

Introduction to Rulemaking

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

Deputy General Counsel

State Board of Education

Department of Public Instruction



Presentation Overview

1. The North Carolina Administrative Procedure Act (APA)
2. Defining a Rule
3. History of Rulemaking by the State Board of Education
4. Procedures for Adopting a Rule
5. Role of the Charter Schools Review Board in Rulemaking



North Carolina Administrative Procedure Act (APA)



APA Overview

- Governs how state administrative agencies propose, adopt, and issue regulations, which are known as “rules.”
- Establishes uniform procedures for administrative hearings, contested cases, and judicial review of agency decisions.
- Performs a similar role to the federal APA, which governs executive branch agencies.
- Codified at Chapter 150B of the North Carolina General Statutes.



APA Components

- **Article 1** – General Provisions
- **Article 2** – Rule Making (repealed)
- **Article 2A** – Rules
- **Article 3** – Administrative Hearings
- **Article 3A** – Other Administrative Hearings
- **Article 4** – Judicial Review
- **Article 5** – Publication of Administrative Rules (repealed)



Defining a Rule



Rule Defined

A rule is defined as "[a]ny 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**" and that "**directly or substantially affect[s]** the procedural or substantive **rights or duties of a person not employed by the agency** or group of agencies."

- G.S. 150B-2(8a).



Rule Simplified

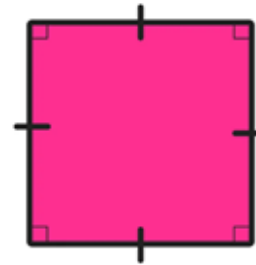
A rule is simply a policy that is, in whole or in part, subject not only to the approval of the State Board of Education but also the statutory requirements of Article 2A of the Administrative Procedure Act.



Rule vs. Policy

- Internal management of DPI by the State Board
- Delegations of authority by the State Board
- Corresponding Rules & Policies

Square



VS

Rectangle



4 Right Angles: ✓
Opposite Sides are the Same Length: ✓
All Sides Are the Same Length: ✓

4 Right Angles: ✓
Opposite Sides are the Same Length: ✓
All Sides Are the Same Length: ✗

Rule vs. Policy

16 NCAC 06C .0603: “The State Board of Education may, following an investigation in accordance with Rule .0603 of this Section, impose disciplinary sanctions on a person who holds a license”

LICN-007, Section 3: “The Superintendent may, following an investigation in accordance with Section 3 of this Policy, impose disciplinary sanctions on a person who holds a license”



History of Rulemaking by the State Board of Education



Constitutional Framework

- “The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.”
 - N.C. Const. art. I, sec. 15
- “The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support . . . and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.”
 - N.C. Const. art. IX, sec. 5



From the Courts

“We hold that Article IX, Section 5 of the North Carolina Constitution authorizes the General Assembly to statutorily delegate authority to the Rules Review Commission to review and approve the administrative rules that are proposed by the State Board of Education for codification.”

North Carolina State Board of Education v. State,
371 N.C. 149, 166 (2018)




Procedures for Adopting a Rule



Permanent Rules

State Board discusses a proposed rule during a regularly scheduled meeting.



State Board formally proposes the rule at a subsequent regularly scheduled meeting.



Notice of rulemaking in the North Carolina Register.

Permanent Rules

Public comments accepted for 60 days from date of publication in North Carolina Register.



State Board may hold a public hearing to collect feedback (optional under APA).



State Board reviews public comments and considers amendments to rule based on those comments.

Permanent Rules

State Board adopts final rule and submits to Rules Review Commission.



Rules Review Commission approves or objects to final rule based on review criteria.



Upon approval, the Codifier of Rules publishes rule in the North Carolina Administrative Code.

Fiscal Notes

An agency may be required to conduct a regulatory impact analysis (better known as a “fiscal note”) if one or more of the following criteria are met:

1. The rule would require the expenditure or distribution of funds subject to the State Budget Act (Chapter 143C).
2. The rule would affect the expenditures or revenues of a unit of local government (such as a county commission or city council).
3. The rule would have a substantial economic impact that is not identical to a federal regulation that the agency is required to adopt. The term “substantial economic impact” means an aggregate financial impact on all persons affected of at least one million dollars (\$1,000,000) in a 5-year period.



Temporary and Emergency Rules

Temporary Rules

- Can be adopted under limited circumstances, usually a recent enactment of the General Assembly.
- Adopted on an abbreviated timeline with fewer requirements.
- Requires a public hearing.
- Temporary rules are good for 270 days or until replaced with a permanent rule.

Emergency Rules

- Can be adopted to address “a serious and unforeseen threat to the public health or safety” (or when directed by the General Assembly).
- Can be adopted without require prior notice or hearing.
- Agency must simultaneously initiate the process to adopt a temporary rule.



Role of Charter Schools Review Board in Rulemaking



Role of CSRB

“To propose, recommend, and approve rules and policies regarding all aspects of charter school operation, including timelines, processes, standards, and criteria for acceptance and approval of applications, monitoring of charter schools, and grounds for revocation of charters.”

G.S. 115C-218(10)a.

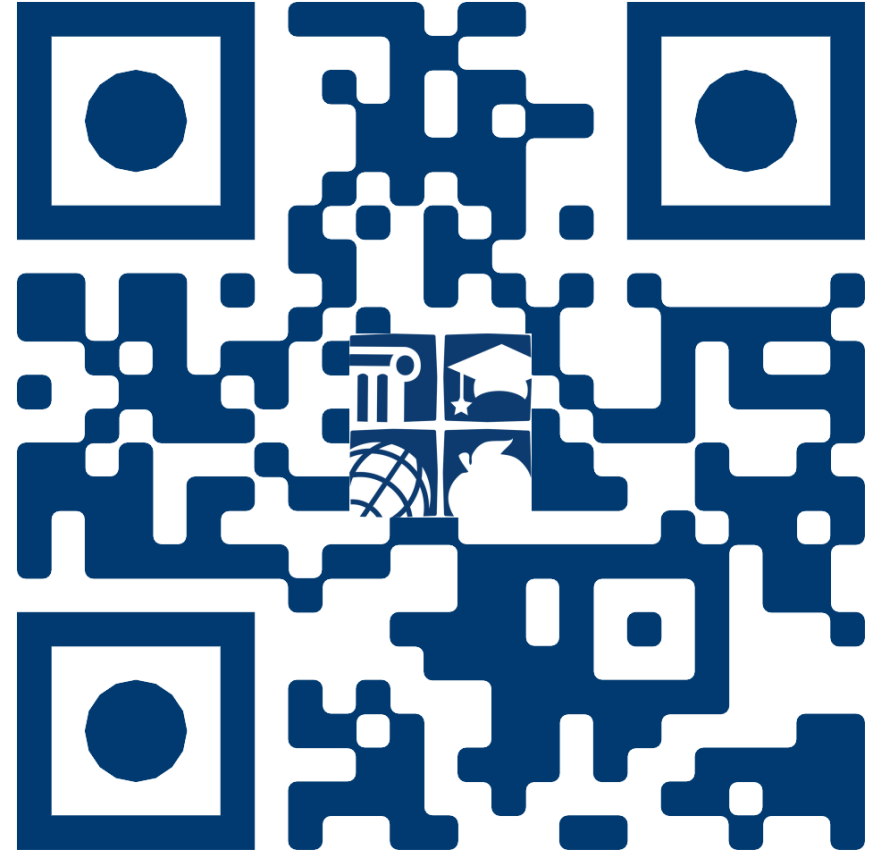


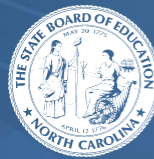
Current Charter School Rules

North Carolina Administrative Code (NCAC)

Title 16, Subchapter 6G,
Section .0500

<http://reports.oah.state.nc.us/ncac.asp>





NORTH CAROLINA
State Board of Education
Department of Public Instruction