

## Burgos, Alexander N

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**Subject:** FW: [External] Re: State Board of Education RFC

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**From:** Ryan Collins <Ryan.Collins@dpi.nc.gov>  
**Sent:** Tuesday, October 10, 2023 2:50 PM  
**To:** Ascher, Seth M <seth.ascher@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ziko, Thomas <Thomas.Ziko@dpi.nc.gov>; Schafer, Allison <allison.schafer@dpi.nc.gov>; Martin, Lou <lou.martin@dpi.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>  
**Subject:** Re: [External] Re: State Board of Education RFC

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Great! Thanks so much, Seth. I'll plan to join the meeting virtually that day should any questions arise.

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**From:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>  
**Sent:** Tuesday, October 10, 2023 2:31 PM  
**To:** Ryan Collins <[Ryan.Collins@dpi.nc.gov](mailto:Ryan.Collins@dpi.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Thomas Ziko <[Thomas.Ziko@dpi.nc.gov](mailto:Thomas.Ziko@dpi.nc.gov)>; Allison Schafer <[Allison.Schafer@dpi.nc.gov](mailto:Allison.Schafer@dpi.nc.gov)>; Lou Martin <[lou.martin@dpi.nc.gov](mailto:lou.martin@dpi.nc.gov)>; Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>  
**Subject:** RE: [External] Re: State Board of Education RFC

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Ryan,

I have reviewed the updated rule and response. At this point, I anticipate recommending approval at October's RRC meeting. I will let you know if anything changes before then.

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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**From:** Ryan Collins <[Ryan.Collins@dpi.nc.gov](mailto:Ryan.Collins@dpi.nc.gov)>  
**Sent:** Tuesday, October 10, 2023 2:05 PM  
**To:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@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)>; Schafer, Allison <[allison.schafer@dpi.nc.gov](mailto:allison.schafer@dpi.nc.gov)>; Martin, Lou <[lou.martin@dpi.nc.gov](mailto:lou.martin@dpi.nc.gov)>; Rules, Oah <[oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov)>  
**Subject:** [External] Re: State Board of Education RFC

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Seth,

I have attached the revised rule along with a response to your Request for Changes. I've also submitted a revised Form 0400. Please let me know if you need additional documentation. Tom Ziko will be out of the country until October 26 with no access to his work email, so I will likely be the contact for the remainder of the rulemaking process on this particular rule.

With respect to the second issue in your request for changes about how fees will be charged, I was able to locate Mr. Ziko's original response to this question when it came up during the temporary rulemaking phase. I believe his response to be sufficient and so I have copied it into my attached response here. If you have additional questions, or if I have misunderstood your question on that issue, please let me know. I will be out of the office tomorrow afternoon but otherwise will be accessible by phone and email.

Best,

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

*Assistant General Counsel*

North Carolina State Board of Education

[ryan.collins@dpi.nc.gov](mailto:ryan.collins@dpi.nc.gov)

984.236.2255 (o)



**NORTH CAROLINA**  
State Board of Education  
Department of Public Instruction

1 16 NCAC 06G .0601 is adopted as published in 37:24 NCR 2230-2231 as follows:

2

3 **16 NCAC 06G .0601 REMOTE ACADEMIES HARDWARE AND SOFTWARE FEES**

4 (a) Definitions:

5 (1) "Damage fee" means "any mandatory payment that a local school administrative unit charges a  
6 student enrolled in a remote academy for injury to, abuse of, or loss of hardware or software that the  
7 local school administrative unit has provided to the student other than degradation arising from  
8 normal use, wear and tear, provided the payments cannot exceed the actual cost of repair or fair  
9 market value of the hardware or software, whichever is less."

10 (2) "Rental fee" means "any mandatory payment that a local school administrative unit requires students  
11 enrolled in remote academies to make before the local school administrative unit will give a student  
12 access to or possession of any hardware and software needed to participate in the remote academy."

13 (b) Local administrative units shall not charge students enrolled in remote academies rental fees for use of hardware  
14 or software needed to participate in the remote academy but may charge them damage fees.

15 *History Note: Authority G.S. § 115C-234.10(b)(1)*

16 *Eff. November 1, 2023*

17

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

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0601

**DEADLINE FOR RECEIPT: October 12, 2023**

***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:

*In the history note, line 15, I believe that the statute is transposed. If so, it should be "~~115C-234.10(1)(b)~~115C-234.10(b)(1)".*

I have addressed this issue in the revised rule as submitted.

*Under G.S. 115C-234.10(b)(1), students "may be charged damage fees for abuse or loss of hardware or software under rules adopted by the State Board of Education." This rule provides further definition to words used in the statute but does not establish how damage fees may be charged. How are damage fees to be charged?*

The purpose of G.S. 115C-234.10(b)(1) is to prohibit local boards of education from charging students enrolled in remote academies extra fees for access to or use of devices or software necessary to fully participate in the remote academies while continuing to allow schools to recover the cost of damage to state property. This rule furthers that purpose by clearly defining the difference between prohibited "rental fees" and allowable "damage fees."

The "damage fees" authorized under this rule are not "fees" charged for public service as defined in G.S. 12-3.1(a); rather, the "damage fees" are measure of the costs local school administrative units suffer from damage to school property. How the school "charges" and collects money to replace or repair devices or software damaged by students enrolled in remote academies depends upon a variety of issues, including the student's culpability for the damage, the actual cost of damage to the devices or software, how frequently students damage devices or software, and disruptions to instructional activities. The assessment of those issues and the proper response are decisions best left to the circumstances in each case and the considered judgment of principals and local boards of education.

There is no practical reason to treat the damage that students enrolled in remote academies inflict on state property any differently from damage other students inflict on other state property. G.S. 115C-523 states that the "parents or legal guardians of any minor are liable for any gross negligence or willful damage or destruction of school property by that minor to the extent of five thousand dollars (\$5,000)." Local school administrative units must comply

Seth Ascher

Commission Counsel

Date submitted to agency: September 28, 2023

with due process before collecting any money for damage to school property. Before a local board of education could seize property from parents to recover for damage to school property, it would have to file a complaint against the parents and get a judgment. Those procedures are certainly sufficient to protect parents' and students' interests.


This rule simply permits local school administrative units to recover the money necessary to replace or repair damaged devices or software. Disciplining a student for behavior that results in damage to a device or software is a completely different issue. G.S. 115C-390.5 authorizes principals to discipline students in accordance with local student Codes of Conduct. There is nothing in G.S. 115C-234.10(b) to indicate that the General Assembly intended to authorize the State Board of Education to adopt rules governing the discipline of students enrolled in remote academies. Whether to include restitution for damage to state property in the student Code of Conduct is a matter best left to the discretion of local boards of education.

In summary, procedures for collection of "damage fees" are within the discretion of the local board of education. The rule simply authorizes local boards of education to recover the actual cost of damage to devices and software used in remote academies. It does not create a special case for damage to school property in the possession of students enrolled in remote academies or mandate or prohibit the use of any special procedures to recover those losses.

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: September 28, 2023

# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency:</b> State Board of Education	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 16 NCAC 06G .0601 Remote Academies Hardware and Software Fees	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> N <input type="checkbox"/> <b>REPEAL through READOPTIO</b> N	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: 06-15-2023 Link to Agency notice: <a href="https://www.dpi.nc.gov/about-dpi/state-board-education/rules-apa">https://www.dpi.nc.gov/about-dpi/state-board-education/rules-apa</a> Hearing on: 06-30-2023 Adoption by Agency on: 09-07-2023 <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: S.L. 2022-59, Part II, Section 2.(a) <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator:</b> Ryan M. Collins  <b>Phone:</b> 984-236-2255 <b>E-Mail:</b> <a href="mailto:ryan.collins@dpi.nc.gov">ryan.collins@dpi.nc.gov</a>  <b>Additional agency contact, if any:</b> Thomas J. Ziko <b>Phone:</b> 984-236-2257 <b>E-Mail:</b> <a href="mailto:thomas.ziko@dpi.nc.gov">thomas.ziko@dpi.nc.gov</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <div style="text-align: center;">  </div> <hr style="width: 80%; margin: 0 auto;"/> <p><b>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</b></p> <p><b>Typed Name:</b> Ryan M. Collins  <b>Title:</b> Assistant General Counsel</p>
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

## Burgos, Alexander N

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**From:** Ascher, Seth M  
**Sent:** Monday, October 2, 2023 12:03 PM  
**To:** Burgos, Alexander N; Collins, Ryan; Martin, Lou  
**Cc:** Ziko, Thomas; Schafer, Allison  
**Subject:** Re: [External] Re: State Board of Education RFC

Ryan,

I'm out of the office today and tomorrow, but can give you a call later in the week if you need more context.

Seth Ascher

Sent via the Samsung Galaxy A52 5G, an AT&T 5G smartphone  
Get [Outlook for Android](#)

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**From:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Sent:** Monday, October 2, 2023 11:19:00 AM  
**To:** Collins, Ryan <Ryan.Collins@dpi.nc.gov>; Martin, Lou <lou.martin@dpi.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>  
**Cc:** Ziko, Thomas <Thomas.Ziko@dpi.nc.gov>; Schafer, Allison <allison.schafer@dpi.nc.gov>  
**Subject:** RE: [External] Re: State Board of Education RFC

Ryan, it is attached here:

**Alexander Burgos**  
Paralegal  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1940  
[Alexander.burgos@oah.nc.gov](mailto:Alexander.burgos@oah.nc.gov)

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**From:** Ryan Collins <Ryan.Collins@dpi.nc.gov>  
**Sent:** Monday, October 2, 2023 11:13 AM  
**To:** Martin, Lou <lou.martin@dpi.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ziko, Thomas <Thomas.Ziko@dpi.nc.gov>; Schafer, Allison <allison.schafer@dpi.nc.gov>  
**Subject:** [External] Re: State Board of Education RFC

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Thanks, Lou.

Seth, can you forward me the Request for Changes document? It didn't come through on the reply email.

Ryan

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**From:** Lou Martin <[lou.martin@dpi.nc.gov](mailto:lou.martin@dpi.nc.gov)>  
**Sent:** Monday, October 2, 2023 10:24 AM  
**To:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Thomas Ziko <[Thomas.Ziko@dpi.nc.gov](mailto:Thomas.Ziko@dpi.nc.gov)>; Ryan Collins <[Ryan.Collins@dpi.nc.gov](mailto:Ryan.Collins@dpi.nc.gov)>; Allison Schafer <[Allison.Schafer@dpi.nc.gov](mailto:Allison.Schafer@dpi.nc.gov)>  
**Subject:** RE: State Board of Education RFC

Mr. Ascher,

I am forwarding your email to Ryan Collins, Rulemaking Coordinator for the State Board of Education to see if he will be able to assist you regarding the Remote Academies rule.

Lou

**Lou Martin**

***Legal Research Assistant***

State Board of Education

NC Department of Public Instruction

(W) (984) 236-2257

[lou.martin@dpi.nc.gov](mailto:lou.martin@dpi.nc.gov)

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**From:** Ascher, Seth M <[seth.ascher@oah.nc.gov](mailto:seth.ascher@oah.nc.gov)>  
**Sent:** Monday, October 2, 2023 9:23 AM  
**To:** Lou Martin <[lou.martin@dpi.nc.gov](mailto:lou.martin@dpi.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Thomas Ziko <[Thomas.Ziko@dpi.nc.gov](mailto:Thomas.Ziko@dpi.nc.gov)>  
**Subject:** RE: State Board of Education RFC

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Mr. Martin,

I sent the email below to Thomas Ziko on Thursday and got his out of office message directing me to contact you.

I'm out of the office myself until Wednesday (10/4), but have sporadic access to email.

Sincerely,

**Seth Ascher**

Counsel to the North Carolina Rules Review Commission



Office of Administrative Hearings  
(984) 236-1934

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**From:** Ascher, Seth M  
**Sent:** Thursday, September 28, 2023 6:09 PM  
**To:** Ziko, Thomas  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** State Board of Education RFC

Good afternoon,

I'm the attorney who reviewed the Rule submitted by the State Board of Education for the October 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, October 19, 2023, 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 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 evites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on October 12, 2023.

Note that in my request for changes, I repeated a question from the substantially similar temporary rule considered earlier this year. This is because the prior answer is not automatically included with the permanent rule, and we have several new Commissioner's who may not be familiar with the prior discussions on this rule. You are free to provide the same or substantially same answer, assuming the Board has the same view.

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

**Seth Ascher**  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984) 236-1934

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