

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06E .0107

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection for failure to comply with the APA and ambiguity. In Paragraph (a), the Rule requires the information listed in this Rule to be reported "in conformity with the State's Uniform Education Reporting System (UERS)." Staff is not aware of and the agency has not provided any authority exempting the UERS from the rulemaking process. Referring to requirements outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update the UERS outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. The reporting requirements are also unclear since those requirements are not set in rule. Therefore, staff recommends objection for failure to comply with the APA and ambiguity.

Staff recommends objection for lack of clarity because the Rule requires LEAs to report crimes and offenses identified by statute to the State Board of Education, but the statutes listed in (a)(4), (a)(5), and the first statute in (a)(6) have been recodified. Additionally, (a)(21) lists G.S. 14-50.16, but that statute was repealed in 2017. As a result, the reporting requirements tied to these statutes are unclear as written.

Staff also recommends objection to Paragraph (b) for lack of clarity since it states "failure to follow reporting requirements under this provision may justify disciplinary action. . . ." As written, it is unclear when a failure to report will "justify disciplinary action."

Ashley Snyder
Commission Counsel

Staff notes the agency did not provide a revised rule or responses to the requests for technical changes.

§ 115C-12. Powers and duties of the Board generally.

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish all needed rules and regulations for the system of free public schools, subject to laws enacted by the General Assembly. In accordance with Sections 7 and 8 of Article III of the North Carolina Constitution, the Superintendent of Public Instruction, as an elected officer and Council of State member, shall administer all needed rules and regulations adopted by the State Board of Education through the Department of Public Instruction. The powers and duties of the State Board of Education are defined as follows:

...

- (18) **Duty to Develop and Implement a Uniform Education Reporting System, Which Shall Include Standards and Procedures for Collecting Fiscal and Personnel Information. -**
 - a. The State Board of Education shall adopt standards and procedures for local school administrative units to provide timely, accurate, and complete fiscal and personnel information, including payroll information, on all school personnel.
 - b. The State Board of Education shall develop and implement a Uniform Education Reporting System that shall include requirements for collecting, processing, and reporting fiscal, personnel, and student data, by means of electronic transfer of data files from local computers to the State Computer Center through the State Communications Network.
 - c. The State Board of Education shall comply with the provisions of G.S. 116-11(10a) to plan and implement an exchange of information between the public schools and the institutions of higher education in the State. The State Board of Education shall require local boards of education to provide to the parents of children at a school all information except for confidential information received about that school from institutions of higher education pursuant to G.S. 116-11(10a) and to make that information available to the general public.
 - d. The State Board of Education shall modify the Uniform Education Reporting System to provide clear, accurate, and standard information on the use of funds at the unit and school level. The plan shall provide information that will enable the General Assembly to determine State, local, and federal expenditures for personnel at the unit and school level. The plan also shall allow the tracking of expenditures for textbooks, educational supplies and equipment, capital outlay, at-risk students, and other purposes.
 - e. When practicable, reporting requirements developed by the State Board of Education as part of the Uniform Education Reporting System under this subdivision shall be incorporated into the PowerSchool application or any other component of the Instructional Improvement System to minimize duplicative reporting by local school administrative units.
 - f. The State Board of Education shall develop a process for local school administrative units to annually identify enrolled military-connected students using the Uniform Education Reporting System. The identification of military-connected students shall not be used for the purposes of determining school achievement, growth, and performance scores as required by G.S. 115C-12(9)c1. The identification of military-connected students is not a public record within the meaning of G.S. 132-1 and shall not be made public by any person, except as permitted under the provisions of the Family Educational and Privacy Rights Act of 1974, 20 U.S.C. § 1232g. For purposes of this section, a "military-connected student" means a student enrolled in a local school administrative

unit who has a parent, step-parent, sibling, or any other person who resides in the same household serving in the active or reserve components of the Army, Navy, Air Force, Marine Corps, Coast Guard, or National Guard. Beginning in the 2016-2017 school year, and annually thereafter, the identification of military-connected students for all local school administrative units shall be completed by January 31 of each school year.

1 16 NCAC 06E .0107 is proposed for adoption as follows:

2 **16 NCAC 06E .0107 SCHOOL VIOLENCE ACTS DEFINED AND THE ANNUAL REPORT OF THESE**
3 **CRIMES**

4 a) Local Education Agencies (LEAs) shall report the following crimes and offenses within five school days to
5 the State Board of Education via the Department of Public Instruction-approved discipline reporting system
6 in conformity with the State’s Uniform Education Reporting System:

- 7 1. Homicide as defined in G.S. §14-17 and 14.18;
- 8 2. Assault resulting in serious personal injury as defined in G.S. §14-32.4;
- 9 3. Assault involving the use of a weapon as defined in G.S. §14-32 through 14-34.10;
- 10 4. Rape as defined in G.S. §14-27.2, 14-27.3 and 14-27.7A;
- 11 5. Sexual offense as defined in G.S §14-27.4, 14-27.5 and 14-27.7A;
- 12 6. Sexual assault as defined in G.S. §14-27.5A and 14-33(c)(2);
- 13 7. Kidnapping as defined in G.S. §14-39;
- 14 8. Robbery with a dangerous weapon as defined in G.S. §14-87;
- 15 9. Indecent liberties with a minor as defined in G.S. §14-202.1, 14-202.2 and 14-202.4;
- 16 10. Assault with a firearm or powerful explosive as defined in G.S. §14-34 through 14-34.10 and §14.49
17 through 14-50.1;
- 18 11. Robbery with a firearm or dangerous explosive as defined in G.S. §14-87;
- 19 12. Willfully burning a school building as defined in G.S. §14-60;
- 20 13. Making bomb threats or engaging in bomb hoaxes as defined in G.S. §14-69.2;
- 21 14. Assault on school officials, employees, and volunteers as defined in G.S. §14-33(c)(6);
- 22 15. Possession of a controlled substance in violation of the law as defined in G.S. §90-86 through 90-
23 113.8;
- 24 16. Possession of a firearm in violation of the law as defined in G.S. §14-269.2;
- 25 17. Possession of a weapon in violation of the law as defined in G.S. §14-269.2;
- 26 18. Unlawful, underage sales, purchase, provision, possession, or consumption of alcoholic beverages
27 as defined in G.S. §18B-302;
- 28 19. Assault as defined in G.S. §14-33 but not resulting in an injury as severe as defined in G.S. §14-
29 32.4;
- 30 20. Fighting, or affray as defined in G.S. §14-33;
- 31 21. Gang activity as defined in G.S. §14-50.16 14-50.20;
- 32 22. Robbery as defined in G.S. §14-87, but without the use of a dangerous weapon;
- 33 23. Extortion as defined in G.S. §14-118.4;
- 34 24. Communicating threats as defined in G.S. §14-277.1;
- 35 25. Threat of assault with a firearm or powerful explosive as defined in G.S. §14-277.1;
- 36 26. Threat of assault with a weapon as defined in G.S. §14-277.1;
- 37 27. Threat of assault without a weapon as defined in G.S. §14-277.1;

- 1 28. Possession or use of tobacco products as defined in G.S. §14-313;
2 29. Property damage as defined in G.S. §115C-398;
3 30. Bullying as defined in G.S. §115C-407.15;
4 31. Cyberbullying as defined in G.S. §14-458.1 and 14-458.2;
5 32. Verbal harassment as defined in G.S. §115C-407.15;
6 33. Sexual harassment as defined in G.S. §115C-335.5; Title VII of the Civil Rights Act of 1964, 42
7 U.S.C. §2000e et seq.;
8 34. Harassment - Race/Ethnicity as defined in §115C-407.15;
9 35. Harassment – Disability as defined in § 115C-407.15;
10 36. Harassment – Sexual orientation as defined in §115C-407.15;
11 37. Harassment – Religious affiliation as defined in §115C-407.15; and
12 38. Discrimination as defined in Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d et seq.;
13 Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq.; Title IX of the Education
14 Amendments of 1972, 20 U.S.C. §§1681-1688; Americans with Disabilities Act, 42 U.S.C. 12101
15 et seq.
16 b) Failure to follow reporting requirements under this provision may justify disciplinary action pursuant to 16
17 NCAC 6C.0312 (License Suspension and Revocation).
18 c) These offenses shall be reported when they occur under the following conditions and circumstances: (1) on
19 school property, defined as any public school building, bus, public school campus, grounds, recreational area,
20 or athletic field in the charge of the principal or (2) off school property on a school-sponsored field trip.

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22 History Note: Authority G.S. 115C-12(18), (21); G.S. 115C-288(g); G.S. 115C-307(a);
23 Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);
24 Emergency Rule Eff. August 20, 2019.
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