

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0314

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection for lack of statutory authority and clarity. As staff reads Paragraph (c), alternative schools are allowed to select an accountability model from the list in (c)(1)-(3). Subparagraph (c)(1) says, "Alternative schools can participate in School Performance Grades as defined by G.S. 115C-83.15..." (emphasis added). Subparagraphs (c)(2) and (c)(3) then provide alternative options to the "School Performance Grades" model in G.S. 115C-83.15. However, 115C-12(24) requires the State Board to evaluate alternative learning programs "through the application of the accountability system developed under G.S. 115C-83.15 and G.S. 115C-105.35." The State Board is granted authority to modify the system in G.S. 115C-83.15, but staff has not found authority for the agency to provide different accountability models. Therefore, staff recommends objection for lack of statutory authority.

Staff recommends objection to Subparagraph (c)(3) for lack of clarity. Subparagraph (c)(3) allows an alternative school to propose its own accountability model subject to approval by the State Board of Education. The Rule does not specify under what circumstances the alternative model may be approved or what factors the State Board will consider when evaluating the alternative model. Therefore, staff recommends objection for lack of clarity.

Paragraph (d) is also unclear because it uses undefined terms including "significantly," "appropriate," and "eligible students."

Ashley Snyder
Commission Counsel

§ 115C-12. Powers and duties of the Board generally.

(24) Duty to Develop Standards for Alternative Learning Programs, ...

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. As part of its evaluation of the effectiveness of these programs, the State Board shall, through the application of the accountability system developed under G.S. 115C-83.15 and G.S. 115C-105.35, measure the educational performance and growth of students placed in alternative schools and alternative programs. If appropriate, the Board may modify this system to adapt to the specific characteristics of these schools. Also as part of its evaluation, the State Board shall evaluate its standards adopted under this subdivision and make any necessary changes to those standards based on strategies that have been proven successful in improving student achievement and shall report to the Joint Legislative Education Oversight Committee by April 15, 2006 to determine if any changes are necessary to improve the implementation of successful alternative learning programs and alternative schools.

§ 115C-83.15. School achievement, growth, performance scores, and grades.

(a) School Scores and Grades. - The State Board of Education shall award school achievement, growth, and performance scores and an associated performance grade as required by G.S. 115C-12(9)c1., and calculated as provided in this section.

(b) Calculation of the School Achievement Score. - In calculating the overall school achievement score earned by schools, the State Board of Education shall total the sum of points earned by a school as follows:

- (1) For schools serving any students in kindergarten through eighth grade, the State Board shall assign points on the following measures available for that school:
 - a. One point for each percent of students who score at or above proficient on annual assessments for mathematics in grades three through eight. For the purposes of this Part, an annual assessment for mathematics shall include any mathematics course with an end-of-course test.
 - b. One point for each percent of students who score at or above proficient on annual assessments for reading in grades three through eight.
 - c. One point for each percent of students who score at or above proficient on annual assessments for science in grades five and eight.
 - d. One point for each percent of students who progress in achieving English language proficiency on annual assessments in grades three through eight.
- (2) For schools serving any students in ninth through twelfth grade, the State Board shall assign points on the following measures available for that school:
 - a. One point for each percent of students who score at or above proficient on either the Algebra I or Integrated Math I end-of-course test or, for

- students who completed Algebra I or Integrated Math I before ninth grade, another mathematics course with an end-of-course test.
- b. One point for each percent of students who score at or above proficient on the English II end-of-course test.
 - c. One point for each percent of students who score at or above proficient on the Biology end-of-course test.
 - d. One point for each percent of students who complete Algebra II or Integrated Math III with a passing grade.
 - e. One point for each percent of students who either (i) achieve the minimum score required for admission into a constituent institution of The University of North Carolina on a nationally normed test of college readiness or (ii) are enrolled in Career and Technical Education courses and score at Silver, Gold, or Platinum levels on a nationally normed test of workplace readiness.
 - f. Repealed by Session Laws 2019-142, s. 1, effective July 19, 2019, and applicable to measures based on data from the 2018-2019 school year and each school year thereafter.
 - g. One point for each percent of students who graduate within four years of entering high school.
 - h. One point for each percent of students who progress in achieving English language proficiency.

In calculating the overall school achievement score earned by schools, the State Board of Education shall (i) use a composite approach to weigh the achievement elements based on the number of students measured by any given achievement element and (ii) proportionally adjust the scale to account for the absence of a school achievement element for award of scores to a school that does not have a measure of one of the school achievement elements annually assessed for the grades taught at that school. The overall school achievement score shall be translated to a 100-point scale and used for school reporting purposes as provided in G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8.

(c) Calculation of the School Growth Score. - Using the Education Value-Added Assessment System (EVAAS), the State Board shall calculate the overall growth score earned by schools. In calculating the total growth score earned by schools, the State Board of Education shall weight student growth on the achievement measures as provided in subsection (b) of this section that have available growth values; provided that for schools serving students in grades nine through 12, the growth score shall only include growth values for measures calculated under sub-subdivisions a. and b. of subdivision (2) of subsection (b) of this section. The numerical values used to determine whether a school has met, exceeded, or has not met expected growth shall be translated to a 100-point scale and used for school reporting purposes as provided in G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8.

(d) Calculation of the Overall School Performance Scores and Grades. - The State Board of Education shall calculate the overall school performance score by adding the school achievement score, as provided in subsection (b) of this section, and the school growth score, as determined using EVAAS as provided in subsection (c) of this section, earned by a school. The school achievement score shall account for eighty percent (80%), and the school growth score shall account for twenty percent (20%) of the total sum. For all schools, the total school performance score shall be converted to a 100-point scale and used to determine an overall school performance grade. The overall school

performance grade shall be based on the following scale and shall not be modified to add any other designation related to other performance measures, such as a "plus" or "minus":

- (1) A school performance score of at least 85 is equivalent to an overall school performance grade of A.
- (2) A school performance score of at least 70 is equivalent to an overall school performance grade of B.
- (3) A school performance score of at least 55 is equivalent to an overall school performance grade of C.
- (4) A school performance score of at least 40 is equivalent to an overall school performance grade of D.
- (5) A school performance score of less than 40 is equivalent to an overall school performance grade of F.

(d1) Establishment of Subgroups of Students. - The State Board shall establish the minimum number of students in a subgroup served by a school that is necessary to disaggregate information on student performance and to determine a subgroup performance score and grade for the following subgroups of students:

- (1) Economically disadvantaged students.
- (2) Students from major racial and ethnic groups.
- (3) Children with disabilities.
- (4) English learners.

(d2) Calculation of the School Performance Scores and Grades for Certain Subgroups of Students Served by a School. - In addition to the overall school performance scores and grades awarded under this section, for each school that serves a minimum number of students in a subgroup of students listed in subsection (d1) of this section, the State Board of Education shall calculate school performance scores and shall determine a corresponding school performance grade for each subgroup using the same method as set forth in subsection (d) of this section. School performance scores for subgroups of students shall not be included in the calculation of the overall school performance scores and grades under subsection (d) of this section.

(d3) Report of Subgroup Performance Scores and Grades. - The subgroup performance scores and grades shall be reported separately on the annual school report card provided under G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8 in a way that provides the following information:

- (1) For the current year and the previous two years, the achievement score for each subgroup of students defined in subsection (d1) of this section for the school.
- (2) The statewide average achievement score for each subgroup defined in subsection (d1) of this section.
- (3) The difference between the achievement score for all students in the school and the achievement score for each subgroup that meets the minimum number of students defined in subsection (d1) of this section.
- (4) Based on the information reported in subdivision (3) of this subsection, the State Board shall determine and identify schools that are closing achievement gaps, experiencing a widening of gaps, or seeing no significant gap changes.

(e) Elementary and Middle School Reading and Math Achievement Scores. - For schools serving students in kindergarten through eighth grade, the school achievement scores in reading and mathematics, respectively, shall be reported separately on the annual school report card provided under G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8.

(e1) Career and College Readiness Scores. - For schools serving any students in ninth through twelfth grade, the percentage of students who either (i) achieve the minimum score required for admission into a constituent institution of The University of North Carolina on a nationally normed test of college readiness or (ii) are enrolled in Career and Technical Education courses and score at Silver, Gold, or Platinum levels on a nationally normed test of workplace readiness shall be reported on the annual school report card provided under G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8.

(f) Indication of Growth. - In addition to awarding the overall school scores for achievement, growth, and performance and the performance grade, using EVAAS, the State Board shall designate that a school has met, exceeded, or has not met expected growth. The designation of student growth shall be clearly displayed in the annual school report card provided under G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8.

(g) Access to Annual Report Card Information on the Department's Web Site. - Beginning with data collected in the 2017-2018 school year, the State Board of Education shall provide user-friendly access to the public on the annual report cards issued for local school administrative units and individual schools provided under G.S. 115C-12(9)c1., 115C-218.65, 115C-238.66, and 116-239.8 through the Department of Public Instruction's Web site. The annual report card shall be designed and organized to display the following information more prominently than any other information:

- (1) A summary for each local school administrative unit and for each individual school of the school performance grades, whether the school has met, exceeded, or has not met expected growth, and any other information required to be provided as part of the annual report card.
- (2) The percentage of schools receiving an overall school performance letter grade of A, B, C, D, or F earned by each school located within a local school administrative unit and statewide.
- (3) The number of schools that have met, exceeded, or have not met expected growth by each school located within a local school administrative unit and statewide.
- (4) A Web page for each individual school that prominently displays the school's performance grades, whether the school has met, exceeded, or has not met expected growth, and the school's performance and growth scores in a way that is easy for the user to read.
- (5) The ability to easily compare annual report card information, including school performance grades and whether schools have met, exceeded, or have not met expected growth, for local school administrative units and for individual schools for a time span of at least three years.

1 16 NCAC 06G .0314 is proposed for adoption as follows:

2 **16 NCAC 06G .0314 ALTERNATIVE SCHOOLS' ACCOUNTABILITY MODELS**

3 (a) This rule establishes the North Carolina Department of Public Instruction's (NCDPI) procedures for alternative
4 schools' participation in the State's Alternative Schools' Accountability Model and shall apply to all alternative
5 schools, including charter schools approved to use the alternative accountability model, that have an NCDPI-assigned
6 local education agency (LEA) school code. Accountability indicators and results for students who attend programs or
7 classes in a facility that does not have an LEA school code shall be reported to and included in the students' base
8 school's accountability results.

9 (b) At the beginning of each school year, local public school and charter school boards shall determine the option that
10 each alternative school under their jurisdiction will follow for participation in the Alternative Schools' Accountability
11 Model. The local board's participation decision shall be reported to the NCDPI's Director of Accountability Services
12 by August 1 of each school year.

13 (c) Local public school and charter school boards shall select from the following Alternative Schools' Accountability
14 Model options:

15 (1) Option A. Alternative schools can participate in School Performance Grades as defined by G.S.
16 §115C-83.15 or

17 (2) Option B. Alternative schools can participate in the Alternative Schools' Progress Model.

18 (A) Schools electing to participate in the Alternative Schools' Progress Model will be evaluated
19 as follows, with Components used in the overall school score: (i) 20% Student Persistence,
20 which is defined as the percent of alternative students who remain enrolled in any North
21 Carolina; (ii) 20% School Achievement, which is comprised of: three years of data using
22 the following indicators: End-of-Grade (EOG) English Language Arts/Reading and
23 Mathematics Assessments at Grades 3–8; EOG Science Assessments at Grades 5 and 8;
24 End-of-Course (EOC) Assessments in Biology, NC Math 1, NC Math 3, and English II;
25 ACT®; ACT WorkKeys; 4-year graduation rate; 5-year graduation rate; and math course
26 rigor; (iii) 60% Growth, which will be calculated using the Education Value-Added
27 Assessment System (EVAAS).

28 (B) A change rating will be assigned to schools comparing their previous year to the current
29 year. All schools will receive a rating of: "Progressing," which indicates a change in the
30 school from the previous year by at least +3 points; "Maintaining," which indicates a
31 change in the school from the previous year by -2.9 to +2.9 points; or, "Declining," which
32 indicates a change in the school from the previous year by at least -3 points.

33 (3) Option C. The alternative school may propose its own alternative accountability model for approval
34 by the State Board of Education (SBE). The proposed model must include criteria for achievement
35 and growth. A request for Option C must be submitted annually to the SBE for approval at its
36 October meeting.

1 (d) Schools that are identified as Developmental Day Centers (as determined by the Department of Health and Human
2 Services) and schools which are providing special education and related services in public separate settings to students
3 with disabilities who are significantly cognitively delayed, have multiple handicapping conditions, and may also have
4 significant behavioral or sensory integration needs shall participate in accountability by administering the appropriate
5 assessment to all eligible students, and participating in either Option B or Option C as defined herein. . To participate
6 in this model, schools who meet the criteria in this section will be reviewed and approved by the Exceptional
7 Children’s Division and the Accountability Services Division.

8
9 *History Note: Authority G.S. 115C-12(24); 115C-105.35; G.S. 115C-83.15*
10 *Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);*
11 *Emergency Rule Eff. August 20, 2019.*
12

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AGENCY: State Board of Education

RULE CITATION: 12 NCAC 06G .0316

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - X Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection for failure to comply with the APA and ambiguity. Item (3) refers to "procedures stated in SBE Policy ADVS-002 (Appointments to Advisory Committees to the State Board of Education." Referring to Board policy circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update the policy outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. Since the contents of this policy are not in rule, requiring compliance with procedures in the policy makes the requirements of this rule unclear. Therefore, staff recommends objection for failure to comply with the APA and ambiguity.

Staff also recommends objection for ambiguity because it is unclear under what circumstances the agency will deem other issues "appropriate" for discussion in (1)(f) and which "field tests(s)/special studies" are being referenced in Item (2).

Ashley Snyder
Commission Counsel

1 16 NCAC 06G .0316 is proposed for adoption as follows:

2
3 **16 NCAC 06G .0316 PURPOSE AND COMPOSITION OF THE STATE BOARD OF EDUCATION'S**
4 **COMPLIANCE COMMISSION FOR ACCOUNTABILITY**

5 The purpose of the Compliance Commission for Accountability (Commission) shall be to advise and to make
6 recommendations to the State Board of Education (SBE) through the North Carolina Department of Public Instruction
7 (NCDPI) on testing issues and other issues related to school accountability and improvement.

8 (1) The SBE, after discussing issues related to testing and accountability as presented by the NCDPI,
9 may request that the Commission further discuss such issues and make recommendations to the
10 SBE. Issues the Commission may discuss include the following:

11 (a) proposed changes to the State's accountability program;

12 (b) the testing code of ethics;

13 (c) test security and administration;

14 (d) auditing procedures to ensure integrity of the testing and accountability programs;

15 (e) the relationship of testing to other aspects of schooling; and

16 (f) other issues related to testing and accountability as deemed appropriate by the SBE.

17 (2) The Commission shall consider requests from schools that desire to be exempt from participating in
18 field test(s)/special studies and shall make a recommendation to the SBE on such requests.

19 (3) Upon recommendation by the State Superintendent of Public Instruction, the SBE shall approve
20 appointments to the Compliance Commission consisting of twenty-two members in accordance with
21 the procedures stated in SBE Policy ADVS-002 (Appointments to Advisory Committees to the State
22 Board of Education), who shall represent the following categories:

23 (a) Four shall be teachers;

24 (b) Five shall be principals representing elementary, middle, and high schools;

25 (c) Four shall be from central office staffs, (at least one must represent Exceptional Children);

26 (d) Two shall represent local boards of education;

27 (e) One shall represent NC charter schools;

28 (f) Two shall be members of the business community;

29 (g) One shall be a parent representative;

30 (h) One shall represent higher education; and

31 (i) Two shall be at-large.

32 (4) Terms of membership shall be for four years, be staggered, and shall run through December 31.
33 Members may be reappointed by the SBE for one additional term.

34 (a) To the extent possible, members will be appointed from the eight education districts (as
35 defined in G.S. §115C-65) to keep the Commission balanced geographically and
36 professionally.

1 **(b) As Commission members are replaced, the SBE shall, to the extent possible, recommend**
2 **and approve replacements to keep the Commission balanced geographically and**
3 **professionally.**

4 **(c) A member of the SBE as designated by the State Board membership shall sit on the**
5 **Commission as a non-voting ex-officio member.**

6 **(5) The SBE shall appoint a chair from the membership of the Commission. The Chair shall serve for**
7 **two years.**

8 **(6) The Commission shall elect a Vice-Chair from its membership.**

9 **(7) The Commission shall meet at least annually. The SBE may call a special meeting of the**
10 **Commission to discuss an issue.**

11 **(8) The Department of Public Instruction, Division of Accountability Services, shall staff the**
12 **Commission and shall develop the agendas for the scheduled meetings in conjunction with the**
13 **Commission's Chair. Draft minutes of the Commission meetings shall be provided to the SBE**
14 **within one month following each meeting, with official approved minutes being shared with the**
15 **SBE following approval by the Commission.**

16
17 **History Note: Authority G.S. 115C-12; 115C-105.35;**

18 **Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);**

19 **Emergency Rule Eff. August 20, 2019.**

20

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AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0503

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection for failure to comply with the APA and ambiguity. The Rule requires "eligible students" take State-required assessments mandated by law or "State Board of Education policy." Requiring assessments in policy instead of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the policy outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to either list the required assessments in this Rule or cross-reference another Rule listing the required assessments makes it unclear which assessments are mandated by the State Board of Education. Therefore, staff recommends objection for failure to comply with the APA and ambiguity.

Staff also recommends objection for ambiguity because the Rule does not define "eligible student," making it unclear who is required to take these assessments. It is also unclear which "accountability measures" charter schools are required to follow as part of the "Every Student Succeeds Act Consolidated State Plan." It is possible these are federal requirements that could be incorporated by reference in accordance with G.S. 150B-21.6, but since the agency has failed to do so here, the Rule is ambiguous as written.

Ashley Snyder
Commission Counsel

1 16 NCAC 06G .0503 is proposed for adoption as follows:

2 **16 NCAC 06G .0503 CHARTER SCHOOL ACCOUNTABILITY REQUIREMENTS**

3 Each year all eligible students shall take state-required assessments mandated by law or State Board of Education
4 policy. All charter schools shall comply with N.C. Gen. Stat. § 115C-83.15 and § 115C-83.16 and accountability
5 measures identified in the State’s federally-approved Every Student Succeeds Act Consolidated State Plan, unless
6 granted a waiver by the State Board of Education pursuant to 16 NCAC 06G .0517 - .0522.

7

8 *History Note: Authority G.S. 115C-12; 115C-83.15, 115C-83.16, 115C-105.20, 115C-218(a), 115C-*

9 *218.85(a)(3); Every Student Succeeds Act of 2015 (P.L. 114-95);*

10 *Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);*

11 *Emergency Rule Eff. August 20, 2019.*

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AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0505

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection for failure to comply with the APA and ambiguity. The Rule provides that charter schools shall be placed on financial noncompliance status if a financial condition in (b)(1)-(6) occurs. Subparagraph (b)(1) refers to the "Uniform Education Reporting System (UERS)" which appears to set data reporting requirements. Staff has not found an exemption from the APA for the UERS. Referring to requirements outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update the UERS outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. The reporting requirements for charter schools are also unclear since those requirements are not set in rule. Therefore, staff recommends objection failure to comply with the APA and ambiguity.

Staff also recommends objection for ambiguity. Paragraph (c) states, "funds may be frozen...until the exception is corrected." The Rule does not clarify under what circumstances funds may or may not be frozen. The Rule also does not specify how the agency determines which level of financial noncompliance in Paragraph (e) to assign a charter school. Additionally, the Rule contains undefined terms including "financial insolvency or weakness" in (b)(3) and "immediately" in (c), (e)(3)(A), and (f). Therefore, staff recommends objection for ambiguity.

Ashley Snyder
Commission Counsel

1 16 NCAC 06G .0505 is proposed for adoption as follows:

2 **16 NCAC 06G .0505 CHARTER SCHOOLS FINANCIAL NONCOMPLIANCE – IMPACT OF**
3 **FINANCIAL NONCOMPLIANCE**

4 (a) There are three stages of financial noncompliance under which a charter school may be placed: cautionary,
5 probationary, and disciplinary.

6 (b) The presence of any one of the following financial conditions shall result in a charter school being assigned a
7 noncompliance status:

8 (1) If the charter school fails to report required Uniform Education Reporting System (UERS) data
9 within 10 days of the required or agreed-upon reporting date or does not submit accurate data due
10 to incorrectly utilizing UERS approved materials or software within the next reporting cycle;

11 (2) If the charter school fails to respond to a specific financial, personnel, or student information request
12 for information or data from the Department of Public Instruction by the required reporting date;

13 (3) If the charter school fails to submit the required audited financial statements to the North Carolina
14 Department of State Treasurer’s Local Government Commission, as prescribed by G.S. 115C-
15 218.30 and G.S. 115C-447.

16 (4) If the charter school shows signs of financial insolvency or weakness, including a decline in student
17 membership;

18 (5) If the Office of State Treasurer receives a "non-sufficient funds (NSF)" notification during the
19 course of cash certification processing;

20 (6) If the charter school receives a material audit finding in its annual independent financial statement
21 audit which indicates a violation of State law, a violation of any of the conditions or procedures set
22 forth in its Charter, a failure to meet generally accepted accounting practices and principles,
23 including sound fiscal management in accordance with G.S.115C-218.95 and remains unresolved;
24 and/or

25 (7) If the charter school's staff fails to attend required financial training.

26 (c) For these warning conditions, funds may be frozen (i.e. the school's access to the cash management system is
27 revoked) until the exception is corrected. Any combination of the above violations may immediately move the charter
28 school to Financial Disciplinary Status without first being held in either the Cautionary or Probationary status. Should
29 a charter school have repeated violations of the same or similar non-compliance condition, the charter school may be
30 moved to Financial Disciplinary Status.

31 (d) This policy does not preclude the State Board of Education from taking any action with regards to a charter school
32 if so warranted, regardless of the charter school’s financial noncompliance status.

33 (e) The stages of financial noncompliance are as follows:

34 (1) Level 1: Financial Cautionary Status

35 (A) A charter school may receive a notification of Financial Cautionary Status for any of the
36 above conditions. The school shall remain in cautionary status for a minimum of 30
37 calendar days from the date of notification, and during that time must correct the

1 exception(s) that caused the financial warning(s) if applicable. When the exception(s) is
2 corrected as prescribed in the notification of noncompliance by NCDPI, the school will be
3 notified of removal from cautionary status.

4 (2) Level 2: Financial Probationary Status

5 (A) A charter school may receive a notification of Financial Probationary Status for any of the
6 above conditions. The school will be placed in Financial Probationary Status, if the school
7 fails to correct the exception(s) during the 30 calendar days cautionary period, unless
8 otherwise stated in the initial notification of noncompliance. The school remains in
9 probationary status for a minimum of 30 calendar days from the date of notification, and
10 during that time must correct the exceptions that caused the financial warnings if
11 applicable. When all of the exceptions have been corrected, the school will be notified of
12 removal from probationary status. While in probationary status, state funds for the school
13 may be allotted on a monthly basis until the exceptions that caused the financial warnings
14 are corrected. Failure to resolve the exceptions may result in the school being placed on
15 Financial Disciplinary Status, referred to the Charter School Advisory Board and/or to the
16 State Board of Education for further action.

17 (3) Level 3: Financial Disciplinary Status

18 (A) The school will be placed in Financial Disciplinary Status, if the school fails to correct all
19 of the exceptions during the established timeframe. Any of the financial conditions noted
20 in this policy, or combination thereof, may immediately result in the charter school being
21 placed on Financial Noncompliance Disciplinary status without the benefit of being first
22 held in either the Cautionary or Probationary status. Also, should a charter school have
23 repeat violations of the same or similar non-compliance condition, the charter school may
24 be moved to Financial Disciplinary Status without the benefit of completing either the
25 Cautionary or Probationary status periods.

26 (f) When in Disciplinary status, the school is expected to immediately address all of the exceptions that caused the
27 financial noncompliance within ten (10) business days from the date of notification or otherwise stated. State funds
28 for the school may be allotted on a monthly basis until the exceptions causing the noncompliance are corrected. When
29 all of the exceptions have been corrected, the school will be notified of removal from disciplinary status. Failure to
30 resolve the exceptions will result in the school being referred to the Charter School Advisory Board and/or to the State
31 Board of Education for further action.

32
33 History Note: Authority G.S. 115C-12(5); 115C-218, 115C-218.15, 115C-218.30, 115C-218.95; 115C-408;
34 Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);
35 Emergency Rule Eff. August 20, 2019.
36

RRC STAFF OPINION

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AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0506

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - X Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection for ambiguity and failure to comply with the APA. In Paragraph (a), the Rule provides that charter schools "may" be placed on governance noncompliance status if a condition in (a)(1)-(3) occurs. The Rule does not clarify under what circumstances a condition in the list results in noncompliance status nor does it specify how the agency determines which level of noncompliance status in Paragraph (b) to assign a charter school.

Part (a)(3)(B) requires compliance with "Health and Safety Standards" and "State Board of Education Policy." Referring to requirements established outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update policies outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. These requirements are also unclear since those requirements are not set in rule. Therefore, staff recommends objection to Part (a)(3)(B) for failure to comply with the APA and ambiguity.

Additionally, staff recommends objection for ambiguity for the inclusion of several undefined terms or requirements including "failure to have a functioning board" in (a)(1); "regular meetings" in (a)(1); "inability to show progress" in (a)(2); and "immediately" in (b)(3).

Ashley Snyder
Commission Counsel

1 16 NCAC 06G .0506 is proposed for adoption as follows:

2 **16 NCAC 06G .0506 CHARTER SCHOOLS GOVERNANCE NONCOMPLIANCE**

3 (a) There are three (3) stages of Governance Noncompliance: Governance Cautionary Status, Governance
4 Probationary Status, and Governance Disciplinary Status. A charter school may be placed within a governance non-
5 compliance status based on any one of the following governance warning conditions:

6 (1) Failure to have a functioning board in place, including failure to conduct regular meetings of the
7 board and failure to adopt policies regarding the operation of the charter school. Such policies would
8 include a minimum of Personnel, Disciplinary, and Parental Grievance policies.

9 (2) Inability to show progress towards the educational and organizational goals described in the charter
10 school application.

11 (3) Failure to maintain student enrollment. (i.e., Required minimum of 80 students, or as otherwise
12 stated in the charter application or approved waiver to operate under the minimum of 80 students.)

13 (A) Bylaws violations including, but not limited to, failure to follow the Open Meetings Law,
14 failure to maintain Public Records, failure to implement a Conflict of Interest Policy,
15 failure to adhere to basic rules of Parliamentary Procedure.

16 (B) Charter Agreement violations including, but not limited to, following State/Federal
17 Regulations, ensuring Health & Safety Standards, making adequate academic progress,
18 meeting Testing and Reporting requirements, and supplying all reports and documentation
19 as requested by the Office of Charter Schools to ensure legal compliance with General
20 Statute, State Board of Education Policy, and the Charter Agreement.

21 (C) Substantiated complaints indicating that the Board is not acting as a representative of the
22 school community to ensure that the needs of all students, parents, and teachers will be
23 addressed.

24 (D) Failure to maintain certification of at least fifty percent (50%) of teachers in all grades
25 pursuant to G.S.115C-218.90. Charter schools shall maintain compliance with this law
26 from December 31 of each year through the end of the school calendar year. Failure to do
27 so will be seen as noncompliance with the statutory requirement.

28 (b) The stages of noncompliance are as follows:

29 (1) Level 1: Governance Cautionary Status: Upon receiving a Governance Warning for any of the above
30 conditions, the charter school will be placed on Governance Cautionary Status. The school remains
31 in cautionary status for 30 calendar days and during that time must correct the exception that caused
32 the warning. When the 30 calendar days have ended and the exception is corrected, the governance
33 warning will be removed and the school will be removed from cautionary status. Failure to correct
34 the exception during the 30 calendar days cautionary period constitutes a second warning and the
35 school will be placed on Governance Probationary Status.

36 (2) Level 2: Governance Probationary Status: The school remains on Governance Probationary Status
37 for 30 calendar days and during that time must correct the exceptions that caused all of the

RRC STAFF OPINION

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AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0508

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - X Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection for failure to comply with the APA and numerous instances of ambiguity that make the Rule as a whole difficult to understand.

Staff recommends objection to Subparagraph (a)(1) for referring to a fee established outside the rulemaking process. The definition of a "rule" in 150B-2(8a) specifically includes the establishment of a fee, meaning setting the dollar amount in the Rule. Additionally, 115C-218.1(c) requires the State Board to adopt the application fee "in accordance with Article 2A of Chapter 150B." Since the fee amount is established outside of rule, staff recommends objection to Subparagraph (a)(1) for failure to comply with the APA and ambiguity since the amount of the fee is unknown.

Staff recommends objection to Paragraph (a) for failure to comply with the APA and ambiguity. Subparagraph (a)(1) states, "Prior to each application round, the State Board of Education shall approve the application process, timeline, and non-refundable fee." Establishing the application and timeline outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to change the application process and timeline before each application round, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. Subparagraphs (a)(2)-(4) refer back to the timeline and "application instructions" established outside the rulemaking process in (a)(1). Since the application process and timeline are established outside of rule, the requirements in Paragraph (a) are unclear and staff recommends objection for failure to comply with the APA and ambiguity.

Ashley Snyder
Commission Counsel

Parts (b)(1)(C) and (D) set application requirements that are ambiguous. It is unclear how applications are evaluated or what factors may be considered to determine whether an application “contains viable governance, business, and education plans.” It is also unclear what “other requirements” are required by the agency. Therefore, staff recommends objection to Parts (b)(1)(C) and (D) for ambiguity.

Staff also recommends objection to Paragraph (c) for ambiguity for use of the following terms or phrases, which are undefined or unclear as written: “capability to provide comprehensive learning experiences” in (c)(2); “promotes innovation” in (c)(3)(B); “large,” “diverse” and “locally-based” in (c)(3)(D); “accurately” in (c)(3)(F); and “diverse learning environment” in (c)(3)(I). Staff is also unsure how Paragraph (c) interacts with G.S. 115C-218.5, which governs the State Board’s final approval of applications for charter schools. Therefore, staff recommends objection to Paragraph (c) for ambiguity.

§ 150B-2. Definitions.

As used in this Chapter,

- (8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. **The term includes the establishment of a fee and the amendment or repeal of a prior rule.** The term does not include the following:

§ 115C-218.1. Eligible applicants; contents of applications; submission of applications for approval.

(c) The State Board shall establish reasonable fees of no less than five hundred dollars (\$500.00) and no more than one thousand dollars (\$1,000) for initial and renewal charter applications, in accordance with Article 2A of Chapter 150B of the General Statutes. No application fee shall be refunded in the event the application is rejected or the charter is revoked.

§ 115C-218.5. Final approval of applications for charter schools.

- (a) The State Board may grant final approval of an application if it finds the following:
- (1) The application meets the requirements set out in this Article and such other requirements as may be adopted by the State Board of Education.
 - (2) The applicant has the ability to operate the school and would be likely to operate the school in an educationally and economically sound manner.
 - (3) Granting the application would achieve one or more of the purposes set out in G.S. 115C-218.

In reviewing applications for the establishment of charter schools within a local school administrative unit, the State Board is encouraged to give preference to applications that demonstrate the capability to provide comprehensive learning experiences to students identified by the applicants as at risk of academic failure.

(b) The State Board shall make final decisions on the approval or denial of applications by August 15 of a calendar year on all applications it receives prior to a date established by the Office of Charter Schools for receipt of applications in that application cycle. The State Board may make the final decision for approval contingent upon the successful completion of a planning period prior to enrollment of students.

(c) The State Board of Education may authorize a school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates the authority is necessary for it to raise working capital. The State Board shall not allocate any funds to the school until the school has obtained space.

(d) The State Board of Education may grant the initial charter for a period not to exceed 10 years.

(e), (f) Repealed by Session Laws 2016-79, s. 1.1, effective June 30, 2016, and applicable beginning with the 2016-2017 school year.

1 16 NCAC 06G .0508 is proposed for adoption as follows:

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

3 (a) Deadline for Filing Charter School Applications.

- 4 (1) Prior to each application round, the State Board of Education shall approve the application process,
5 timeline, and non-refundable fee.
- 6 (2) Applications for charters, and the nonrefundable fee, must be received by the Office of Charter
7 Schools no later than the date and time specified for the charter application round that year.
- 8 (3) Applications and fees received after the deadline specified by the Office of Charter Schools will not
9 be considered, and any affected applicant groups will be notified in writing.
- 10 (4) Rejection of Incomplete Applications. The Charter School Advisory Board and Office of Charter
11 Schools shall review all timely applications and shall reject all incomplete applications. In order to
12 be deemed complete, all sections of the application must be completed as prescribed in the
13 “Application Instructions” and G.S. 115C-218.2.

14 (b) Charter School Advisory Board Responsibilities

- 15 (1) The Charter School Advisory Board, with the assistance of the Office of Charter Schools, shall
16 review each complete application and determine whether the application meets the requirements of
17 General Statute 115C-218.1
- 18 (A) Meets all the requirements of the Charter School Act, G.S. 115C-218 et seq.;
19 (B) Would achieve one or more of the purposes set forth in G.S. 115C-218(a);
20 (C) Contains viable governance, business, and education plans; and
21 (D) Satisfies any other requirements adopted by the SBE.
- 22 (2) The Charter Schools Advisory Board will present its recommendation on each charter school
23 application to the SBE by the May SBE meeting for discussion.

24 (c) SBE Review of Applications and Award of Charters

- 25 (1) The SBE may request information from applicants, their officers, agents or employees or other
26 persons having information regarding the charter application reviewed by the Charter School
27 Advisory Board when the SBE seeks clarification or greater detail regarding an application
- 28 (2) When awarding charters, the SBE may give priority consideration to applications that demonstrate
29 the capability to provide comprehensive learning experiences to students identified as at risk of
30 academic failure.
- 31 (3) When determining whether to award a charter, the SBE may consider any factors including the
32 extent to which the application:
- 33 (A) Reflects the applicant’s commitment to the purposes of the charter school law stated in G.
34 S. 115C-218(a);
- 35 (B) Promotes innovation through charter schools;
- 36 (C) Reflects the applicant’s planning, research and understanding of educational issues,
37 including budgeting, financing and accounting;

- 1 (D) Demonstrates the applicant’s commitment to governance by participation of a large,
2 diverse and locally-based board;
- 3 (E) Contains articles of incorporation and by-laws;
- 4 (F) Contains a budget that accurately reflects anticipated revenues and costs; including costs
5 associated with maintenance of the school facilities and projected growth;
- 6 (G) Describes student admission requirements and lottery system that comply with G.S. 115C;
- 7 (H) Describes a plan for acquisition and utilization of a facility;
- 8 (I) Describes a five (5) year marketing plan that promotes a diverse learning environment; and
- 9 (J) Any other factor that it determines will promote the purposes of the Charter School Act,
10 G.S. 115C-218 et seq.

11

12 History Note: Authority G.S. 115C-12; 115C-218, 115C-218.1; 115C-218.5;
13 Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);
14 Emergency Rule Eff. August 20, 2019.

15

RRC STAFF OPINION

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AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0509

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

Staff recommends objection for failure to comply with the APA and ambiguity. In (a), the Rule requires completion of "all of the planning program requirements." Incorporating or referring requirements established outside the rulemaking process set forth in G.S. 150B-21.2 would allow the agency to change the requirements of the planning year outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. Additionally, Paragraph (a) requires a meeting about "policies and procedures." Staff is unsure which policies and procedures the Rule is referring to and whether these policies would fall within the definition of a "rule." Therefore, staff recommends objection to Paragraph (a) for failure to comply with the APA and ambiguity.

Staff also recommends objection for lack of clarity due to undefined terms or phrases including: "clear and compelling need" in (b)(1); "exceptional need" in (b)(2); "unique mission" in (c)(1); "successful" in (b)(4); "obstacles to educational reform efforts" in (c)(5); "successful charter school board" in (c)(6); and "application due date" in (d).

1 16 NCAC 06G .0509 is proposed for adoption as follows:

2 **16 NCAC 06G .0509 PLANNING YEAR FOR NEW PRELIMINARY CHARTER SCHOOLS**

3 (a) All nonprofit boards eligible to receive a charter for the first time shall participate in a year-long planning program
4 prior to the charter school's opening for students. During this planning year, n directors from nonprofit boards holding
5 charters shall attend meetings conducted by consultants from the Office of Charter Schools regarding the following
6 topics: school opening plans, staff development, finance, governance, board training, marketing, policies and
7 procedures, securing a school site, and hiring a school administrator. Final approval of the charter shall be contingent
8 upon the nonprofit board completing all of the planning program requirements.

9 (b) The State Board of Education may accelerate the mandatory planning year for a charter applicant that meets the
10 following requirements:

11 (1) Demonstrates a clear and compelling need for the accelerated planning year;

12 (2) Demonstrate an exceptional need for the charter school in the proposed location;

13 (3) Agrees to participate in the planning year while the charter application is being reviewed without
14 any guarantee of charter award; and

15 (4) Demonstrates that there is a facility identified by the applicant that is feasible for opening on an
16 accelerated schedule.

17 (c) The State Board shall also consider the presence or absence of the following factors in making its determination
18 of whether to accelerate a planning year:

19 (1) Unique mission and educational program outlined in the nonprofit board's application;

20 (2) Local, state, and national nonprofit partnerships committed to assisting the school;

21 (3) Potential for economic and educational development of the region;

22 (4) Mentoring by a successful organization that has experience in creating public schools;

23 (5) Obstacles to educational reform efforts that leave chartering as an available option;

24 (6) Commitment to work with a successful charter school board as a guiding mentor;

25 (7) The length of time the nonprofit corporation has existed; and

26 (8) Whether the proposed board has previously or currently operates a public charter school.

27 (d) An applicant requesting acceleration shall submit the request to the State Board of Education prior to the
28 application due date for consideration.

29

30 History Note: Authority G.S. 115C-12; 115C-218, 115C-218.1, 115C-218.5(b);

31 Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);

32 Emergency Rule Eff. August 20, 2019.

33

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AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0517

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - X Unclear or ambiguous
 - X Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection for lack of necessity and clarity. The Rule begins, "Unless otherwise prohibited by federal or state law..." without referencing any federal laws or regulations in the body of the Rule or the history note. Therefore, staff is unsure which federal laws may apply and staff recommends objection for lack of clarity.

The Rule states "The purpose of the following rules is to establish the criteria for eligibility and the procedures for applying for this designation [as an Alternative School]." The criteria for eligibility and application requirements are included in Rules 16 NCAC 06G .0518 and .0519. This amounts to a general purpose statement and does not meet the definition of a "rule" in G.S. 150B-2(8a). Therefore, staff also recommends objection for lack of necessity.

§ 150B-2. Definitions.

As used in this Chapter,

- (8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

1 16 NCAC 06G .0517 is proposed for adoption as follows:

2 **16 NCAC 06G .0517 ALTERNATIVE CHARTER SCHOOL – PURPOSE AND APPLICABILITY**

3 Unless otherwise prohibited by federal or state law, a charter school that meets specific criteria may be eligible to be
4 designated an “Alternative School” for purposes of participation in the “North Carolina Alternative Schools’
5 Alternative Accountability Model.” The purpose of the following rules is to establish the criteria for eligibility and
6 the procedures for applying for this designation.

7

8 *History Note: Authority G.S. 115C-12(24), 115C-218(a)(2);*

9 *Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);*

10 *Emergency Rule Eff. August 20, 2019.*

11

RRC STAFF OPINION

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AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0519

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - X Failure to comply with the APA
- Extend the period of review

COMMENT:

Staff recommends objection for failure to comply with the APA and ambiguity. Subparagraph (a)(2) refers to accountability options in the "Department of Public Instruction's School Based Management and Accountability Program under 115C-105.20." Referring to the "Management and Accountability Program" rather than stating the accountability options in rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the Program outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide the options in rule also make the meaning of this Rule unclear. Therefore, staff recommends objection for failure to comply with the APA and ambiguity.

Staff also recommends objection to Paragraph (b) for ambiguity for use of the undefined term "well-defined."

§ 115C-105.20. School-Based Management and Accountability Program.

(a) The General Assembly believes that all children can learn. It is the intent of the General Assembly that the mission of the public school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential. With that mission as its guide, the State Board of Education shall develop a School-Based Management and Accountability Program. The primary goal of the Program shall be to improve student performance.

(b) In order to support local boards of education and schools in the implementation of this Program, the State Board of Education shall adopt guidelines, including guidelines to:

- (1) Assist local boards and schools in the development and implementation of school-based management under Part 2 of this Article.

Ashley Snyder
Commission Counsel

- (2) Recognize the schools that meet or exceed their goals.
- (3) Identify low-performing schools under G.S. 115C-105.37, and create assistance teams that the Board may assign to schools identified as low-performing under G.S. 115C-105.37. The assistance teams should consist of currently practicing teachers and staff, representatives of institutions of higher education, school administrators, and others the State Board considers appropriate.
- (4) Enable assistance teams to make appropriate recommendations under G.S. 115C-105.38.
- (5) Establish a process to resolve disputes between local boards and schools in the development and implementation of school improvement plans under G.S. 115C-105.27. This process shall provide for final resolution of the disputes.

1 16 NCAC 06G .0519 is proposed for adoption as follows:

2 **16 NCAC 06G .0519 ALTERNATIVE CHARTER SCHOOL - APPLICATION**

3 (a) A charter school that meets the eligibility criteria set forth in 16 NCAC 06G .0518 and seeks to be designated as
4 an “alternative school” shall submit an application to the Office of Charter Schools that includes the following:

5 (1) The school’s mission as it relates to the request for designation as an “alternative school”;

6 (2) A designation of which alternative accountability option, as defined by the Department of Public
7 Instruction’s School Based Management and Accountability Program under G.S. 115C-105.20, that
8 it is requesting, which option cannot be changed except at the time of renewal;

9 (3) The criteria the school plans to use that will meet the eligibility requirements, including the
10 documentation the school will use to support its admissions process;

11 (4) An admission plan for recruiting at-risk students as described in the application;

12 (5) An explanation of how the school intends to serve its student population; and

13 (6) The goals the school is setting for academic achievement for its student population.

14 (b) A plan that is not well-defined shall not be approved.

15

16 *History Note: Authority G.S. 115C-12(24), 115C-218(a)(2);*

17 *Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);*

18 *Emergency Rule Eff. August 20, 2019.*

19