

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.
For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

TITLE 16 – DEPARTMENT OF PUBLIC INSTRUCTION

Notice is hereby given in accordance with G.S. 150B-21.1(a3) that the State Board of Education intends to amend the rule cited as 16 NCAC 06E .0204.

Codifier of Rules received for publication the following notice and proposed temporary rule(s) on: March 7, 2022.

Public Hearing:

Date: March 24, 2022

Time: 9:00 a.m.

Location: <https://ncgov.webex.com/meet/lou.martin> 1+415-655-0003 US Toll Access code: 615 950 383

Reason for Proposed Temporary Action: *The effective date of a recent act of the General Assembly or of the U.S. Congress, S.L. 2021-184, Part I, section 1.(b), effective November 23, 2021. Notwithstanding G.S. 150B-21.1(a2), for 180 days following the effective date of this act, the State Board of Education is authorized to submit temporary rules for high school interscholastic athletic activities to the Rules Review Commission. Notwithstanding G.S. 150B-21.1(a4), the State Board of Education shall not be required to submit a written statement of its findings of need with its submission of temporary rules for high school interscholastic athletic activities during this period. Except as otherwise provided in this subsection, the requirements of Article 2A of Chapter 150B of the General Statutes shall apply.*

G.S. 150B-21.1(a4) also states that, when promulgating a rule that establishes a fee, an agency must comply with the G.S. 12-3.1 which requires agencies to request a consultation with the Joint Legislative Oversight Commission on Government Operations and the Fiscal Research Division of the General Assembly. This temporary rule does not establish a fee; the rule only delegates the authority to establish a fee to the administering organization. Therefore, this temporary rule is not subject to G.S. 12-3.1. Nevertheless, the State board of Education has informed the Joint Legislative Oversight Commission on Government Operations and the Fiscal Research Division of the General Assembly that it is filing this temporary rule with OAH and provided them with the information required in a request for consultation.

Comment Procedures: *Comments from the public shall be directed to: Thomas Ziko, Rulemaking Coordinator, SBE, 6302 Mail Service Center, Raleigh, NC 27699-6302; phone (984) 236-2249; email thomas.ziko@dpi.nc.gov. The comment period begins March 14, 2022 and ends May 2, 2022.*

CHAPTER 06 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6E - STUDENTS

SECTION .0200 - SCHOOL ATHLETICS AND SPORTS MEDICINE

16 NCAC 06E .0204 INTERSCHOLASTIC ATHLETICS AND ADMINISTERING ORGANIZATIONS FOR HIGH SCHOOL ATHLETICS

(a) ~~Local Education Agencies (LEAs) Definitions:~~

(1) "Administering organization" is defined in G.S. 115C-407.50(1).

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

(3) "Public school unit" is defined in G.S. 115C-5(7a).

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

~~(b)(c) In order to qualify for participation~~ To participate in public school interscholastic athletics, a student shall meet the following requirements:

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

(2) ~~The A student shall meet the age requirements at each grade level to participate. The principal PSUs shall have determine the age of participating students based on a preponderance of the evidence of the legal birth date of the student, known to them. A student who is ineligible to participate at one grade level due to age is shall be eligible to participate at the next higher grade level only. However, only, provided, no student is shall be eligible to participate at the middle school level for a period lasting longer than six consecutive semesters, beginning with the student's entry~~

into ~~sixth grade, grade 6, and~~ no student shall be eligible to participate at the high school level for more than eight consecutive semesters, beginning with the student's first entry into grade ~~nine~~ 9 or participation on a high school team, whichever occurs first.

- (A) A student shall not participate on a ~~sixth, seventh, or eighth grade~~ 6, 7, or 8 team if the student becomes 15 years of age on or before August 31 of that school year.
- (B) A student shall not participate on a ~~ninth grade~~ 9 through 12 ~~junior high school~~ team if the student becomes ~~16~~ 19 years of age on or before August 31 of that school year.
- (C) ~~A student is eligible to participate in high school athletic contests during a school year if the student does not reach his or her 19th birthday on or before August 31 of that school year.~~

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

~~(d)(e)~~ To be eligible to participate, a student shall receive a medical examination ~~each year~~ every 395 days by a licensed physician, nurse practitioner, or physician assistant, subject to the provisions of G.S. 90-9, 90-18.1, and 90-18.2.

~~(e)(f)~~ The student shall not participate in interscholastic athletics after any of the following:

- (1) ~~graduation; graduation, except that the student may continue to participate in playoff and state championship contests in spring sports after graduation;~~
- ~~(2) becoming eligible to graduate;~~
- ~~(3)(2)~~ signing a professional athletic ~~contact;~~ contract, except that the student may continue to participate in any sport for which the student has not signed a professional contract;
- ~~(4)(3)~~ receiving remuneration as a participant in an athletic ~~contest, or~~ contest, except that the student may accept a gift, merchandise, trophy, or other thing of value, provided that:
 - (A) the value does not exceed two hundred fifty dollars (\$250.00) per student per sports season;
 - (B) the item is totally consumable and nontransferable or labeled in a permanent manner, for example, monogrammed or engraved items; and
 - (C) the item is approved by the student's principal and superintendent; or
- ~~(5)(4)~~ participating on an all-star team or in an all-star game that is not sanctioned by the ~~association~~ administering organization of which the student's school is a ~~member. The member, provided, the student is~~ shall be ineligible only for the specific sport involved.

~~(f)(g)~~ Each PSU shall require the principal of a school that participates in interscholastic athletics ~~shall~~ to certify a list of eligible students for each sport.

~~(g)(h)~~ Any A PSU shall impose at least the following penalties on a student, student athlete, coach, or school official in grades 6-12 6 through 12 who is ejected from any an interscholastic athletic contest shall at least be penalized as follows:

- (1) for the first offense, the person shall be reprimanded and suspended ~~from participating in~~ for the next game at that level of play (varsity or junior varsity); ~~varsity) and for any intervening games at either level;~~
- (2) for a second offense, the person shall be placed on probation and suspended ~~from participating in~~ for the next two games at that level of play (varsity or junior varsity); ~~varsity) and for any intervening games at either level;~~
- (3) for a third offense, the person shall be suspended for one calendar year; and
- (4) a coach who is suspended ~~at any level of grades 6-12 (middle school, junior high or high school)~~ shall not coach any team for in any other grade level ~~in grades 6-12~~ during the period of suspension.

~~(5)~~ Penalties are cumulative from sport to sport and from sport season to sport season. If no member of the school's coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.

~~(h)(i)~~ LEAs PSUs may allow their schools to belong to the North Carolina High School Athletic Association (NCHSAA), which has established as a minimum the rules adopted by the SBE, an administering organization designated by the State Board of Education. The NCHSAA

(j) An administering organization entering into a memorandum of understanding with the State Board of Education for the purpose of administering interscholastic athletics under this Rule must apply and enforce all of the requirements of this Rule.

(k) The State Board of Education may delegate to an administering organization its authority over participating schools to:

- (1) waive any student eligibility requirement contained in this Rule, ~~except the age requirement,~~ if it finds that the rule requirement fails to accomplish its purpose, or it works an undue hardship on a student who has lost eligibility due to circumstances that made participation impossible such as prolonged illness or injury. The NCHSAA may enforce penalties for the violation of this Rule at the high school level. injury;
- (2) adopt, apply, and enforce penalty rules that establish a system of demerits that includes reprimands, probations, suspensions, forfeitures of contests, forfeitures of titles, and disqualifications;
- (3) adopt, apply, and enforce administrative rules, as defined in G.S. 115C-407.55(5);
- (4) adopt, apply, and enforce gameplay rules, as defined in G.S. 115C-407.55(6); and
- (5) establish and collect from all its members a uniform membership fee of either:
 - (A) one thousand dollars (\$1,000) for each participating school, or

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

(l) An administering organization shall:

- (1) enter into a memorandum of understanding with the State Board of Education no later than March 15 prior to the academic year in which it is to begin administering interscholastic athletics and before each subsequent renewal of a memorandum of understanding;
- (2) be audited by a reputable independent auditing firm and submit the audit to the State Board of Education no later than March 15 each year;
- (3) broadcast the meetings of its membership and board of directors in a manner that is announced on its website and which may be viewed electronically by any member of the public;
- (4) provide to the State Board of Education within 30 days any requested organizational records, including but not limited to, financial information, annual audit reports, and any matters related to or impacting participating schools;
- (5) enter into written agreements with PSUs that allow their eligible schools to participate in interscholastic sports, which agreements shall include an explanation of the fees to be charged, the obligations of the PSU and participating schools, penalties for the violation of this Rule at the high school level, that may be imposed, and an explanation of the process to contest or appeal adverse decisions; and
- (6) publish the organization's rules through a link on the first page of its website.

(m) The State Board of Education will appoint an appeals board to hear and act upon appeals from final decisions of an administering organization regarding student eligibility, penalties, fees imposed, retaliation, or discrimination. Panels of no fewer than three members of the appeals board may hear and decide matters on behalf of the board. A PSU aggrieved by a final decision of the administering organization may file an appeal with the State Board of Education's Office of General Counsel within five days after receipt of the administering organization's final decision. The PSU's appeal shall:

- (1) be in writing;
- (2) include a description of the facts of the dispute;
- (3) include any evidence submitted to the administering organization;
- (4) present an argument explaining why the PSU believe the administering organization's final decision was not based on substantial evidence or affected by an error of law.

The administering organization may file a response to the PSU's submissions within five days. The panel may shorten the time to for filing the administering organization's response if the decision affects a student's or coach's eligibility to participate in an intervening athletic contest. All documents filed in the appeal shall be simultaneously served on all parties. Any hearing shall be recorded.

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

The panel's decision shall be final.

~~(n)~~ The LEA PSU that has jurisdiction over the high a school may impose additional penalties. penalties in addition to those imposed by an administering organization. If there is no administering organization governing a group of schools, a PSU LEAs or conferences may adopt and impose penalties at the middle and junior high school levels. for schools under its jurisdiction.

Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50, 115C-407.55; 115C-407.60; 115C-407.65; 116-235(b).