

Impact Analysis for Adoption of Permanent Rule:

Agency: State Board of Education

Rule Citation: 16 NCAC 06G .0601 Remote Academies Hardware and Software Fees

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Rulemaking Authority: S.L. 2022-59, Part II, Sec. 2.(a);
Codified: G.S. § 115C-234.10(b)(1)

Impact Summary:

State Government:	No
Local Government:	Yes
Private Entities:	No
Substantial Impact:	No

Problem:

Without this rule, local school administrative units (LSAUs) cannot charge students enrolled in remote academies for damage they inflict on the school-issued devices necessary to participate in the remote instruction and may result in uneven administration of the statutorily prohibition on “rental fees” for those devices.

Background:

S.L. 2022-59, codified in G.S. §§ 115C-234 to 234.25, authorizes the State Board of Education to approve local school administrative unit (LSAU) applications to create

“remote academies,” defined as public schools whose instruction is provided primarily online outside of the school facility. G.S. § 115C-234(b). Unlike other public schools, remote academies are allowed to use hours of remote instruction to satisfy the minimum required number of instructional days or hours for the school year. G.S. § 115C-234(c).

G.S. § 115C-234.10 specifies the requirements for remote academies. Among those requirements, G.S. § 115C-234.10(b)(1) states remote academies must provide students with:

[a]ny hardware and software needed to participate in the remote academy. Students may not be charged rental fees but may be charged damage fees for abuse or loss of hardware or software under rules adopted by the State Board of Education.

The effect of G.S. § 115C-234.10(b)(1) is to prohibit LSAUs from charging students enrolled in remote academies any “rental fees” and to prohibit LSAUs from charging students “damage fees” for abuse or loss of school-supplied hardware and software unless the SBE adopts rules authorizing those charges.¹ This is a significant departure from existing law.

LSAUs are currently authorized to impose fees (G.S. § 115C-47(6) and G.S. § 115C-103). LSAUs are required to adopt Codes of Student Conduct (G.S. § 115C-390.2(b)) which can include restitution for damage to school property. Finally,

¹ The “damage fees” described in G.S. § 115C-234.10(b)(1) are not fees in the sense contemplated by G.S. § 12-3.1(a). The “damage fees” in G.S. § 115C-234.10(b)(1) are not assessed in exchange for “rendering any service or fulfilling any duty to the public.” G.S. § 12-3.1(a). Instead, the “damage fees” referenced in G.S. § 115C-234.10(b)(1) describe a sum of money that LSAUs may recover to compensate them for the cost of repairing or replacing school-issued devices that students abuse or lose. In short, the “damage fees” in G.S. § 115C-234.10(b)(1) are a measure of compensation for property loss, not a fee for service.

G.S. § 115C-523 authorizes LSAUs to charge parents and guardians up to \$5,000 for damage to school property resulting from a students' gross negligence or willful damage or destruction of school property.

Unless the SBE adopts a rule, G.S. § 115C-234.10(b)(1) will: (1) prohibit LSAUs recovering for damage to devices caused by students enrolled in remote academies while continuing to permit LSAUs to charge all other students for damage they cause to school-issued devices; and (2) prohibit LSAUs from including restitution for damage to school-issued devices in the disciplinary measures that could be imposed on students enrolled in remote academies.

Also, while G.S. § 115C-234.10(b) prohibits LSAUs from charging students enrolled in remote academies "rental fees," it does not define "rental fees." Absent an SBE rule defining "rental fees," existing LSAU policies could subject students enrolled in remote academies to fees that are not denominated or intended to be "rental fees" but, nevertheless, have the effect of charging students for the mere use of school-issued devices – a effect that the General Assembly clearly meant to prohibit.

Solution/Alternatives:

To address the identified problems, the SBE proposes the following rule:

**16 NCAC 06G .0601 REMOTE ACADEMIES
HARDWARE AND SOFTWARE FEES**

(a) Definitions:

- (1) "Damage fee" means "any mandatory payments that a local school administrative unit charges a student enrolled in a remote academy for injury to, abuse of, or loss of hardware or

software that the local school administrative unit has provided to the student other than degradation arising from normal use, wear and tear, provided the payments cannot exceed the actual cost of repair or fair market value of the hardware or software, whichever is less."

(2) "Rental fee" means "any mandatory payments that a local school administrative unit requires students enrolled in remote academies to make before the local school administrative unit will give a student access to or possession of any hardware and software needed to participate in the remote academy."

(b) Local administrative units shall not charge students enrolled in remote academies rental fees for use of hardware or software needed to participate in the remote academy but may charge them damage fees.

The effect of 16 NCAC 06G .0601 is restore the LSAUs' authority to recover the actual cost of repairing or replacing school-issued devices that students damage, permit LSAUs to include restitution for damage to school-issued devices as a student disciplinary measure, and to promote the consistent administration of the statute by clarifying the scope of the prohibition on "rental fees."

The proposed definition of "rental fees" will prohibit schools from charging students enrolled in a remote academy any fees, no matter how denominated, before the students take possession of or are allowed to use any hardware or software needed to participate in the remote academy -- even if the school charges other similarly situated students a fee for the same hardware and software. This definition would clearly prohibit charges like "technology fees" or "security deposits" that could function as prohibited "rental fees."

The rule couples the definition of prohibited “rental fees” with a definition of “damage fees” that distinguishes fees for damage from abuse or loss of school-issued devices from “rental fees.” The definition of “damage fees” expressly prohibits charging students for normal wear and tear – charges that would function as rental fees.

The definitions are simple and easy to administer. Access to devices necessary for remote instruction cannot be conditioned on prepayment of any money but, once students take possession of school-issued devices, the students are accountable for damage resulting from abuse or loss of the devices. The rule also limits “damage fees” to the lesser of actual repair or replacement cost. This prohibits LSAUs from charging a fixed rate for damage to devices. That limitation, plus the prohibition on charges for normal wear and tear, will prevent LSAUs from charging excessive “damage fees” which could function as “rental fees,” i.e., charges unrelated to normal use of the devices.

It is appropriate to vest the discretion to charge “damages fees” in the LSAUs. LSAUs have the obligation to instruct students in the proper care of school property and protect school property from damage. (G.S. § 115C-523). However, recovering the cost of damage to school property is not the only public interest to be considered when charging students for damage to school property. LSAU policies regarding damage or loss of school property are inextricably intertwined with student discipline. G.S. § 115C-390.2 authorizes LSAUs to adopt Codes of Student Conduct and encourages LSAUs to use a full range of response to violations of those Codes. The rule respects the LSAUs greater responsibility, knowledge, and experience with student disciplinary measures. The rule limits the recovery for damage resulting from abuse or loss

of school-issued devices to the actual cost of repairing or replacing the device. But, other than that, the rule leaves decisions regarding the charging of “damage fees” to the judgment of LSAUs which are in the best position to know the course most likely to promote the student’s education and character and serve the public’s educational and fiscal interests.

Alternatives to vesting discretion in the LSAUs could include: (1) no rule at all or (2) a rule that set a fixed damage fee. Neither of those solutions would have the benefits of the proposed rule.

If the SBE did not adopt a rule, the prohibition on “rental fees” would be less likely to uniformly enforced across the State. Furthermore, absent a rule allowing for the collection of “damage fees,” students enrolled in remote academies would benefit from an arbitrary exemption from LSAUs’ normal property damage and student discipline policies.

A rule creating a single fixed average “damage fee” would appear arbitrary. A fixed “damage fee” would not account for varying local circumstances, including local expenses; would deprive LSAUs of the authority to make case-by-case judgments and decisions; and naturally result in both over charging and under charging students for damage they cause to school-issued devices.

Impacts:

As noted above, the impact of the rule will be to restore LSAUs authority to recover damages for abuse or loss of school-issued property and use restitution as a student disciplinary measure. The rule does not require LSAUs to take any actions or collect any money. It will place decisions regarding damage to school-issued devices necessary to participate in remote academies in the hands of the school administrators who are in the best position to make the judgments appropriate to the individual circumstances which naturally arise in every case involving property damage. The rule also protects students by clearly defining prohibited “rental fees,” prohibiting LSAUs from charging students for normal wear and tear, and limiting any “damage fees” arising from abuse or loss of devices to the actual cost of repairing or replacing damaged devices.

Costs and Benefits:

16 NCAC 06G .0601 authorizes LSAUs to charge students “damage fees” for abuse or loss of school-issued device. The rule does not impose any costs on LSAUs or students. The rule does have the potential of allowing LSAUs to recover the cost of repairing or replacing damaged property. The benefits that LSAUs might reap from the exercise of that authority are dependent on a variety of factors that make the financial benefits of the rule difficult to determine but are very unlikely to exceed \$1M a year.

The SBE has approved forty-two remote academies to open in 2023-24. The total projected enrollment for those schools is 11,510. The Department of Public Instruction sent a survey to LSAUs that have been approved to operate remote academies, fifteen responded. The information from that survey is attached. The responses reveal that the rule will

produce a range of relatively low financial benefits. If one factors in the exercise of administrative discretion which will invariably enter into decisions to take actions to recover the cost to repair or replace damaged devices, the benefits become even smaller.

All fifteen districts stated that they would issue students only one device. Therefore, the total number of devices subject to the rule is likely to be close to 11,510. The most common devices were Chromebooks and iPads. The cost of the devices ranged from \$250 to \$600 (average cost \$425). The most common estimated damage rates were 5% or less (6 of 15 respondents) and 20% (6 of 15 respondents). Two respondents estimated damage rates of 10% and one respondent estimated a damage rate of 30%. The respondents stated that devices are typically under warranty. One respondent stated that the school district charges an average of \$100 to repair devices not under warranty.

The range of responses make it difficult to predict what the State-wide financial benefits of the rule will be. The range in prices for devices was \$250 to \$600 – a 240% variance. Damage predictions ranged from 5% to 30% -- a 600% variance. Even if one assumes that the remote academies reach their total projected enrollment of 11,510 students, that every damaged device was damaged as a result of student abuse or loss, and that every damaged device had to be replaced, the variance in price and predicted damage rates produces a wide range of potential recoveries for LSAUs.

The attached spreadsheet shows a potential range of financial benefits to LSAUs. Using the highest device costs and the highest damage rate, one could estimate that

highest replacement costs that the rule would permit LSAUs to recover \$2,071,800 in one year. Using the \$425 average price and the more frequently predicted damage rates of 5% or 20%, one could estimate that the potential replacement cost would range from \$244,588 to \$978,350 per year. Using the \$425 average price and an average predicted damage rate of 13% produces a potential benefit of recovered replacement cost of \$635,928.

Thus, while it is hard to estimate the actual financial benefits of the rule, a conservative analysis of the available information indicates that the fiscal impact of the rule is very unlikely to exceed \$1M. Finally, administrative cost of pursuing hundreds, if not thousands of claims, make it certain that the net benefit to LSAUs would be less than the total “damage fees” LSAUs are likely to recover.

Consequently, a reasonable estimate would place the net benefits of the rule to the LSAUs operating remote academies at less than \$1M per year – lower than the substantial benefit required for OSBM approval under G.S. 150B-21.4(b1).

Sensitivity Analysis:

The information above shows that, while the actual financial benefits of the rule will vary depending on a range of local variables in pricing, damage rates, and enforcement, the predictable impact will be less than \$1M.

Results:

The rule clarifies the statutory prohibition on charging students rental fees for devices and software necessary to fully participate in remote academies and restores LASUs authority to use their best judgment to recover the actual cost of repairing or replacing devices that students lose or abuse. The rule will also have the benefit of permitting LSAUs to hold students accountable for their actions, encouraging them to respect school property, instilling responsibility, and promoting character development. The rule presumes that LASUs have the responsibility, knowledge, and judgment to exercise the discretion granted under the rule to educate students and protect school property. The range of local costs and potential damage make it difficult to predict what the actual financial benefits of the rule will be but they are not likely to exceed \$1M.

16 NCAC 06G .0601 REMOTE ACADEMIES HARDWARE AND SOFTWARE FEES

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- (2) "Rental fee" means "any mandatory payments that a local school administrative unit requires students enrolled in remote academies to make before the local school administrative unit will give a student access to or possession of any hardware and software needed to participate in the remote academy."**

(b) Local administrative units shall not charge students enrolled in remote academies rental fees for use of hardware or software needed to participate in the remote academy but may charge them damage fees.

Authority G.S. 115C-234.10(1)(b).