



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

November 21, 2019

Walker Reagan
ABC Commission
Sent via email only to: Walker.Reagan@abc.nc.gov

Re: Extension of the Period of Review for 14B NCAC 15A .1406

Dear Mr. Reagan:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rule in accordance with G.S. 150B-21.10. The Commission did so in response to a request from the agency to extend the period in order to allow the agency additional time to prepare a response to a staff opinion issued on the rule.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Ashley B. Snyder
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103



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November 26, 2019

Eric Davis, Chair
NC State Board of Education
Sent via email only to: eric.davis@dpi.nc.gov

Re: Objection to Rules 16 NCAC 06C .0326, .0329, .0334-.0340 and .0342-.0346

Dear Chair Davis:

At its meeting on November 21, 2019, the Rules Review Commission (hereinafter "the Commission") reviewed the above-referenced rules filed by the Board on November 8, 2019. The Commission found that the statements of the findings of need as provided in the Temporary Findings of Need Forms did not meet the criteria set forth in G.S. 150B-21.1(a) and also that the rules did not meet the standards set forth in G.S. 150B-21.9.

The Temporary Findings of Need Forms for these Rules indicate that the agency engaged in temporary rulemaking as a result of a recent act of the General Assembly, specifically S.L. 2019-149. Box 7 of the Forms state that "the General Assembly directed the State Board of Education to adopt by October 1, 2019, a rule required by N.C. Gen. Stat. 115C-269.45(c1)." Box 5 of the Forms indicate that the State Board of Education did not adopt these Rules until November 7, 2019. The Commission did not approve these Rules because the adoption date of these Rules was after October 1, 2019 and therefore, the State Board of Education lacked the statutory authority for temporary rule making.

In addition, the Commission objected to all rules except for .0340, which specifically addresses the small group exception referenced by Section 2 of S.L. 2019-149, for lack of statutory authority. The Commission found that the remaining rules are beyond the limited and narrow scope of the mandate provided in the Section 2 of S.L. 2019-149 as referenced on the Findings of Need Forms.

The Commission also objected to 16 NCAC 06C .0339 and .0342 through .0346 for clarity. The Commission determined that it was unclear whether these Rules create sanctions in addition to those provided in G.S. 115C-269.45(a)(1) through (3) or whether the intent is to address the "performance measures" as referenced by the same.

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Finally, the Commission objected to 16 NCAC 06C .0346 for lack of statutory authority, finding that this Rule as filed directly contradicts G.S. 115C-269.45. Specifically, Paragraph (b) of this Rule allows for “an EPP on revoked status” to “continue to admit students...”; however, G.S. 115C-269.45(b)(2) states “upon assignment of revoked status of EPP approval, the EPP shall not admit new students.” Further, Paragraph (c) of this Rule provides an EPP the ability to recommend students for licensure for two years once it is placed on revoked status; however, G.S. 115C-269.45(a)(3) states that “an EPP shall be assigned revoked status and its approval to recommend students for educator licensure revoked...” when specific requirements are met.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.1(b1) or (b2). If you have any questions regarding the Commission's action, please do not hesitate to contact me.

Sincerely,



Amber C. May
Commission Counsel

cc: Eric Snider
Melissa Strong



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November 21, 2019

Sue Hodgin, Rulemaking Coordinator
North Carolina State Board of Opticians
Sent via email only: shodgin@ncopticiansboard.org

Re: Continued Objection to Rule 21 NCAC 40 .0321

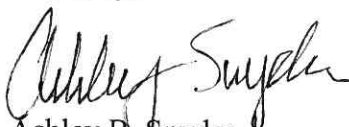
Dear Ms. Hodgin:

On November 21, 2019, the Rules Review Commission acted to continue its objection to 21 NCAC 40 .0321. The objection, originally entered on September 19, 2019, was as follows:

- The Commission objected to Rule .0321 for lack of statutory authority and ambiguity. Specifically, the Commission objected to ambiguity for failure to list the Board's factors for determining or provide a list of the "minimum equipment specified by the Board," the "curriculum approved by the board," "any test required by the Board," and for failure to delineate the scope or purpose of the on-site inspection requirement. The Commission objected for lack of statutory authority for failure to limit the Board's inspections to ensuring compliance with a training program.

Please respond to this objection in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,


Ashley B. Snyder
Commission Counsel

cc: Catherine Lee; Nichols, Choi & Lee, PLLC

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