

## Burgos, Alexander N

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**Subject:** FW: [External] FW: 16 NCAC 06G .0508 Request for Changes - November 2022 RRC

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Tuesday, November 8, 2022 3:45 PM  
**To:** Walker, Brandon <Brandon.Walker@dpi.nc.gov>; Ziko, Thomas <Thomas.Ziko@dpi.nc.gov>  
**Cc:** Martin, Lou <lou.martin@dpi.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>  
**Subject:** RE: [External] FW: 16 NCAC 06G .0508 Request for Changes - November 2022 RRC

Hi all,

This is the final rule for the Board of Education.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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**From:** Brandon Walker <[Brandon.Walker@dpi.nc.gov](mailto:Brandon.Walker@dpi.nc.gov)>  
**Sent:** Tuesday, November 8, 2022 1:51 PM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>; Ziko, Thomas <[Thomas.Ziko@dpi.nc.gov](mailto:Thomas.Ziko@dpi.nc.gov)>  
**Cc:** Martin, Lou <[lou.martin@dpi.nc.gov](mailto:lou.martin@dpi.nc.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] FW: 16 NCAC 06G .0508 Request for Changes - November 2022 RRC

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Hello Brian,

Thank you for your feedback. Attached are the requested revisions. Please do not hesitate to contact me if you have any questions. Thank you!

Brandon Walker

ird parties, including law enforcement.

DBR

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

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0508

DEADLINE FOR RECEIPT: Tuesday, November 8, 2022.

***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 your introductory sentence, please change “proposed for adoption” to “proposed for amendment”. Done*

*Also in the introductory sentence, please correct the citation to the Register. Your Rule was published in Volume 37, Issue 03, on page 230-31. Done*

*Any changes made to the adopted rule after publication in the Register should be highlighted along with the cross-outs and underlines. Please see the templates on OAH’s website at <https://www.oah.nc.gov/rules-division/information-rulemaking-coordinators>*

*In (a), line 4, delete the two commas. I have rewritten this paragraph. See next note.*

*In (a), consider a change in the verbiage of “shall be received by”. This language is passive and does not require any action by applicants. Use a more direct action verb targeting the regulated public (charter school applicants), such as “shall be submitted to”. The purpose of the rule is to establish a deadline for submitting the complete and delivering the fee. To address your concerns about the passive voice and clarify how applicants are to complete and deliver applications and fees, I have rewritten the entire paragraph..*

*In (a), unless this is specified in another rule, please specify where, how, and to whom the applicant must submit the application. The rewritten paragraph addresses these issues. I assume these changes remain technical, not substantive.*

*In (a), is there a time requirement to file the application on “last Friday in April”? For example, by close of business (5:00 p.m.)? Or just by 11:59 p.m.? The rewritten paragraph addresses this issue.*

Brian Liebman  
Commission Counsel

Date submitted to agency: October 25, 2022

*In (b), line 6, is “the deadline specified by the Office of Charter Schools” different from the deadline specified in (a)? If you’re referring to the deadline in (a), please use the same terms, as to avoid confusion. To clarify that there is only one deadline, I made this change: “after the deadline specified by the ~~Office of Charter Schools~~ in paragraph (a)”*

*In (b), line 7, what is an “applicant group”? This is the only place this language is used in G.S. 115C and Chapter 06G. Applicant group is shorthand for the corporation, teachers, instructional personnel, and parents included in G.S. 115C-218.1(a). I have added a sentence to clarify the recipients of the notice.*

*In (c), are these factors in addition to the requirements in G.S. 115C-218.1(b)? The application forms the basis for the evaluation but G.S. 115C-218.2 also provides for corrections to the application and the right to address the Charter School Advisory Board in a public meeting. This creates dynamic application process. The SBE evaluates all the information in the application plus any additional information about the academic, financial, and governance plans for the school before making a decision based on the factors specified in G.S. 115C-218.5.*

*In (c), line 8-9, can you rephrase “academic, financial, and governance of the school”? This is ungrammatical as written. Consider “academic performance, financial performance, and the governance of the school”. I have amended the sentence to make the construction more parallel.*

*Is not (c)(2) duplicative of (c)(1), in that promoting innovative teaching methods is one of the purposes of a charter school listed in G.S. 115C-218(a)? Please delete (c)(2). I do not believe the two points are redundant. You raise an interesting point that requires parsing the meaning of G.S. 115C-218(a). G.S. 115C-218(a) states that its purpose is to establish a “system of charter school.” That system is to accomplish all the objectives listed in the statute. This rule, however, is about the SBE’s evaluation of a particular charter school application. The SBE wants all charters to be committed to all purposes listed in G.S. 115C-218(a) but it will evaluate each charter to determine whether it specifically promotes different and innovative teaching methods. Subparagraph (c)(1) is evidence of overall intent; subparagraph (c)(2) is a plan to accomplish a particular goal. I would prefer to leave both subparagraphs in the rule.*

*Regardless, with respect to (c)(2), how can an application promote the use of “different and innovative teaching methods”? If you keep this item, please rephrase. I have corrected the problem. The clause now reads that the SBE will consider how the application “describes how the applicant will promote the use of different and innovative teaching methods.” The correction makes this clause parallel with other clauses that begin with “describes.”*

*In (c)(3), line 13, what are “educational issues”? Please define. I think that attempting to define “educational issues” will add words without improving clarity. G.S. 115C-12(5) references “educational programs” without definition. G.S. 115C-204 references “educational systems” without definition. It is reasonable to assume that educational programs and systems will have “educational issues.” Schools are more than vehicles*

Brian Liebman  
Commission Counsel

Date submitted to agency: October 25, 2022

*for transmission of knowledge; they are complex and highly regulated businesses. Educational issues span the range of academic and business issues. That is why this subparagraph emphasizes budgeting, financing and accounting.*

*In (c)(3), lines 13-14, are “budgeting, financing, and accounting” examples of “educational issues” you specifically want the application to address, or are these issues that relate to “planning” and “research”? Please revise this item for clarity. I have reorganized the sentence. I hope that it now more clearly states that the SBE will consider whether the applicant understands educational issues, has researched those issues, and has a plan for addressing the full range of those issues, including budgeting, financing and accounting issues that arise in the operation of a school.*

*In (c)(9), line 23, the sentence lacks a verb. It reads “... the extent to which the application any other factor...” I have amended the clause to read, “describes other factors that will promote the purposes of the Charter School Act, G.S. 115C-218 et seq.” Using “describes” makes this clause parallel with several other clauses in this list.*

*In (c)(9), line 23, who makes the determination? The applicant or the Board? The SBE makes the determination. Subparagraph (c) is meant to be a list of factors described in the application and supplemented by inform gather from meetings with the applicant that the SBE will consider when deciding whether to grant a charter. As rewritten (c)(9) now more clearly fits in that list of things the SBE will consider.*

*In (c)(9), line 23, what are the purposes of the Charter School Act? Are these other than the purposes described in G.S. 115C-218(a)? The subparagraphs of G.S. 115C-218(a) lists the educational, employment and community objectives of the charter school system. But the first paragraph of G.S. 115C-218(a) also states the purpose of the Charter School Act is to “maintain [charter] schools.” (c)(9) is meant to encompass all the objectives of the entire Charter School Act which go beyond the six purposes listed in G.S. 115C-218(a) and, as noted above, includes the sound financial and corporate management that is essential to maintaining a charter school. References to those addition management factors can be found in G.S. 115C-218.1(b). So, the purpose of this subparagraph is include consideration of all the factors that might contribute to the success of a charter school.*

*In your History Note, can you please explain the cited effective date of August 23, 2022? I did not remember seeing this Rule over the summer, and my review of RRC’s agendas from July and August indicate that the Rule was not submitted for review at either of those meetings. Was there another mechanism for making this Rule effective other than RRC review? This rule has a tortured history. The rule giving the SBE discretion to set the application deadline and fee annually was originally approved as an emergency rule by the RRC in August 2019. The RRC approved the amended rule, fixing the July deadline and \$1,000 fee, at its April 2021 meeting. But the amended 16 NCAC 06G .0508 received 10 objections from the public. Therefore, under G.S. 150B-21.3(b1) and (b2) the effective date was delayed until the 2022 legislative session. The General Assembly met sporadically in 2022. On July 28, 2022, the Codifier, Ms. Snyder, emailed me to explain that on that day the legislature met in regular session, marking day 30 in the count of “legislative days,” but adjourned later that day to reconvene on*

Brian Liebman  
Commission Counsel

Date submitted to agency: October 25, 2022

*August 23, 2022. Therefore, Ms. Snyder told me that August 23, 2022, would be the thirty-first legislative day and the effective date for this rule.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman  
Commission Counsel  
Date submitted to agency: October 25, 2022

1 16 NCAC 06G .0508 is proposed for ~~amendment with changes as published in 37:03 NCR 230~~ as follows:

2  
3 **16 NCAC 06G .0508 CHARTER SCHOOLS APPLICATION AND REVIEW PROCESS**

4 (a) ~~Applications for charters, and the nonrefundable one thousand dollar (\$1,000) fee, shall be received by the Office~~  
5 ~~of Charter Schools no later than the last Friday in July. Applicants shall complete and submit the charter application~~  
6 ~~at <https://www.dpi.nc.gov/students-families/alternative-choices/charter-schools/applications> and deliver the~~  
7 ~~nonrefundable one thousand dollar (\$1,000) fee to the Office of Charter Schools no later than 5:00 p.m. on the last~~  
8 ~~Friday in April. The fee shall be in the form of a certified check or money order payable to NC DPI Office of Charter~~  
9 ~~Schools. Applicants may mail the certified check or money order to the Office of Charter Schools, 6307 Mail Service~~  
10 ~~Center Raleigh, NC 27699-6307; or deliver it to the Office of Charter Schools, Department of Public Instruction, 301~~  
11 ~~N Wilmington Street, Raleigh, NC. Applicants are responsible for submitting applications and delivering fees to the~~  
12 ~~Office of Charter School by the deadline.~~

13 (b) ~~Applications and fees received after the deadline specified by the Office of Charter Schools in paragraph (a) will~~  
14 ~~not be considered, considered, and any affected applicant groups will be notified in writing. The Office of Charter~~  
15 ~~Schools shall send written notice to the applicant and signatories of any statement required in G.S. 115C-218.1(a)~~  
16 ~~informing them that the SBE will not consider the application because the applicant did not submit the application or~~  
17 ~~deliver the fee to the Office of Charter School by the deadline.~~

18 (c) When determining whether to award a charter, the SBE shall consider any factors relevant to the applicant's  
19 academic, financial, and governance of plans for the school, including the extent to which the application:

- 20 (1) reflects the applicant's commitment to the purposes of the charter school law stated in G.S. 115C-  
21 218(a);
- 22 (2) ~~promotes~~ describes how the applicant will promote the use of different and innovative teaching  
23 methods;
- 24 (3) reflects the applicant's ~~planning, research, and understanding of~~ of, research into, and planning for  
25 educational issues, including budgeting, financing, and accounting issues;
- 26 (4) describes a board whose size, diversity, and regional affiliations represent the community and are  
27 likely to promote community support for the school;
- 28 (5) contains articles of incorporation and by-laws;
- 29 (6) contains a budget that reflects anticipated revenues and costs, including costs associated with  
30 maintenance of the school facilities and projected growth;
- 31 (7) contains a plan for acquisition and utilization of a facility consistent with the proposed budget and  
32 timeline for opening school;
- 33 (8) describes a five year marketing plan that promotes a diverse student population; and
- 34 (9) ~~describes any other factor~~ factors that it determines will promote the purposes of the Charter School  
35 Act, G.S. 115C-218 et seq.

36 *History Note:* Authority G.S. 115C-12; 115C-218, 115C-218.1; 115C-218.5;  
37 *Emergency Adoption Eff. August 20, 2019;*

- 1 *Eff. August 23, ~~2022~~2022;*
- 2 *Amended Eff. December 1, 2022.*

## Burgos, Alexander N

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**Subject:** FW: [External] FW: 16 NCAC 06G .0508 Request for Changes - November 2022 RRC  
**Attachments:** 16 NCAC 06G .0508 003.docx; RRC Comments 11.2022 - SBOE 16 NCAC 06G .0508 w SBE Responses.docx

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**From:** Thomas Ziko <[Thomas.Ziko@dpi.nc.gov](mailto:Thomas.Ziko@dpi.nc.gov)>  
**Sent:** Monday, November 7, 2022 9:09 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** Walker, Brandon <[Brandon.Walker@dpi.nc.gov](mailto:Brandon.Walker@dpi.nc.gov)>; Martin, Lou <[lou.martin@dpi.nc.gov](mailto:lou.martin@dpi.nc.gov)>  
**Subject:** [External] FW: 16 NCAC 06G .0508 Request for Changes - November 2022 RRC

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Brian,

I'm going to be on the road from CO to NC on Tuesday, 11/8. If you have any more changes for this rule, please copy Brandon Walker and Lou Martin with your email. If I can't do them myself, I can work with them to make those changes. Thanks.

Thomas J. Ziko  
Legal Specialist  
State Board of Education

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**From:** Thomas Ziko  
**Sent:** Friday, November 4, 2022 1:22 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)>; Lou Martin <[lou.martin@dpi.nc.gov](mailto:lou.martin@dpi.nc.gov)>  
**Subject:** RE: 16 NCAC 06G .0508 Request for Changes - November 2022 RRC



Brian,

I have attached the SBE's responses to your recommended changes to 16 NCAC 06E .0508 CHARTER SCHOOLS APPLICATION AND REVIEW PROCESS. I have also attached a revised copy of the rule noting the changes with strikeout and underlines. In the first sentence, I am not sure that I correctly noted the change from July to April. The version published in 37:03 NCR 230 had "~~July~~April." I ignored that the proposed change from July to April, struck through the entire sentence including the July deadline, and inserted the April deadline in the new sentence. If that is not correct form, please let me know.

I appreciate your insights and suggestions. Although the purpose of the amendment remains shifting the deadline from July to April, the other reversions to make the rule clearer. After you have reviewed these documents, let me know if I have adequately addressed all your concerns.

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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Tuesday, October 25, 2022 1:29 PM  
**To:** Thomas Ziko <[Thomas.Ziko@dpi.nc.gov](mailto:Thomas.Ziko@dpi.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** 16 NCAC 06G .0508 Request for Changes - November 2022 RRC

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Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Board for the November 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, November 17, 2022, at 9:00 a.m. The meeting will be a hybrid

of in-person and WebEx attendance, and an invite 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 invites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Tuesday , November 8, 2022.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
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