

## Burgos, Alexander N

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**From:** Brandon Walker <Brandon.Walker@dpi.nc.gov>  
**Sent:** Tuesday, May 17, 2022 6:10 PM  
**To:** Liebman, Brian R  
**Cc:** Burgos, Alexander N; Ziko, Thomas  
**Subject:** Re: [External] RE: 16 NCAC 06E .0204 Temp Rule for May 2022 RRC

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Thank you, Brian. I will review and discuss with Tom. I will let you know if we have any questions. Thank you for your help on this matter.

BCW

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Tuesday, May 17, 2022 5:26:03 PM  
**To:** Brandon Walker <Brandon.Walker@dpi.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Thomas Ziko <Thomas.Ziko@dpi.nc.gov>  
**Subject:** RE: [External] RE: 16 NCAC 06E .0204 Temp Rule for May 2022 RRC

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Brandon,

Attached, please find a copy of the staff opinion recommending objection to the temporary rule. This will be posted online shortly.

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

Best,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
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**From:** Liebman, Brian R  
**Sent:** Tuesday, May 17, 2022 2:39 PM  
**To:** Brandon Walker <Brandon.Walker@dpi.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ziko, Thomas  
Subject: RE: [External] RE: 16 NCAC 06E .0204 Temp Rule for May 2022 RRC

Hi Brandon,

Thanks for getting these back to me. Unfortunately, I still have concerns, and I think because of how close we are to the meeting and the volume of other matters on the agenda this month, we won't have the time to address these concerns before the meeting. Thus, I plan to recommend objection to the Rule. That being said, I think we can definitely fix these problems next month, once we have a little more time. I'll try to get the staff opinion out to you today, tomorrow morning at the latest.

So, see below for my continued concerns. I'm going to just cut and paste from the change request document, and keep the conversation going from there. My additional questions/comments in blue.

*In (h), p.2, with respect to the rules imposing penalties upon students, coaches, and schools, do your rules otherwise provide for how notice is to be given of the infraction? The version of 115C-407.55(4) in the SL states that appeals rules "shall establish" a process "that provides for... notice of the infraction...." I don't see anything here discussing notice of the infraction. See added definition of "receipt" on page 1, line 8. Without comment on the definition itself, where is this term used in the body of the Rule? I see "receipt" several times but it is in reference to the Board being in receipt of something, not the person subject to the infraction being in receipt of the infraction from the Board. I think the point of my question was that you don't have a process for notifying the person subject to the infraction, and I still don't see that here.*

*In (k)(1), p.3, line 17-21, can you delegate the ability to waive eligibility requirements to an AO? 115C-407.55 explicitly places student participation rules in the Board's purview, and does not state that the Board can by rule delegate its authority over student participation rules to the AO. The version of 16 NCAC 06E .0204(h) that is currently in effect, states: "The NCHSAA may waive any eligibility requirement contained in this Rule, except the age requirement, if it finds that the rule 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 a prolonged illness or injury." This rule was approved by the RRC in 2020. We have attached the revised rule that shows the permissive "may" struck in line 14 on page 3 and reinserted in section (k) line 18 on page 3.*

*G.S. 115C-12(23) states: "The State Board of Education may authorize a designated organization to apply and enforce the Board's rules governing participation in interscholastic athletic activities at the high school level."*

*I think the previous version of the rule needs to be changed in light of the Session Law, which deletes the above quoted portion of 115C-12(23) from the statute, and inserts the requirement that the rules be adopted "in accordance with this subdivision and Article 29E of this Chapter" which refers to G.S. 115C-407.50, 115C-407.55, 115C-407-60, and 115C-407.65. So, while the rule language may have passed muster in 2020, it does not now do so, since the underlying statute has changed.*

*In (m), p. 4, does the language regarding appeals comply with the version of 115C-407.55(4) in the SL? The language of the SL says that the Board "shall establish an appeals process for enforcement of rules...." While Paragraph (m) does establish an appeals board, it limits its jurisdiction to "appeals from final decisions of an administering organization..." I understand that the Board intends to enter into a MOU with an AO, but the statute does provide that if an MOU is not reached, the administration of HS athletics goes to DPI. Should the Rule not also provide for appeals from DPI, in the event you do not reach a MOU? Please see attached MOU entered between the SBE and the NCHSAA. I understand you have a MOU in place, but I think the Rule still needs to include DPI if the MOU is not renewed or otherwise falls through.*

Additionally, in the last version you sent me, any changes made to the Rule need to be highlighted, struck through, or underlined, so RRC and the public can readily identify your changes.

Thanks,  
Brian

Brian Liebman  
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**From:** Brandon Walker <[Brandon.Walker@dpi.nc.gov](mailto:Brandon.Walker@dpi.nc.gov)>  
**Sent:** Tuesday, May 17, 2022 10:08 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Ziko, Thomas <[Thomas.Ziko@dpi.nc.gov](mailto:Thomas.Ziko@dpi.nc.gov)>  
**Subject:** RE: [External] RE: 16 NCAC 06E .0204 Temp Rule for May 2022 RRC

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Hello Brian,

Again, thank you for your patience in this matter. Attached is the revised rule, along with our responses to your questions. I have also attached a copy of the MOUs between the SBE and athletic associations. Please do not hesitate to contact me if you have any questions.

Also, Tom Ziko (rules coordinator) will also be joining me on Thursday to answer any questions. I have copied him on this email. Again, thank you for all your help!

BCW

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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Monday, May 16, 2022 4:23 PM  
**To:** Brandon Walker <[Brandon.Walker@dpi.nc.gov](mailto:Brandon.Walker@dpi.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 16 NCAC 06E .0204 Temp Rule for May 2022 RRC

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If you can shoot for noon tomorrow, that'd be great. I will need some time to review these and we'll need time to make any changes that might be necessary. I appreciate y'all working hard on this as well, and I apologize on my end for not getting these to you a little sooner.

Best,  
Brian

Brian Liebman  
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**From:** Brandon Walker <[Brandon.Walker@dpi.nc.gov](mailto:Brandon.Walker@dpi.nc.gov)>  
**Sent:** Monday, May 16, 2022 4:21 PM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 16 NCAC 06E .0204 Temp Rule for May 2022 RRC

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Thank you so much Brian! Tom and I really appreciate your indulgence on the deadline. This is not our standard operating procedure to delay you in any way. I am working to get you the requested revisions by the end of the day, but at the latest we will have them to you tomorrow afternoon. Please let me know if this is acceptable. I understand that we are working on a tight time schedule and I will do my best to expedite the process. Again, this is a bit of an unique situation and I really appreciate your patience. Let me know what you think.

Thank you,

BCW

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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Monday, May 16, 2022 3:56 PM  
**To:** Brandon Walker <[Brandon.Walker@dpi.nc.gov](mailto:Brandon.Walker@dpi.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 16 NCAC 06E .0204 Temp Rule for May 2022 RRC

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Hi Brandon,

Thanks for the update. Just so you know, we need to have everything completed really no later than 5 PM tomorrow.

Thanks,  
Brian

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**From:** Brandon Walker <[Brandon.Walker@dpi.nc.gov](mailto:Brandon.Walker@dpi.nc.gov)>  
**Sent:** Monday, May 16, 2022 3:31 PM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Subject:** RE: [External] RE: 16 NCAC 06E .0204 Temp Rule for May 2022 RRC

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Hello Brian,

We are still working on providing a revised version of the rule. I am awaiting feedback from our team and will provide you an update ASAP.

BCW

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**From:** Brandon Walker  
**Sent:** Monday, May 16, 2022 8:40 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 16 NCAC 06E .0204 Temp Rule for May 2022 RRC

Thank you so much!

BCW

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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Friday, May 13, 2022 12:07 PM  
**To:** Brandon Walker <[Brandon.Walker@dpi.nc.gov](mailto:Brandon.Walker@dpi.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** Re: [External] RE: 16 NCAC 06E .0204 Temp Rule for May 2022 RRC

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Brandon,

No worries at all. Yes, Monday would be totally fine.

Brian

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**From:** Brandon Walker <[Brandon.Walker@dpi.nc.gov](mailto:Brandon.Walker@dpi.nc.gov)>  
**Sent:** Friday, May 13, 2022 12:03:40 PM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** [External] RE: 16 NCAC 06E .0204 Temp Rule for May 2022 RRC

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Hello Brian,

Thank you for follow up. I just left you a voice message. I apologize for my delayed response. I have had meetings all morning and much of my afternoon is the same. I understand you have a 5pm deadline for the revised rule. Is it possible to have a couple more hours and get you the revisions before I leave the office today? If not, I will adjust my schedule accordingly. Thanks so much for your help!

BCW

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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Thursday, May 12, 2022 5:15 PM  
**To:** Brandon Walker <[Brandon.Walker@dpi.nc.gov](mailto:Brandon.Walker@dpi.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: 16 NCAC 06E .0204 Temp Rule for May 2022 RRC

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Hi Brandon,

I'm the attorney who reviewed the temporary rule submitted by the State Board of Education for the May 2022 RRC meeting. The RRC will formally review this rule at its meeting on Thursday, May 19, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised rule to me via email, no later than 5 p.m. on Friday, May 13, 2022. As this is a pretty close deadline, please let me know if you'll need additional time, and we can work that out.

Let me know if you have any questions or concerns.

Thanks!  
Brian

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**From:** Liebman, Brian R  
**Sent:** Thursday, May 12, 2022 4:04 PM  
**To:** Walker, Brandon  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** 16 NCAC 06E .0204 Temp Rule for May 2022 RRC

Hi Brandon,

I'm reviewing the temp rule submitted earlier this week and plan to have some requests for changes out to you before the end of the day. Apologies for any delay on these. Before I do, I had a preliminary question. Along with the Temporary Rule-Making Findings of Need Form, you submitted an email exchange with Carrie Hollis regarding the need for a fiscal note. It appears that this was in regard to a different Rule - 16 NCAC 06D .0403. Was this erroneous, or is there another Rule you intended to file that I don't have?

Thanks,  
Brian

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