

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 06D .0212

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:

On September 17, 2020, RRC objected to 16 NCAC 06D .0212 for failure to comply with the APA, ambiguity, and lack of necessity. Staff recommends RRC renew its objection for failure to comply with the APA and ambiguity.

RRC's objection was detailed in a letter from staff dated September 18, 2020 as follows:

The Commission objected to 16 NCAC 06D .0212 for failure to comply with the APA, ambiguity, and lack of necessity. The Rule refers to an "Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina." In Paragraph (b) the Rule states "Publishers are required to follow the procedures set forth in the invitation. Failure to comply with all procedure, including stated deadlines, may result in disqualification." Subparagraph (d)(3) states the Invitation includes the "procedure for reconsideration." These procedures meet the definition of a "rule" in G.S. 150B-2(8a). Referring to the Invitation rather than stating its contents in rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the Invitation outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide these procedural requirements in rule also makes the process for submitting and evaluating textbooks unclear. Therefore, the Commission objected for failure to comply with the APA and ambiguity.

Ashley Snyder
Commission Counsel

Additionally, the Commission objected to 16 NCAC 06D .0212(a) for lack of necessity because it repeats the requirements of G.S. 115C-94.

Staff acknowledges the agency's rewritten rule deletes references to the "invitation" in (b) and (c)(3). However, the rewritten rule still references the "invitation" in (c)(2).

Staff thinks the agency has satisfied the Commission's objection for lack of necessity by deleting the language in Paragraph (a) that repeated G.S. 115C-94. Therefore, staff recommends the Commission only renew its objection on the basis of failure to comply with the APA and ambiguity.

1 16 NCAC 06D .0212 is proposed for adoption with changes as published in 34:13 NCAC 1228 as follows:

2
3 **16 NCAC 06D .0212 TEXTBOOK PUBLISHERS REGISTRY**

4 (a) ~~In accordance with G.S. 115C 94, the State Superintendent of Public Instruction or designee shall maintain a~~
5 ~~register of all publishers who submit textbooks for adoption by the State Board of Education. The State Superintendent~~
6 ~~shall prescribe the information required for registration. Publishers who submit textbooks for adoption shall register~~
7 ~~with the Office of State Superintendent of Public Instruction. Publisher registration information shall include:~~

8 (1) the publisher's name;

9 (2) the publisher's president's or proprietor's name and address, including email address;

10 (3) the names of all agents authorized to represent the publisher in North Carolina; and

11 (4) the name, title, address, email address and telephone number of the publisher's preferred agent
12 contact.

13 (b) ~~Publishers shall be registered on the NC Publishers Registry in order to receive the State Board of Education-~~
14 ~~approved Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina, which shall provide the~~
15 ~~required procedures for submission, evaluation, and adoption of textbooks. Publishers are required to follow the~~
16 ~~procedures set forth in the invitation. Failure to comply with all procedures, including stated deadlines, may result in~~
17 ~~disqualification. Only publishers on the NC Publishers Registry will be sent the invitation and can submit textbooks~~
18 ~~for evaluation and adoption.~~

19 (e)(b) ~~Each publishing company publisher~~ piloting textbook materials being submitted for consideration in the current
20 adoption year shall notify the Textbook Commission, in writing, which materials are being piloted and in which local
21 education agencies materials are being piloted. The Textbook Commission shall notify all local superintendents
22 involved in piloting textbook materials prior to the end of the textbook selection process that the materials they are
23 piloting may or may not be accepted by the Commission.

24 (d)(c) ~~Contact Publishers' agents' contacts~~ with the State Board of Education, the Textbook Commission, evaluation
25 advisors, and the Department of Public Instruction (DPI) staff ~~must be limited, shall be limited as follows:~~

26 (1) The Commission may meet publicly with ~~representatives of agents of~~ agents of publishers to discuss the
27 Commission's plans and procedures for adoption of textbooks.

28 (2) ~~At no time during the adoption process (from From the time the State Board approves the invitation~~
29 ~~to submit textbooks until the State Board adopts the list of textbooks) textbooks, may the publisher~~
30 ~~or any of their representatives publishers' agents' shall not meet privately with members of the~~
31 Textbook Commission, the State Board of Education, evaluation advisors, or ~~the Department DPI~~
32 staff involved in the textbook submission, evaluation, or adoption process.

33 (3) A period of time shall be set aside for the Textbook Commission to meet and deliberate before a list
34 of textbook recommendations is taken to the State Board of Education for adoption. Publishers will
35 have time to present additional information to the Commission if their title(s) have been excluded
36 from the list of recommendations. ~~The procedure for reconsideration shall be described in the~~
37 ~~Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina.~~

1 (d) Publishers ~~may~~ shall not exercise undue pressure on members of the Textbook Commission, the State Board of
2 Education, evaluation advisors, or DPI staff involved in the textbook submission, evaluation, or adoption process.

3 (1) For purposes of this Rule ~~restrictions~~, “undue pressure” means personal contact, whether in person,
4 by telephone, or in written form, that ~~attempts to advocate~~ advocates for the selection of a particular
5 book or series of books. “Undue pressure” does not include social contact or presentations to the
6 Textbook Commission as a whole, and does not include written communication with Textbook
7 Commission members or ~~agency~~ State Board of Education or DPI officials following acceptance or
8 rejection of a submission in an effort to seek clarification or reconsideration.

9 (2) The State Superintendent of Public Instruction shall remove from the NC Publishers Registry any
10 publisher whose agents ~~representatives attempt to~~ exercise undue pressure ~~of any kind to adopt its~~
11 ~~books~~ upon a member of the Textbook Commission, the evaluation advisors, or DPI staff ~~the~~
12 ~~Department~~.

13 (3) The State Board of Education shall direct the State Superintendent of Public Instruction to remove
14 from the NC Publishers Registry any publisher whose agents ~~representatives attempt to~~ exercise
15 undue pressure ~~of any form~~ upon a member of the State Board of Education ~~to adopt its books~~.

16
17 *History Note:* *Authority G.S. 115C-12; 115C-89;*
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 *Eff. December 1, 2020.*
21

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AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0314, .0519

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:

On September 17, 2020, RRC objected to 16 NCAC 06G .0314 for lack of statutory authority and clarity and 16 NCAC 06G .0519 for failure to comply with the APA and ambiguity. RRC's objections to these rules were detailed in a letter from staff to the agency dated September 18, 2020 and are copied on the following page.

The agency provided rewritten versions of both rules in response to RRC's objections. The agency remedied the objections in .0519 by deleting reference to the "School Based Management and Accountability Program" and adding a cross-reference to explain the accountability options referenced in .0519 are the same as those described in .0314.

However, RRC objected to the accountability models in .0314 for lack of statutory authority. The agency responded: "We understand your objection to this rule. I will do more research to address the lack of authority for the different accountability models." Therefore, staff recommends RRC renew its objection to 16 NCAC 06G .0314 for lack of statutory authority and issue a new objection for lack of statutory authority for 16 NCAC 06G .0519 for referencing the accountability models at issue.

Staff thinks the agency has remedied the objection to .0314 for lack of clarity by adding information or deleting previously undefined terms. Therefore, staff recommends RRC renew its objection only for lack of statutory authority to 16 NCAC 06G .0314 and issue a new objection for lack of statutory authority to 16 NCAC 06G .0519.

Ashley Snyder
Commission Counsel

Excerpt from objection letter, 16 NCAC 06G .0314:

The Commission objected to 16 NCAC 06G .0314 for lack of statutory authority and clarity. Based on the text of 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 the Commission has not found authority for the agency to provide different accountability models. Therefore, the Commission objected for lack of statutory authority.

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. Paragraph (d) is also unclear because it uses undefined terms including “significantly,” “appropriate,” and “eligible students.” Therefore, the Commission objected for lack of clarity.

Excerpt from objection letter, 16 NCAC 06G .0519:

The Commission objected to 16 NCAC 06G .0519 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, the Commission objected for failure to comply with the APA and ambiguity.

1 16 NCAC 06G .0314 is proposed for adoption with changes as published in 34:13 NCAC 1236 as follows:
2

3 **16 NCAC 06G .0314 ALTERNATIVE SCHOOLS' ACCOUNTABILITY MODELS**

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

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

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

16 (1) Option A. Alternative schools can participate in School Performance Grades as defined by G.S.
17 115C-83.15 or

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

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

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

34 (3) Option C. The alternative school may propose its own alternative accountability model for approval
35 by the State Board of Education (SBE). The SBE will approve the proposed model ~~must include~~
36 ~~criteria for~~ if a preponderance of the evidence proves that the model is a valid and reliable measure

1 the achievement and growth of the school's students. A request for Option C must be submitted
2 annually to the SBE for approval at its October meeting.

3 (d) Schools that are identified as Developmental Day Centers (as determined by the Department of Health and Human
4 Services) and schools which are providing special education and related services in public separate settings to students
5 with disabilities ~~who are significantly cognitively delayed, have multiple handicapping conditions, and may also have~~
6 ~~significant behavioral or sensory integration needs~~ shall participate in accountability by administering the appropriate
7 assessment, based on the student's Individualized Education Program created under the Individuals with Disabilities
8 Education Act, 33 U.S.C. § 1414, and regulations adopted pursuant to that act, to all ~~eligible~~ enrolled students, and
9 participating in either Option B or Option C as defined herein. To participate in this model, schools who meet the
10 criteria in this Section will be reviewed and approved by the Exceptional Children's Division and the Accountability
11 Services Division.

12
13 *History Notes:* *Authority G.S. 115C-12(24); 115C-105.35; ~~115C-83.15;~~ 115C-83.15;*
14 *Eff. December 1, 2020.*
15

1 16 NCAC 06G .0519 is proposed for adoption with changes as published in 34:13 NCAC 1245 as follows:

2
3 **16 NCAC 06G .0519 ALTERNATIVE CHARTER SCHOOL - APPLICATION**

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

- 6 (1) The school's mission as it relates to the request for designation as an "alternative school";
- 7 (2) A designation of which alternative accountability option, as defined ~~by the Department of Public~~
8 ~~Instruction's School Based Management and Accountability Program under G.S. 115C-105.20~~ 16
9 NCAC 06G .0314, that it is requesting, which option cannot be changed except at the time of
10 renewal;
- 11 (3) The criteria the school plans to use that will meet the eligibility requirements, including the
12 documentation the school will use to support its admissions process;
- 13 (4) An admission plan for recruiting at-risk students as described in the application;
- 14 (5) An explanation of how the school intends to serve its student population; and
- 15 (6) The goals the school is setting for academic achievement for its student population.

16 (b) ~~A plan that is not well defined shall not be approved.~~

17
18 *History Note: Authority G.S. 115C-12(24); 115C-218(a)(2);*
19 *Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, Sec. 27.(b);*
20 *Emergency Rule Eff. August 20, 2019.*
21 *Eff. December 1, 2020*
22

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AGENCY: State Board of Education

RULE CITATION: 16 NCAC 06G .0508

RECOMMENDED ACTION:

- X 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:

On September 17, 2020, RRC objected to 16 NCAC 06G .0508 for failure to comply with the APA and multiple instances of ambiguity. The Commission's objection is detailed in the attachments to this staff opinion. Staff thinks the agency has satisfied all of the Commission's objections and therefore recommends approval of the rule. However, staff recommends the Commission determine the addition of a \$1,000 fee constitutes a substantial change.

G.S. 150B-21.12(c) requires the Commission to determine whether a change satisfies the Commission's objection. If it does, the Commission must approve the rule. The Commission is also required to determine whether the change is substantial within the meaning of G.S. 150B-21.2(g). If a change is substantial, the rule will be required to go through the notice, hearing, and publication process for temporary rules as set forth in G.S. 150B-21.1(a3). Following that process, the rule will come back to the Commission for review.

In September, the Commission objected for failure to comply with the APA and ambiguity for mentioning a fee established outside of the rulemaking process. The agency has now set the fee amount at \$1,000 at line 7. G.S. 115C-218.1 grants the agency authority for the fee. Staff recommends approval of the rule and determination the proposed change is substantial because it addresses an issue not addressed in the proposed rule and produces an effect that could not reasonably have been expected.

Ashley Snyder
Commission Counsel

§ 150B-21.12. Procedure when Commission objects to a permanent rule.

(a) Action. - When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

- (1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.
- (2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

(b) Time Limit. - An agency that is not a board or commission must take one of the actions listed in subsection (a) of this section within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

(c) Changes. - When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection. The Commission must also determine whether the change is substantial. In making this determination, the Commission shall use the standards set forth in G.S. 150B-21.2(g). If the change is substantial, the revised rule shall be published and reviewed in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b).

(d) Return of Rule. - A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it must notify the Codifier of Rules of its action. If the rule that is returned would have increased or decreased expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule.

§ 150B-21.2. Procedure for adopting a permanent rule.

...

(g) Adoption. - An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency shall review any fiscal note that has been prepared for the proposed rule and consider any public comments received in connection with the proposed rule or the fiscal note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

- (1) Affects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.
- (2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.
- (3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

...

§ 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.

Excerpt from letter to agency dated September 18, 2020 detailing RRC’s objection:

The Commission objected to 16 NCAC 06G .0508 for failure to comply with the APA and numerous instances of ambiguity that make the Rule as a whole difficult to understand.

The Commission objected 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, the Commission objects to Subparagraph (a)(1) for failure to comply with the APA and ambiguity since the amount of the fee is unknown.

The Commission also objected 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 the Commission objected for failure to comply with the APA and ambiguity.

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, the Commission objected to Parts (b)(1)(C) and (D) for ambiguity.

Additionally, the Commission objected 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). It is further unclear how Paragraph (c) interacts with G.S. 115C-218.5, which governs the State Board’s final approval of applications for charter schools. Therefore, the Commission objected to Paragraph (c) for ambiguity.

1 16 NCAC 06G .0508 is proposed for adoption with changes as published in 34:13 NCAC 1241 as follows:

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

4 (a) ~~Deadline for Filing Charter School Applications.~~

5 (1) ~~— Prior to each application round, the State Board of Education shall approve the application process, timeline,~~
6 ~~and non refundable fee.~~

7 (2) ~~— Applications for charters, and the nonrefundable \$1,000 fee, must shall be received by the Office of Charter~~
8 ~~Schools no later than the last Friday in July date and time specified for the charter application round that year.~~

9 (3) ~~— (b) Applications and fees received after the deadline specified by the Office of Charter Schools will not be~~
10 ~~considered, and any affected applicant groups will be notified in writing.~~

11 (4) ~~— Rejection of Incomplete Applications. The Charter School Advisory Board and Office of Charter~~
12 ~~Schools shall review all timely applications and shall reject all incomplete applications. In order to~~
13 ~~be deemed complete, all sections of the application must be completed as prescribed in the~~
14 ~~"Application Instructions" and G.S. 115C 218.2.~~

15 (b) ~~Charter School Advisory Board Responsibilities~~

16 (1) ~~— The Charter School Advisory Board, with the assistance of the Office of Charter Schools, shall~~
17 ~~review each complete application and determine whether the application meets the requirements of~~
18 ~~G.S. 115C 218.1~~

19 (A) ~~— Meets all the requirements of the Charter School Act, G.S. 115C 218 et seq.;~~

20 (B) ~~— Would achieve one or more of the purposes set forth in G.S. 115C 218(a);~~

21 (C) ~~— Contains viable governance, business, and education plans; and~~

22 (D) ~~— Satisfies any other requirements adopted by the SBE.~~

23 (2) ~~— The Charter Schools Advisory Board will present its recommendation on each charter school~~
24 ~~application to the SBE by the May SBE meeting for discussion.~~

25 (c) ~~SBE Review of Applications and Award of Charters~~

26 (1) ~~— The SBE may request information from applicants, their officers, agents or employees or other~~
27 ~~persons having information regarding the charter application reviewed by the Charter School~~
28 ~~Advisory Board when the SBE seeks clarification or greater detail regarding an application~~

29 (2) ~~— When awarding charters, the SBE may give priority consideration to applications that demonstrate~~
30 ~~the capability to provide comprehensive learning experiences to students identified as at risk of~~
31 ~~academic failure.~~

32 (3) ~~— (c) When determining whether to award a charter, the SBE may shall consider any factors relevant to~~
33 ~~academic, financial, and governance of the school, including the extent to which the application:~~

34 (A)(1) ~~Reflects reflects~~ the applicant's commitment to the purposes of the charter school law stated in G.S.
35 115C-218(a);

36 (B)(2) ~~Promotes promotes~~ the use of different and innovative teaching methods ~~innovation through charter~~
37 ~~schools;~~

