board of Education is adopting two new rules on Interscholastic Athletics and is asking to re-use the rule numbers for two expired rules that are on the same subject matter as the new rules.

Date: 1/4/2024

Factors to be used in determining whether RRC shall grant a waiver (26 NCAC 05 .0112):

- (1) the necessity for a waiver;
- (2) the amount of notice given to the Commission and its staff, the agency proposing the rule, and interested parties;
- (3) the applicant's responsibility for the conditions creating the need for a waiver;
- (4) the applicant's previous requests for a waiver;
- (5) the applicant's knowledge of or experience with the rulemaking process;
- (6) the precedential value of such a waiver;
- (7) the harm to the applicant if a waiver is not granted;
- (8) the harm to the agency if a waiver is granted when the agency is not the applicant.

List and explain the appropriate factors affecting your request and why the waiver should be granted: The State Board of Education (“SBE”) is requesting a waiver of 26 NCAC 02C .0102(13), as it applies to two proposed rules on interscholastic athletics that it has noticed for publication concurrently with this request for a waiver: 16 NCAC 06E .0201 and 16 NCAC 06E .0205. Specifically, the SBE is asking for a waiver of the prohibition against re-using a rule number. The previous version of 16 NCAC 06E .0201 was a “Definitions” rule for the Section, and it expired on June 1, 2022. The new proposed rule is also a “Definitions” rule that provides new definitions based on the other new and amended rules for the Section. Similarly, the previous version of 16 NCAC 06E .0205 was a rule on concussion safety requirements for interscholastic athletic competition, which expired on August 20, 2020. The new proposed rule is entitled “Student Health and Safety Requirements for Interscholastic Athletic

Competition,” but the content is nearly identical to the expired rule, save for some technical changes.

The applicant has considered the factors in 26 NCAC 05 .0112 and contends that they support this request.

- (1) The waiver is necessary for the efficient organization of the Administrative Code. Re-using 16 NCAC 06E .0201 ensures that the definitions rule for the Section remains at the beginning of the Section, and thus alerts readers of the Code to the meaning of terms used throughout the Section. In addition, since both new rules are on substantially the same subject matter as the expired rules, it would be efficient for the same rule numbers to be re-used.
- (2) The waiver is being submitted concurrently with the proposed text of the rules for publication. Accordingly, the Commission and its staff will have at least 30 business days to consider the waiver before the SBE adopts a final rule for submission to the Commission. I do not anticipate substantial public interest in the request to re-use the rule numbers for expired rules.
- (3) Although the SBE failed to re-adopt the expired rules prior to their expiration, the applicant believes that this failure should be a basis for denying the waiver in this case. The General Assembly has made significant changes in the past two years to laws governing interscholastic athletics and has required the SBE to adopt new rules to implement those laws. Given that these two rules are part of a much larger package that will substantially expand SBE rules on this topic, the SBE should be given the opportunity to organize those rules in an effective manner.
- (4) The applicant has not previously requested a waiver on this subject.
- (5) The SBE is relatively new to the rulemaking process, given that prior to 2018 the SBE operated primarily based on policy. The undersigned is also a relatively new rulemaking coordinator, having only joined the SBE staff in January 2023. The undersigned is working with the SBE to improve its rulemaking process to avoid the need for such waiver requests in the future.

- (6) The undersigned is given to believe that the Commission or the Codifier has granted waivers of 26 NCAC 02C .0102(13) in the past when a proposed new rule was on substantially the same subject matter as an old rule. The undersigned believes that this sets a valuable precedent in that it encourages the efficient management of the Administrative Code by re-using old rule numbers where it is appropriate to do so.
- (7) The SBE does not anticipate significant harm if the waiver is denied but contends that no harm will come in granting it.
- (8) N/A – agency is the applicant.

List on a separate sheet of paper any persons you have notified concerning this waiver request.



Signature: _____