



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

January 21, 2021

Margaret McDonald
Department of Public Safety
Sent via email only to: Margaret.McDonald@ncdps.gov

Re: Extension of the Period of Review for Rules 14B NCAC 19A, 19B, and 19C

Dear Ms. McDonald:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address the requested technical changes and submit the rewritten rules at a later meeting.

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,

Amanda J. Reeder
Commission Counsel

Julian Mann, III, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
Senior Administrative Law Judge

Linda T. Worth
Deputy Director

An Equal Employment Opportunity Employer
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**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

January 21, 2021

Thomas Ziko
State Board of Education
Sent via email only: Thomas.Ziko@dpi.nc.gov

Re: Objection to Rule 16 NCAC 06B .0114

Dear Mr. Ziko:

The State Board of Education submitted a rewritten version of 16 NCAC 06B .0114 in response to an objection entered September 17, 2020. At its meeting this morning, the Commission objected to the rewritten rule for lack of statutory authority.

The rewritten rule exceeds the agency's statutory authority to regulate a "school transportation system" by requiring individuals inspecting school buses to obtain a "North Carolina School Bus Inspection Certification." The governing standards set in the statutes listed in the rule's history note relate to school bus safety as it pertains to equipment and mechanical maintenance of school buses, not to the individuals conducting the inspections. G.S. 115C-240(c) discusses the following: "construction, equipment, color, and maintenance of school buses"; fuel requirements; and "adequate heating facilities, a standard signaling device..., an alternating flashing stoplight..., and such other warning devices, fire protective equipment and first aid supplies as may be prescribed...." The rewritten rule governs the inspectors and does not address the specific safety criteria that will be used in the inspection.

G.S. 115C-248(a) states "the superintendent of each local school administrative unit, shall cause each school bus owned or operated by such local school administrative unit to be inspected at least once each 30 days during the school year..." In other words, the statute gives control of the act of conducting the inspection to the local superintendent.

The History Note lists no authority allowing State Board of Education to govern individual inspectors. The rewritten rule establishes a new Certificate created and issued by the agency. To obtain a Certificate, the Rule requires individuals to take a course and pass a test, both administered

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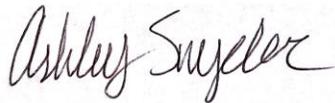
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by the agency. The rule further provides how DPI can revoke this Certificate. The Commission is not aware of any other similar certificate created by an agency in rule instead of through statute absent express statutory authority. Therefore, the Commission objected for lack of statutory authority.

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

Sincerely,

A handwritten signature in black ink that reads "Ashley Snyder". The signature is written in a cursive style with a large initial 'A' and a long, sweeping tail on the 'y'.

Ashley Snyder
Commission Counsel