

**16 NCAC 06E, Section .0200  
(Interscholastic Athletics)  
*Proposed Permanent Rule*  
Fiscal and Regulatory Impact Analysis**

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<b>Basis for Fiscal Note</b>	X	Impact on State Funds
	X	Impact on Local Government
		Substantial Economic Impact

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## Executive Summary

On November 23, 2021, Governor Roy Cooper signed S.L. 2021-184, which made significant changes to state laws governing interscholastic athletic activities in public school units. The legislation created Article 29E of Chapter 115C of the North Carolina General Statutes, which, among other things, required the State Board of Education (“SBE”) to adopt rules governing high school interscholastic athletic activities conducted by public school units.<sup>1</sup> On September 22, 2023, the General Assembly enacted S.L. 2023-133, Parts XVII–XX, which expanded and modified Article 29E, imposed additional oversight requirements on the SBE, and specifically required rules to govern middle school athletics in addition to high school athletics. The legislation directed the SBE to adopt new temporary rules to implement the requirements of the legislation in time for the 2024-2025 school year. The SBE adopted these temporary rules in March 2024, and they took effect on July 1, 2024. The new rules address several topics, including the administration of interscholastic athletics, student health and safety, student participation (eligibility), amateur rules (including “name, image, and likeness”), penalties, limitations on recruitment and undue influence, and a process for appealing decisions of administering organizations for high school athletics such as the North Carolina High School Athletic Association (“NCHSAA”). Although the rules govern interscholastic athletic activities in all public schools for Grades 6 through 12, their primary import is at the high school level, Grades 9 through 12.

The SBE is now proposing permanent rules that will take effect July 1, 2025. The rules include amendments to two existing rules and the adoption of eight new rules. A copy of the proposed rules is included as Appendix A. This fiscal and regulatory analysis (“fiscal note”) examines the anticipated financial and regulatory impact of the proposed rules, which have the potential to directly or indirectly impact State and local funds but not have a substantial economic impact.

It is imperative to note from the beginning that, for several reasons that are unique to the public school system and the subject matter of these rules, the rules themselves will have little actual effect on persons and parties that are subject to the rules. That is because nearly all public schools in North Carolina that participate in interscholastic athletics at the high school level have long been members of the NCHSAA,<sup>2</sup> and the new SBE rules largely track the longstanding rules and regulations of that organization.<sup>3</sup> To the extent that the rules impose requirements that are new or unique to the SBE, those requirements either have no discernable financial or regulatory impact or their impact is limited to the additional worktime requirements for employees of the SBE and Department of Public Instruction (“DPI”) tasked with the increased responsibilities of the SBE over interscholastic athletics.

To the extent that these rules do have a financial or regulatory impact for the purposes of G.S. 150B-21.4, the impact is primarily indirect and arises from the impact of the rules on the professional responsibilities for a select number of State employees and a larger number of public school employees across the State. To the extent that the rules are anticipated to increase expenditures of State or local funds, those have been noted throughout this analysis.

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<sup>1</sup> S.L. 2021-184, Section 1.(a); G.S. 115C-407.55.

<sup>2</sup> For more information on the NCHSAA, visit <https://www.nchsaa.org/>.

<sup>3</sup> The SBE currently recognizes two administering organizations, the NCHSAA and the Carolina Athletic Association for Schools of Choice (“CAA4SC”). The NCHSAA has 443 member schools, including 58 charter schools and 4 nonpublic parochial schools, as of the start of the 2024-2025 school year. The CAA4SC has only 24 member schools, all of which are charter schools.

## Description of Proposed Rule

North Carolina General Statutes Sections 115C-407.55 and 115C-407.70, as amended by S.L. 2023-133, set forth substantive requirements for SBE rules on interscholastic athletics. The SBE has developed detailed rules that address these requirements, which reflect a combination of the SBE's pre-existing rules on this subject and a codification of many of the existing rules and regulations of the NCHSAA. Each proposed rule is summarized in detail below.

### 16 NCAC 06E .0201 (Definitions)

This rule defines several terms that are used throughout the section on interscholastic athletics.

- In addition to statutory terms like “administering organization” and “parent” that are defined in G.S. 115C-407.50, the rule creates more expansive definitions for the terms “local superintendent” and “principal” to encompass charter schools.
- “Aggrieved party” is a term of art unique to these rules and specifies who may file an appeal under Rule .0215. The definition satisfies the requirements of G.S. 115C-407.55(4) but is sufficiently narrow to exclude appeals from individuals who are not directly and adversely impacted by a decision of the administering organization.
- “Bona fide purpose,” “final decision,” and “initial entry” are also terms of art that are specific to these rules and are especially relevant to the student participation requirements in Rule 06E .0207.
- “Interscholastic athletics” or “interscholastic athletic activity” is defined specifically to include only school-sponsored activities involving athletic activities between students in Grades 6 through 12 from more than one school. As such, it excludes localized activities such as recess, physical education classes, and intramural sports.
- Although “participating school” is defined in G.S. 115C-407.50(7), that definition only includes high schools. This more expansive definition accounts for middle and junior high schools, entities for which the SBE is also required to adopt rules on interscholastic athletics under G.S. 115C-407.70.

16 NCAC 06E .0201 is a "glossary rule" and therefore, standing alone, has no financial or regulatory impact.

### 16 NCAC 06E .0204 (Administration of Interscholastic Athletics)

Before the enactment of the temporary rules on July 1, 2024, this Rule contained almost all the SBE's rules on interscholastic athletics. With the more expansive rulemaking required by S.L. 2023-133, the SBE has moved components of the old rule into separate rules and transformed this rule into one focused on how interscholastic athletic activities are to be administered.

- The rule sets forth the requirements for administering organizations like the NCHSAA and CAA4SC, including the requirement that they enter an MOU with the Superintendent of Public Instruction (“Superintendent”) for the purposes of administering high school athletics.
- The rule establishes the areas for which an administering organization may create on its own rules (including administrative, gameplay, and penalty rules) and those areas for which it can only enforce rules adopted by the SBE (such as student participation requirements and membership fees for participating schools).
- The rule establishes uniform membership fees for participating schools that elect to join an administering organization.
- The rule establishes requirements for an administering organization when issuing a final decision regarding the application or enforcement of a rule.

- The rule establishes a process for individuals to report allegations of intimidation or harassment by an administering organization to the Superintendent, as required by G.S. 115C-407.55(9).
- The rule establishes that the Superintendent is responsible for general oversight of interscholastic activities at the middle and junior high school level while reserving the day-to-day application and enforcement of the rules to the public school units, consistent with G.S. 115C-407.70.
- The rule clarifies that PSUs may further restrict student participation in interscholastic athletics consistent with local policy. The SBE rules constitute the minimum requirements, but individual PSUs are free to impose more stringent requirements, including loss of student eligibility for disciplinary reasons or removal of an employee from coaching responsibilities.

## 16 NCAC 06E .0205 (Student Health and Safety)

This rule establishes minimum health and safety requirements for interscholastic athletic competitions and implements the requirements of the Gfeller-Waller Concussion Awareness Act of 2011, S.L. 2011-147, now codified at G.S. 115C-407.57 and 115C-407.58.

- The rule requires participating schools to provide students, parents, school nurses, athletic directors, and others involved in interscholastic athletics with information on concussions and head injuries on an annual basis.
- The rule establishes protocols for removing a student from athletic activities if the student exhibits signs of a concussion and when that student may return to play.
- The rule requires each participating school to adopt venue-specific emergency action plans to deal with serious injuries and acute medical conditions that may arise during interscholastic athletic activities.

The substantive requirements of this rule have been part of SBE policy and NCHSAA rules and regulations since 2011.<sup>4</sup> The SBE previously adopted 16 NCAC 06E .0205 as an emergency rule in 2019 but failed to adopt it as a permanent rule before it expired in 2020. Given this history and the fact that the rule tracks almost exactly with the requirements of G.S. 115C-407.57 and 115C-407.58, which are part of the regulatory baseline, the SBE has concluded that this rule will have no additional impact on State or local funds.

## 16 NCAC 06E .0206 (Athletic Trainers)

This rule requires each PSU to designate for each participating school under its jurisdiction either a licensed athletic trainer or a first responder. This rule has been in effect since 2021, but during this process the SBE is making two substantive amendments.

- The rule requires the designation of either an athletic trainer licensed under Chapter 90, Article 34 of the General Statutes or a “first responder.” The rule sets forth specific requirements for a “first responder” that include certification in various first aid and injury prevention programs.
- The existing rule requires a first responder or athletic trainer to attend all practices and games for football. The amendment expands this requirement to wrestling, another sport in which concussions and other serious injuries are common.
- The existing rule only applies to local school administrative units.<sup>5</sup> The amendment expands the rules application to all PSUs (including charter schools) consistent with the requirements of G.S. 115C-407.55.

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<sup>4</sup> See [SBE Policy ATHL-003](#).

<sup>5</sup> The current rule uses the term “local education agency” which is a term of art derived from the federal Individuals with Disabilities in Education Act (“IDEA”). See 34 C.F.R. § 300.28. However, in both SBE policy and rules, it has long been used interchangeably with “local school administrative unit” as that term defined in G.S. 115C-5(6). The

## 16 NCAC 06E .0207 (Student Participation Rules)

This rule sets forth the minimum requirements for students enrolled in North Carolina public schools who want to participate and compete in interscholastic athletics in Grades 6 through 12. This rule addresses the following substantive eligibility requirements:

- **Residency Requirements.** These provisions establish how a student’s primary residence will be determined for the purpose of identifying the participating schools for which the student is eligible to compete. This is intended to prevent a student from manipulating his or her address to compete for a preferred school.
- **Enrollment Requirements.** These provisions establish that a student who attends a traditional public school can only compete in interscholastic athletics on behalf of the school to which the student is assigned by the local board of education under G.S. 115C-336. If the student attends a charter school, regional school, or school operated by the UNC system, the student’s primary residence must be in the same county or within 25 miles of the school. This provision also permits PSUs to allow home school students to compete under certain circumstances.
- **Transfer Requirements.** These provisions establish the circumstances under which a student can retain athletic eligibility after transferring schools, either within the same PSU or between PSUs. The purpose of this rule is to prevent students from transferring schools solely for athletic purposes.
- **Scholastic Requirements.** These provisions establish minimum academic and attendance requirements for students to participate in interscholastic athletics, in recognition that academics takes priority over all extracurricular activities. Since at least 1986, the SBE has required students to pass a minimum number of courses in the previous semester to remain eligible for interscholastic athletics.<sup>6</sup> Due to the changing structure of academic course loads in the public schools, especially at the high school level, the SBE has modified this rule to focus on the student's overall academic performance. The rule now requires the student to have passed 70% of courses attempted in the previous semester and be making sufficient academic progress toward promotion or graduation. In accordance with G.S. 115C-407.55(1)a., the rule also adds a minimum attendance requirement.
- **Age Requirements.** These provisions establish age restrictions for athletic teams at different grade levels. Like the scholastic requirements, the SBE has imposed age requirements since at least 1986.<sup>7</sup> The requirements are primarily an issue of safety and a recognition that younger, physically smaller students should not be competing with their older, larger counterparts.
- **Biological Requirements.** This provision cross-references the biological requirements established by G.S. 115C-407.59.
- **Medical Requirements.** This provision requires that students receive a medical examination ever 395 days. This requirement has been part of the SBE rules since at least 2021, and the requirements of the NCHSAA for much longer. It is a basic safety measure designed to ensure students are physically fit to participate in interscholastic athletics and to mitigate against injury or illness.
- **Criminal Convictions.** This provision prohibits a student from participating in interscholastic athletics after pleading guilty or “no contest” or being convicted of a felony.
- **Waiver.** These provisions establish a process by which an administering organization or PSU can waive any of the eligibility requirements under limited circumstances. This rule recognizes that there may be specific instances in which enforcement of a rule would be unfair, such as where a student has lost eligibility due to a debilitating illness or other factor beyond the student's control. Like the scholastic and age requirements, SBE rules have long allowed for administering organizations to waive eligibility rules under certain circumstances.<sup>8</sup>

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term “public school unit” or “PSU” is the preferred term of the General Assembly to refer to any type of public elementary or secondary school system, including local school administrative units and charter schools.

<sup>6</sup> See 16 NCAC 06E .0204(d) (2023); 16 NCAC 06E .0202(a)(3) (1986) (now expired).

<sup>7</sup> See 16 NCAC 06E .0204(c)(2) (2023); 16 NCAC 06E .0202(a)(2) (1986) (now expired).

<sup>8</sup> See 16 NCAC 06E .0204(k) (2023); 16 NCAC 06E .0202(c) (1986) (now expired).

## 16 NCAC 06C .0208 (Amateur Rules)

This rule includes several provisions designed to preserve the amateur nature of interscholastic athletics.

- The rule prohibits students from participating in interscholastic athletics after graduating high school (except for post-graduation playoffs and state championships); signing a professional athletic contract; participating on an all-star team or in an all-star game; or receiving any kind of remuneration for participation in an athletic contest, except for trophies and other small-dollar gifts attendant to many athletic activities.
- The rule also prohibits students from participating in athletics after entering an agreement for the use of the student's name, image, or likeness for commercial purposes (“NIL”) unless the student has complied with the NIL requirements in proposed Rule .0211.
- Most of these provisions are in the current SBE rule and several date back to at least 1986.<sup>9</sup>

## 16 NCAC 06E .0209 (Penalty Rules)

This rule sets forth minimum penalties for students, coaches, or school officials who are ejected from an interscholastic athletic contest and clarifies that PSUs may impose additional penalties beyond those imposed by an administering organization. The SBE has adopted minimal rules in this area and delegated most rulemaking authority related to penalties to the NCHSAA and CAA4SC.<sup>10</sup> These rules are substantially identical to Paragraphs (h) and (n) of existing Rule 16 NCAC 06E .0204.

## 16 NCAC 06E .0210 (Limitations on Recruiting and Undue Influence)

This rule prohibits students, coaches, professional educators, or other employees of a PSU or administering organization from subjecting a student to “undue influence” for the purpose of inducing or causing the student to transfer from one school to another for athletic purposes.

- The rule defines what sort of conduct constitutes “undue influence” under the rule.
- The rule permits the administering organization to impose appropriate penalties on a student, coach, or school that violates the rule.

## 16 NCAC 06E .0211 (Name, Image, and Likeness)

This rule addresses students who want to enter an agreement to use their name, image, and likeness (“NIL”) for commercial purposes in exchange for compensation, commonly known as an “NIL deal.” The temporary rules adopted by the SBE for the 2024-2025 school year, as well as long-standing NCHSAA regulations and professional practice, prohibit such agreements. In keeping with the prevailing trends in other states,<sup>11</sup> however, the SBE is considering a rule to permit such agreements at the middle and high school level, subject to certain requirements and restrictions.

- The rule defines “compensation” and clarifies that it applies to NIL agreements that provide compensation to the student or an immediate family member of the student.
- The rule specifies certain requirements for any NIL agreement, including that it cannot condition compensation on a student’s athletic performance, that the student’s parent must be a party to the

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<sup>9</sup> See 16 NCAC 06E .0204(f) (2023); 16 NCAC 06E .0202(a)(5) (1986) (now expired).

<sup>10</sup> See G.S. 115C-407.55(3); 16 NCAC 06E .0204(c)(4).

<sup>11</sup> As of June 5, 2024, 39 states and the District of Columbia permit high school student athletes to enter NIL deals without losing athletic eligibility. Jeremy Crabtree, “Where is NIL prohibited for high school athletes?” ON3, <https://www.on3.com/nil/news/where-is-nil-name-image-likeness-prohibited-for-high-school-athletes-hs-football-basketball/> (last accessed August 26, 2024).



agreement if the student is under 18, and that the agreement must hold certain parties harmless from liability.

- The rule requires the student to notify administrators and coaches at the student's school and to complete the free NIL online course offered by the National Federation of State High School Associations ("NFHS").
- The rule outlines the types of commercial activities subject to the rule, including product or service endorsements and promotional activities in person or on social media.
- The rule prohibits students from making any reference to the student's school, PSU, conference, or administering organization in any commercial activities. It also prohibits the student from displaying or receiving compensation for the use of intellectual property of the student's school, PSU, conference, or administering organization.
- The rule prohibits the student from promoting goods or services of an NIL party during interscholastic athletic events or other school activities.
- The rule prohibits the student from entering into an NIL agreement to promote certain products or services, such as alcohol, tobacco, drugs, weapons, and gambling.
- The rule requires schools and administering organizations to track and report NIL agreements involving students under their jurisdiction.
- The rule prohibits athletic directors, coaches, other PSU employees, athletic booster clubs, and NIL collectives from using the promise of an NIL agreement to recruit a student to a participating school.
- The rule clarifies that it applies to any NIL agreement executed while the student is enrolled in a PSU, even if the benefits of the agreement do not accrue to the student until after graduation.

## 16 NCAC 06E .0215 (Appeals)

This rule sets for the process for appealing decisions of a PSU or administering organization related to the administration and enforcement of SBE rules on interscholastic athletics.

- Many aspects of the rule are substantively identical to Paragraph (m) of existing Rule 16 NCAC 06E .0204.
- The rule permits expands the right of appeal from only a PSU to any "aggrieved party" as defined in Rule .0201(2).<sup>12</sup>
- The rule clarifies that an aggrieved party can appeal a decision of any entity enforcing SBE rules, not just an administering organization.<sup>13</sup>
- The rule sets for more specific instructions for what information must be included in an appeal, consistent with the Superintendent's transition from a written appeal to standard online appeal form.
- The rule removes the burdensome requirement that parties to an appeal serve all documents via the United States Postal Service, thus permitting the use of electronic forms and email.
- The rule clarifies that the appeals board does not consider new evidence that was not presented to the rule administrator in the first instance and allows the appeals board to remand a case to the rule administrator if new evidence emerges.

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<sup>12</sup> G.S. 115C-407.55(4), as amended by S.L. 2023-133.

<sup>13</sup> In accordance with G.S. 115C-407.55, the rule allows for appeals from any enforcement of SBE rules on interscholastic athletics. Rules for middle school athletics are administered and enforced locally by the PSUs, so it is necessary to include broader language to allow for rights of appeal from those decisions. Importantly, however, the right of appeal *does not* extend to decisions made under local policy (at any level, whether middle school or high school), such as if a student loses athletic eligibility for disciplinary reasons. Additional language in proposed Rule .0204, Paragraph (k) clarifies that there is no right to appeal under these circumstances.



# Impact Analysis

This section analyzes the impact of the proposed rule on state and local funds, explains how that amount was computed, and discerns and analyzes the impacts attributed to the rule.

## Persons Affected

The persons subject to, or affected by, the proposed SBE rules are all public school units within the State of North Carolina that participate in interscholastic athletics, as well as those serving in administrative roles related to athletics (local superintendents, athletic directors, principals, and coaches). All 115 local school administrative units and 82 charter schools have at least one constituent school that participates in interscholastic athletics at the high school level. The rules also impact students enrolled in those public schools participating in interscholastic athletics at the middle, junior high, and high school level.

## Regulatory Baseline

For purposes of this impact analysis, the impact of the proposed rule is measured against the baseline requirements of Chapter 115C, Article 29E of the General Statutes. As a result, the following statutory components are part of the regulatory baseline assumed in this analysis:

- The requirement that the SBE adopt rules governing middle and interscholastic athletics for students in Grades 6 through 9,<sup>14</sup> including the following:
  - Academic standards;
  - Enrollment and transfer requirements;
  - Attendance requirements;
  - Medical eligibility requirements;
  - Biological participation requirements consistent with G.S. 115C-407.59;
  - Recruiting limitations;
  - Amateur status requirements, including rules related to NIL;
  - Student health and safety rules;
  - Penalty rules (delegable to an administering organization);
  - Rules establishing an appeals process for decisions of an administering organization;
  - Administrative rules (delegable to an administering organization);
  - Gameplay rules (delegable to an administering organization);
  - Fees that an administering organization may charge to schools for participation in interscholastic athletics;
  - Rules for administering organizations, including the requirement that the administering organization undergo an annual audit by an independent auditing firm; and
  - Rules for reporting to the Superintendent of Public Instruction any issues or concerns related to the administration of interscholastic athletics.
- The requirement that PSUs purchase catastrophic insurance for high school interscholastic athletic activities.<sup>15</sup>
- The requirement that the SBE adopt rules related to concussions and head injuries.<sup>16</sup> To the extent that the SBE rules track the substantive requirements of G.S. 115C-407.57, those requirements are considered part of the regulatory baseline.

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<sup>14</sup> G.S. 115C-407.55.

<sup>15</sup> G.S. 115C-407.65; G.S. 58-31A-60.

<sup>16</sup> G.S. 115C-407.57.

- The requirement that the SBE adopt rules related to emergency action plans for PSUs.<sup>17</sup> To the extent that the SBE rules track the substantive requirements of G.S. 115C-407.58, those requirements are considered part of the regulatory baseline.
- The requirement that PSUs designate all athletic teams as male, female, or co-ed, and the requirement that students only participate on single-sex teams that match their birth sex.<sup>18</sup> Any financial impact associated with the legal causes of action created by G.S. 115C-407.59 are also considered part of the regulatory baseline.<sup>19</sup>
- The substantive requirements of any MOU entered between the Superintendent of Public Instruction and an administering organization.<sup>20</sup>
- The requirement that PSUs conduct high school interscholastic athletics in accordance with rules adopted by the SBE.<sup>21</sup>

In addition, the existing SBE rules on interscholastic athletics, 16 NCAC 06E .0204 and 16 NCAC 06E .0206 are part of the regulatory baseline assumed in this analysis. This includes the following substantive provisions:

- The authority of PSUs to determine whether students in Grades 6 through 12 may participate in interscholastic athletics.
- The requirement that a student be otherwise eligible to attend a school on behalf of which the student participates in interscholastic athletics.<sup>22</sup>
- Age restrictions on interscholastic athletic teams.<sup>23</sup>
- The requirement that every student participating in interscholastic athletics receive a medical examination every 395 days.
- Restrictions designed to preserve a student's amateur status.<sup>24</sup>
- The requirement that the principal of each participating school prepare a verified list of eligible students for each sport.<sup>25</sup>
- The minimum penalties required when a student, coach, or school official is ejected from an interscholastic athletic contest.<sup>26</sup>
- The requirement that an administering organization that enters an MOU with the SBE to enforce its rules does so in accordance with the requirements of 16 NCAC 06E, Section .0200.<sup>27</sup>
- The requirement that the SBE delegate its authority to administer and enforce its rules to an administering organization, and its authority to adopt penalty rules, administrative rules, and gameplay rules.<sup>28</sup>

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<sup>17</sup> G.S. 115C-407.58.

<sup>18</sup> G.S. 115C-407.59.

<sup>19</sup> It should be noted that the SBE has no authority to hear or enforce these causes of action, which must be filed in the General Court of Justice.

<sup>20</sup> G.S. 115C-407.61.

<sup>21</sup> G.S. 115C-705.65(a).

<sup>22</sup> Existing 16 NCAC 06E .0204(c)(1) is substantively identical to proposed 16 NCAC 06E .0207(d)(1)–(2).

<sup>23</sup> Existing 16 NCAC 06E .0204(c)(2) is substantively identical to proposed 16 NCAC 06E .0207(g).

<sup>24</sup> Existing 16 NCAC 06E .0204(f) is substantively identical to proposed 16 NCAC 06E .0208(a).

<sup>25</sup> Existing 16 NCAC 06E .0204(g) is substantively identical to proposed 16 NCAC 06E .0207(b).

<sup>26</sup> As noted above, Existing 16 NCAC 06E .0204(h) and (n) are substantively identical to proposed 16 NCAC 06E .0209.

<sup>27</sup> Existing 16 NCAC 06E .0204(j) is substantively identical to proposed 16 NCAC 06E .0204(b). Considering this regulatory baseline and the fact that any administering organization that administers and enforces SBE rules assumes this responsibility voluntarily pursuant to the terms of an MOU with the Superintendent, this analysis does not consider the expenses or revenues of the administering organization (e.g., staff salaries, insurance, legal fees, facilities and other overhead) except those directly established by these rules (i.e., membership fees).

<sup>28</sup> Existing 16 NCAC 06E .0204(k) is substantively identical to proposed 16 NCAC 06E .0204(c).

- The uniform membership fee that an administering organization may charge to participating schools.<sup>29</sup>
- Minimum requirements for an administering organization that contracts with the SBE to administer its rules on interscholastic athletics.<sup>30</sup>
- The process for appealing decisions of an administering organization to the Interscholastic Athletics Appeals Board appointed by the Superintendent, to the extent provisions of Rule .0204, Paragraph (m), as currently written, are substantively identical to proposed Rule .0215.
- The requirement that each local school administrative unit designate a licensed athletic trainer or first responder who will attend all football games and practices.<sup>31</sup>

With this regulatory baseline in mind, this impact analysis focuses on those aspects of the SBE rule that are within the SBE’s discretion. It is important to note, however, that the SBE anticipates these new rules will, in practice, have very little financial and regulatory impact on the regulated entities.

Prior to the enactment of S.L. 2021-184, the SBE maintained limited rules governing interscholastic athletics at the middle and high school level. As noted above, these limited rules historically set age limits for student participation in athletics, required students to pass a minimum number of courses each semester and obtain an annual medical examination to retain eligibility, and established limitations designed to preserve amateurism in high school sports.<sup>32</sup> The SBE then delegated to the NCHSAA the authority to enforce its rules and to adopt additional rules with approval from the SBE.

At the time the SBE enacted the temporary rules currently in effect, the NCHSAA Board of Directors had adopted extensive rules and regulations, updated annually and published in the NCHSAA Handbook,<sup>33</sup> governing student participation rules, health and safety rules, penalty rules, gameplay rules, and administrative rules. These rules and regulations incorporated SBE rules but also expanded and refined them, particularly around issues related to student eligibility. All NCHSAA member high schools, which include all traditional public high schools and most charter high schools with athletic programs, were bound by these rules by virtue of their membership in the organization and abided by them accordingly.<sup>34</sup> Public school units administering interscholastic athletics in Grades 6-8 followed the Middle and Junior High School Athletics Manual,<sup>35</sup> updated and adopted annually as SBE policy, which incorporated all SBE rules and most of the NCHSAA’s substantive regulations, to the extent they were relevant to the middle and junior high school context. The 24 charter schools that are members of CAA4SC are bound by the terms of

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<sup>29</sup> Although this provision is assumed as part of the regulatory baseline because it is unchanged from the existing rule, it merits additional comment because it establishes a fee rate. Even if the fee rate were new, the SBE contends that it would not be subject to review under G.S. 12-3.1 because (1) it is not “a fee or charge for the rendering of any service or fulfilling of any duty to the public” but, rather, a delegation of authority to an administering organization, membership in which is voluntary for participating schools, to charge a membership fee to its members for the provision of services by the organization; and (2) public school units are “local governmental units” falling under the exception in G.S. 12-3.1(c)(1).

<sup>30</sup> Existing 16 NCAC 06E .0204(l) is substantively identical to proposed 16 NCAC 06E .0204(d).

<sup>31</sup> 16 NCAC 06E .0206.

<sup>32</sup> See, e.g., 16 NCAC 06E .0204 (2021); 16 NCAC 06E .0202 (1986) (now expired).

<sup>33</sup> See “NCHSAA Handbook,” NCHSAA, <https://www.nchsaa.org/handbook/> (last accessed Aug. 20, 2024). Prior editions of the Handbook may be obtained from the NCHSAA in electronic format upon request.

<sup>34</sup> The NCHSAA currently has 439 member schools that are public schools. The CAA4SC has 24 member schools, all of which are charter schools. Thus, 95% of all public high schools participating in interscholastic athletics are members of the NCHSAA, and therefore bound by its rules.

<sup>35</sup> See “Interscholastic Athletics,” Department of Public Instruction, <https://www.dpi.nc.gov/districts-schools/classroom-resources/academic-standards/programs-and-initiatives/nc-healthy-schools/interscholastic-athletics#MiddleandJuniorHighSchoolAthleticsManual-6828> (last accessed Aug. 20, 2024).

the organization’s constitution and bylaws,<sup>36</sup> which include rules and regulations that are substantively similar to those adopted by the NCHSAA.

In developing new permanent rules, the SBE has largely incorporated long-standing rules and regulations of the NCHSAA, except where limited by state law.<sup>37</sup> The SBE acknowledges that the NCHSAA Handbook, CAA4SC Constitution and Bylaws, and SBE Middle and Junior High School Athletics Handbook are not as a technical matter part of the “regulatory baseline” for purposes of G.S. 150B-21.4. The SBE believes it is important to share this context, however, so that state and government agencies as well as concerned members of the public understand that the adoption of these rules is not, in practice expected to meaningfully increase the financial or regulatory burden on most PSUs or students.

## Areas of SBE Discretion

The SBE has identified the following discretionary aspects of the rules that merit further discussion. Some are anticipated to have a direct or indirect financial and regulatory impact. Others are not anticipated to have a meaningful impact but warrant an explanation as to why.

### Extension of Athletic Trainer Rule

As noted above, the SBE is proposing two amendments to Rule .0206 (Athletic Trainers). First, the rule extends its application from local school administrative units to all PSUs, including charter schools. This change reflects the mandate in G.S. 115C-407.55 that the SBE adopt rules related to student health and safety in interscholastic athletics for all public school units, not just local school administrative units. It also furthers the goals of the Gfeller-Waller Concussion Awareness Act by ensuring that students at the 82 charter high schools in North Carolina who participate in interscholastic athletics have trained professionals on site for athletic events with a high risk of concussion and head injuries to provide first aid to students who suffer from such injuries.

Second, the rule expands the circumstances at which an athletic trainer or first responder must be present from games and practices for football only to football *and* wrestling. Wrestling is one of the sports with the highest risk of concussion or head-related injury, with an estimated 0.17 concussions for every 1,000 “athletic exposures” (one athletic exposure is defined as **one** athlete participating in **one** game or practice) among youth athletes under 18 years of age.<sup>38</sup> Moreover, a recent study published in the *Journal of Sports Medicine and Physical Fitness* found that wrestling-related concussions and close head injuries predominately occur in high school-age athletes who, due to the unique nature and culture of the sport, are more likely to attribute it to “normal training-related fatigue” and therefore underreport symptoms.<sup>39</sup> In light of this evidence, the SBE has concluded that requiring athletic trainers at wrestling-related events is an important and reasonable step to increase student safety.

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<sup>36</sup> See "Documents," CAA4SC, <https://www.thecaa4sc.com/documents> (last accessed Aug. 20, 2024).

<sup>37</sup> For example, prior to 2021, neither SBE rules nor NCHSAA rules included an attendance requirement in their student eligibility requirements, instead leaving that to local policy. G.S. 115C-407.55(1)c., however, specifically required the SBE to adopt an attendance rule.

<sup>38</sup> “What Sport Has the Most Concussions?” COMPLETE CONCUSSIONS, Dec. 6, 2018, <https://completeconcussions.com/concussion-research/concussion-rates-what-sport-most-concussions/> (last accessed Aug. 30, 2024).

<sup>39</sup> Kevin Pirruccio *et al.*, “Wrestling-Related Concussions and Closed Head Injuries Predominantly Occur in High School Age Athletes,” 61(3) *J. SPORTS MED. PHYS. FITNESS* 407–12 (Mar. 2021).

As with many other changes to the SBE rules, these changes reflect current NCHSAA regulations that have already been adopted by most participating schools. As such, the SBE rule changes will not present any actual change for these schools. For the purposes of rulemaking, however, the existing SBE rule governs. Accordingly, this analysis focuses on the projected cost of (1) extending the requirements of the rule to charter schools, and (2) expanding the circumstances in which an athletic trainer or first responder is required to be present to include wrestling practices and matches.

The cost of these new provisions will largely depend on decisions made at the school level within the range of flexibilities offered by the rule. Data provided by the NCHSAA indicate that, of its 443 member schools entering the 2024-2025 school year:

- 225 schools have designated only a licensed athletic trainer.
- 92 schools have designated only a first responder.
- 97 schools have designated a combination of athletic trainers and first responders.
- 27 schools have not designated an athletic trainer or first responder.<sup>40</sup>
- 2 schools have not reported their designation as of the date of this fiscal note.<sup>41</sup>

Data provided by the NCHSAA from the 2023-2024 school year indicates that, of the 288 athletic trainers currently employed for the purposes of 16 NCAC 06E .0206:

- 215 were full-time employees of the PSU.
- 15 were part-time employees of the PSU.
- 58 did not report their employment status, but the NCHSAA postulates that their role is limited to attending football games and wrestling matches, thus effectively rendering them part-time.

According to the NCHSAA, for those participating schools that rely on designated first responders, those individuals typically fit one of the following profiles:

- Current employees of the PSU, such as a physical education or health teacher, whose job duties include serving as a first responder.
- Paid first responders who are not otherwise employed by the PSU.
- School nurses.
- Local EMTs.
- Unpaid volunteers.

Accordingly, for the 82 charter schools that are not currently required by SBE rule to designate a licensed athletic trainer (or, in practice, the 24 charter schools that are not members of the NCHSAA), the financial impact of this requirement will vary depending on their approach to compliance. If the school assigns the athletic trainer or first responder duties as part of a current employee's job responsibilities, or designates an unpaid volunteer, the financial impact could be zero.<sup>42</sup> If, on the other hand, the school chooses to hire someone on a part-time or full-time basis to fill this role, the school will incur that cost. Given the variety of options available, attempting to project the cost of this rule changes on a statewide basis would be

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<sup>40</sup> These 27 schools do not field football or wrestling programs, therefore rendering application of this rule to those schools moot.

<sup>41</sup> The data includes 4 nonpublic parochial schools that are not subject to SBE rules. However, given that these schools constitute less than one percent of the NCHSAA membership, the effect of their inclusion in this data is negligible.

<sup>42</sup> To be sure, if the PSU designates an existing employee as a first responder or athletic trainer, any time devoted to these additional duties may create an opportunity cost for that employee relative to the employee's other duties.

impractical and of little value; instead, this fiscal note focuses on the potential *per school* cost of the rule changes.

According to the National Athletic Trainers' Association ("NATA"), the average annual salary for a secondary school athletic trainer in North Carolina is approximately **\$60,000**. Thus, the high-end cost for an individual PSU employing a full-time athletic trainer would be **\$60,000 annually**, not including benefits. The SBE anticipates that these costs would come from local funds appropriated to the charter school by the local school administrative unit under G.S. 115C-218.105(c).

The SBE has concluded that it is highly unlikely that all charter schools participating in interscholastic athletics that do not currently employ a full-time athletic trainer will hire one in response to this rule. As an initial matter, the 24 charter schools that are members of the CAA4SC do not have football programs, meaning that the rule would only require a designated athletic trainer or first responder at wrestling matches. Accordingly, those schools would likely find no need for a full-time athletic trainer. In addition, the data from the NCHSAA referenced above suggests that at least some of those schools would choose to employ a part-time athletic trainer or designate a first responder.

If a school chooses to employ a part-time athletic trainer, the cost will vary depending on whether the charter school offers football, wrestling, or both as part of its athletic program. The NCHSAA reports that, for state championship events organized and financed by the organization, it pays **\$40 per hour** for an onsite athletic trainer.<sup>43</sup> The NCHSAA further reports that the designated athletic trainer or first responder for each participating school typically spends **12-15 hours per week** during football season fulfilling their responsibilities under NCHSAA regulations (and current SBE rule). Assuming a charter school offering football employs a part-time athletic trainer at a comparable rate to the NCHSAA, the estimated weekly cost for employing an athletic trainer would be between **\$480 and \$600 per week**. The average football season lasts **13 weeks**,<sup>44</sup> meaning the total estimated cost of employing a part-time athletic trainer for one football season would be between **\$6,240 and \$7,800**.<sup>45</sup>

A similar calculation can be used to estimate the cost of extending the SBE rule to cover wrestling. According to the NCHSAA, the designated athletic trainer or first responder for each participating school typically spends between **2-15 hours per week** per week during wrestling season fulfilling their responsibilities under NCHSAA regulations. This wider range reflects the variable nature of wrestling matches, which can include one two-team match in a week (approximately 2 hours) to a multi-team, multi-day tournament (up to 24 hours over 2-3 days). Assuming a charter school offering wrestling employs a part-time athletic trainer at a comparable rate to the NCHSAA, the estimated weekly cost for employing an athletic trainer would be between **\$80 and \$960 per week**. The average wrestling season lasts **13 weeks**, meaning the total estimated cost of employing a part-time athletic trainer for one wrestling season would be between **\$1,040 and \$12,480**.

As noted above, the SBE rule provides flexibility to schools to determine how best to fulfill the rule's obligations based on the structure and scope of its interscholastic athletic programs. The above cost estimates are designed to reflect a few possible scenarios. It also bears repeating that, considering long-

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<sup>43</sup> NATA data suggests that the average hourly rate for an athletic trainer in North Carolina is closer to \$24 per hour. The SBE has conducted its analysis based on the NCHSAA rate, operating on the assumption that athletic trainers would expect a comparable rate for similar work in North Carolina. Of course, a lesser hourly rate would result in a smaller financial burden for the PSU.

<sup>44</sup> The regular season lasts 11 weeks, and postseason can last up to 6 additional weeks depending on how far a school advances in the state playoffs. Given that most schools will not advance far in the postseason, an average season of 13 weeks is assumed.

<sup>45</sup> Part-time employees are not entitled to benefits, so costs to the PSU would be limited to hourly wages.

standing NCHSAA regulations for its member schools, approximately 95% of PSUs, and all that offer football, are already subject to requirements that are substantially identical to those that this rule change will impose.

## Expansion of Student Participation Requirements

Proposed Rule .0207 sets forth the eligibility requirements for students to take participate in interscholastic athletics. The proposed rule appears to represent a significant expansion of the eligibility requirements contained in Rule .0204 as currently written. As noted above, however, the substantive provisions of Rule .0207 are mostly consistent with long-standing NCHSAA regulations as well as Paragraphs (b), (c), (d), (e), and (g) of existing Rule .0204.

Before the enactment of S.L. 2021-184, the NCHSAA had regulated interscholastic athletics in North Carolina for almost 100 years.<sup>46</sup> Over the course of that history, the NCHSAA Board of Directors has adopted and refined a complex set of student eligibility regulations designed to promote academic progress, health, safety, and fair play. At the time the SBE implemented the current temporary rules on July 1, 2024, 95% of participating high schools in North Carolina were operating under NCHSAA regulations, and the remaining 5% were operating under substantially similar regulations adopted by the CAA4SC. With the enactment of S.L. 2023-133, the NCHSAA and CAA4SC have been stripped of their independent authority to adopt student participation rules and are only permitted to adopt rules enacted by the SBE. Accordingly, it was necessary for the SBE to adopt extensive rules that those organizations previously adopted on their own to address all the substantive areas related to eligibility. The SBE has concluded that the codification of NCHSAA student participation rules, subject to specific alterations affected by G.S. 115C-407.55, not only represents the best substantive approach to rulemaking on this subject but will also involve the least amount of short-term disruption to interscholastic athletic programs in the public school system.

Although the provisions of proposed Rule .0207 that are beyond the regulatory baseline are within the SBE's discretion, the SBE has concluded that they will not have a fiscal or regulatory impact. These are largely passive requirements that a student must meet to be eligible for participation in interscholastic athletics. To the extent that the eligibility rule requires the student to take some affirmative action to retain eligibility, those actions are of the kind the SBE reasonably believes the student would pursue regardless of this rule, not because of it. For example, Paragraph (f) of Rule requires students to attend at least 85 percent of the total number of instructional days and pass at least 70 percent of courses taken in the preceding semester to retain athletic eligibility. Students are required by state law to remain enrolled in school until age 16.<sup>47</sup> Regular attendance is required, and most PSUs have existing attendance requirements that are independent of those imposed by the SBE rule. Students must pass a minimum number of course credits to graduate and are required to repeat courses that they do not pass.<sup>48</sup> Hundreds of thousands of public school students in North Carolina fulfill these requirements daily without participating in interscholastic athletics.

The rule arguably has a financial and regulatory impact on PSUs in two ways: (1) the time and resources that a principal must invest to verify the athletic eligibility of students under the principal's charge; and (2) the potential cost of covering a home school student under its catastrophic insurance policy if the PSU

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<sup>46</sup> "History of the NCHSAA," NCHSAA, <https://www.nchsaa.org/history-nchsaa/> (last accessed Aug. 30, 2024).

<sup>47</sup> G.S. 115C-378.

<sup>48</sup> See 16 NCAC 06D .0503, which sets forth the minimum state graduation requirements. Note that 16 NCAC 06D .0503 is, as of the publication of this fiscal note, undergoing an amendment process to reflect current requirements under SBE Policy GRAD-004.



chooses to allow home school students in its jurisdiction to participate in athletics. As noted above, however, both requirements are part of the regulatory baseline.<sup>49</sup>

One might argue that proposed Rule .0207 has a financial and regulatory impact because, by limiting a student's ability to participate in interscholastic athletics if the student fails to satisfy the requirements of the rule, it limits the future collegiate and economic prospects that the student may have enjoyed by virtue of the student's athletic abilities. For example, if a rising senior who is a star basketball player loses athletic eligibility in her senior year because she did not satisfy the scholastic requirements in Paragraph (f), that student could potentially miss being scouted by a top Division I college basketball program, which could in turn hamper her prospects at a future career in the WNBA. Although not insignificant, such potential costs are far too wide ranging and speculative to reasonably calculate. Moreover, such minimum academic requirements ensure that students in middle and high school prioritize education, rather than the privilege of participating in interscholastic athletics.

## Clarification of Amateur Rule

Proposed Rule .0208 includes provisions intended to maintain the amateur nature of interscholastic athletics. With the exception of the NIL provision, discussed in greater detail below, Paragraph (a) is substantively identical to Paragraph (f) of existing Rule .0204 and is therefore part of the regulatory baseline.

Paragraph (b) includes new provisions that clarify the scope of the amateur rule and outlines certain activities that the rule does not exclude. Subparagraphs (b)(1) and (b)(2) are part of the temporary rules, and all three provisions are part of long-standing NCHSAA regulations to which 95% of participating schools are accustomed. Given that these provisions are permissive, rather than restrictive, they will not have a financial or regulatory impact. On the other hand, the addition of these provisions benefits students by ensuring that they are not improperly excluded from participation in interscholastic athletics due to activities that the SBE would otherwise encourage. A North Carolina high school student competed in the 2020 Olympic Games in Tokyo in the summer before her senior year, earning a silver in swimming for the Women's 4x100 Medley Relay.<sup>50</sup> Athletic booster clubs help public schools finance quality sports equipment and facilities for their athletic programs. They also help ensure that student-athletes—the majority of whom play sports for fun, recreation, and social development, rather than in anticipation of a career as a professional athlete—incur minimal costs for doing so, thus promoting equality of access to the benefits of interscholastic athletics. Allowing students to receive compensation for assisting with youth sports programs promotes fitness and recreation among younger children and exposes them to positive role models, while also allowing students to develop leadership and mentoring skills.

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<sup>49</sup> 16 NCAC 06E .0204(g) (2023) (requiring principals to verify student eligibility each year); G.S. 115C-407.65(b) (requiring participating schools to purchase catastrophic insurance for high school athletics). The addition of a minimal number of home school students would not likely affect the premiums that a PSU pays for such group insurance coverage, thus resulting in no additional cost to a PSU that permits home school student participation. In any event, the rule does not affirmatively require PSUs to allow home-school students to participate and permits PSUs to allow their participation only if the student is independently covered by insurance. Accordingly, any costs associated with such a policy are voluntarily assumed by the PSU.

<sup>50</sup> Ashley Kairis, "17-Year-Old Cary Olympian Earns Silver in Swimming," CARY CITIZEN, Aug. 4, 2021, <https://carycitizen.news/2021/08/04/17-year-old-cary-olympian-earns-silver-in-swimming/> (last accessed Aug. 30, 2024).

## New Limitations on Recruiting and Undue Influence

Proposed Rule .0210 sets forth limitations on recruiting and undue influences by students, coaches, professional educators, and other employees of a PSU or administering organization, as required by G.S. 115C-407.55(1)f. The rule aligns with long-standing NCHSAA regulations to which 95% of participating schools are accustomed. These rules are not anticipated to have any meaningful financial or regulatory impact because they do not require any affirmative conduct on the part of a regulated party. Instead, the rule simply proscribes certain behavior, and such proscription does not affect the financial position of any of a regulated party.

## NIL

Proposed Rule .0211 establishes a framework to permit students in Grade 6 through 12 who participate in interscholastic athletics to receive compensation for the commercial use of their name, image, and likeness (“NIL”). Although the SBE has adopted temporary rules for the 2024-2025 school year that prohibit this practice,<sup>51</sup> proposed Rule .0211 would allow it, subject to reasonable regulations articulated above, beginning with the 2025-2026 school year. These regulations are consistent with those adopted by other states that have permitted NIL for high school student-athletes.

NIL is a relatively recent development that only gained national attention in 2021, when the National College Athletic Association (“NCAA”), for the first time, adopted a policy allowing collegiate student-athletes to profit from the commercial use of their name, image, and likeness. The idea of extending this opportunity to student-athletes in middle and high school is even more novel, and one that involves several considerations not attendant to collegiate athletics. Unlike colleges and universities with major sports program, North Carolina public schools are not reaping multi-million dollar profits from the athletic performances of their students. Most students participating in interscholastic athletics in North Carolina public schools are under 18 and not legally competent to enter contracts. Children under 18 are still undergoing significant social, cognitive, and emotional development that may leave them unable to fully and critically appreciate the short- and long-term ramifications of using their name, image, and likeness for commercial purposes. And although the economic opportunities available with NIL are undeniable, the primary role of our public schools is to educate students and prepare them for life after high school.<sup>52</sup>

There are legitimate concerns that come with allowing NIL at the middle and high school level. In addition to the possibility that a student’s contractual obligation to promote or endorse certain products could

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For these reasons, the SBE believed that it needed more time to carefully evaluate the NIL question than would have been afforded under the temporary rulemaking process. Indeed, a special committee of NCHSAA studied this question for several years before floating a proposed policy in the summer of 2023, and even since then their staff has recommended additional changes, reflected in the proposed rule, based on the experiences of their colleagues in other states. Accordingly, the SBE chose to prohibit students from profiting off the commercial use of NIL for the 2024-2025 school year. This effectively preserved the status quo, since the NCHSAA has historically prohibited high school students from profiting off their role as an athlete.

<sup>52</sup> See, e.g., Virginia High School League Handbook, Regulation 28B-2-4; Florida High School Athletic Association Handbook, Bylaw 9.9; Oklahoma Secondary School Activities Association, Guidelines Regarding Name, Image, and Likeness (NIL), <https://www.rcps.info/cms/lib/VA50010994/Centricity/Domain/77/Section%2028A.pdf>, (last accessed Aug. 26, 2024); [https://fhsaa.com/documents/2024/8/16//2425\\_handbook\\_update\\_81524.pdf?id=5645](https://fhsaa.com/documents/2024/8/16//2425_handbook_update_81524.pdf?id=5645) (last accessed Aug. 26, 2024); [https://ossaillustrated.com/wp-content/uploads/2023/08/MF\\_2022-23\\_NILGuidelines-1.pdf](https://ossaillustrated.com/wp-content/uploads/2023/08/MF_2022-23_NILGuidelines-1.pdf) (last accessed Aug. 26, 2024).

interfere with the student’s academic priorities or disrupt the school environment,<sup>53</sup> such deals carry risks of exploitation. In 2022, shortly after NIL deals were authorized for college athletes, NBC News reviewed a dozen written NIL offers to high school students that experts described as “exploitative, including marketing contracts claiming exorbitant commissions of up to 40% and booster contracts with complex fee structures and legal jargon, reducing the athletes’ freedom to transfer or enter outside deals.”<sup>54</sup> In light of these concerns, the proposed SBE rules are a reasonable attempt to balance economic opportunity for students with the educational mission of the public school system and the protection of students from exploitation.

This rule primarily concerns private contracts between a student and a third-party, so no state or local funds will be affected. The only impact on state or local funds will be the indirect impact on select PSU personnel—specifically, school athletic directors—in terms of additional work hours that may be required to satisfy the reporting requirements in Paragraph (h). Even then, the SBE anticipates that the average number of work hours necessary to fulfill this requirement will be *de minimis*, given that (1) the rule merely requires the athletic director to report an NIL agreement to the relevant administering organization within 30 days of disclosure by a student and (2) the SBE anticipates that there will be, at most, 1 or 2 NIL agreements per school per year (with most schools likely having zero).<sup>55</sup>

Accordingly, the only other potential basis for a fiscal analysis for this rule is whether it is likely to have a substantial economic impact. At first blush, this may appear to be the case given that a single NIL deal can exceed the \$1 million aggregate financial impact over a 12-month period established by G.S. 150B-21.4(b1).<sup>56</sup> However, considering that, as compared to the regulatory baseline, the proposed rule is more restrictive, the fiscal and regulatory impact is limited to the potential cost of those restrictions. Paragraphs (e), (f), and (g) of the proposed rule place restrictions on NIL agreements, but none of those provisions are anticipated to meaningfully impair the potential economic value of an NIL contract offered to a middle or high school student-athlete, much less rise to the level of substantial economic impact.

Paragraph (e) prohibits the student from referencing the student’s school, PSU, conference, or administering organization, or utilizing the uniform or trademarks thereof. The SBE does not anticipate that this provision, common in other states’ rules related to NIL for high school students, will limit the potential value of an NIL agreement. By definition, NIL agreements are premised on the perceived economic value of the student’s individual “brand” as a student-athlete, often connected to a student’s prominent presence on social media (i.e., number of followers, number of views of the student’s content).<sup>57</sup> The value of this “brand” is not linked to the school the athlete attends but to the individual, in contrast to the collegiate model where a student-athlete may receive a percentage of profits from the sale of a jersey with the athlete’s

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<sup>53</sup> See John E. Johnson, “Name, Image and Likeness for Interscholastic Athletes – What Does it Look Like?,” Nov. 8, 2023, NFHS, [nfhs.org/articles/name-image-and-likeness-for-interscholastic-athletes-what-does-it-look-like/](https://nfhs.org/articles/name-image-and-likeness-for-interscholastic-athletes-what-does-it-look-like/) (last accessed Aug. 24, 2024).

<sup>54</sup> Kit Ramgopal, Kenzi Abou-Sabe, and Gabe Gutierrez, “‘There’s Not Rules. It’s Crazy.’: New Money in NCHSAA Recruiting Leaves Elite Athletes Ripe for Exploitation,” NBC NEWS, Nov. 27, 2022, <https://www.nbcnews.com/news/us-news/star-high-school-athletes-can-now-profit-nil-deals-rcna51075> (last accessed Aug. 30, 2024).

<sup>55</sup> See Elizabeth Heubeck, “High School Athletes Can Profit from Brand Deals, What That Means for Schools,” EDUCATION WEEK, Aug. 6, 2024, <https://www.edweek.org/leadership/high-school-athletes-can-profit-from-brand-deals-what-that-means-for-schools/2024/08> (last accessed Aug. 26, 2024) (noting that less than 1 percent of the nearly 8 million high school student-athletes nationwide are signing lucrative NIL deals).

<sup>56</sup> For example, the top five quarterback prospects in the high school Class of 2025 have an average NIL valuation of \$1 million. Pete Nakos, “On3 NIL Valuation: High School Quarterback Averages,” ON3, June 27, 2024, <https://www.on3.com/nil/news/on3-nil-valuation-high-school-quarterback-averages/> (last accessed Aug. 26, 2024).

<sup>57</sup> See Johnson, *supra*, at n. 53.

name and number, or where the institution otherwise profits off the student's brand and name.<sup>58</sup> Indeed, for high school athletes, the interest lies less with the high school the student attends than the college or university that they *could* attend, or the professional team by which the student *could* be drafted.<sup>59</sup> Moreover, any NIL agreement premised on the use of trademarked property of a school, PSU, or administering organization would present independent legal concerns related to copyright infringement. For these reasons, the SBE does not anticipate such expectations would be incorporated in the typical NIL agreement, and therefore this restriction will not have a substantial economic impact.

Paragraph (f) prohibits students from endorsing or promoting the goods or services of any third-party entity with which the student has entered an NIL agreement during an interscholastic athletic competition or school-based event.<sup>60</sup> The SBE does not anticipate that this provision, common in other states' rules related to NIL for high school students, will limit the potential value of an NIL agreement. As previously noted, much of the NIL market for students focuses on their social media presence and conduct outside the school environment.<sup>61</sup> Moreover, efforts by *any* student, including a student-athlete, to promote or endorse the goods or services of a third party during the school would likely run afoul of local PSU policies.<sup>62</sup> For these reasons, the SBE does not anticipate such expectations would be incorporated in the typical NIL agreement, and therefore this restriction will not have a substantial economic impact.

Finally, Paragraph (g) prohibits students from entering an NIL agreement to promote certain products or services. The SBE does not anticipate that this provision, common in other states' rules related to NIL for high school students, will limit the potential value of an NIL agreement. Most of the products or services enumerated by this provision are ones that the typical middle or high school student would not legally be allowed to purchase or use due to the student's age (most middle and high school students are under 18 and vanishingly few are 21). In some cases, such deals might be otherwise prohibited by law.<sup>63</sup> Third parties producing such products thus have little incentive to strike an NIL deal with a student-athlete in middle or high school. For these reasons, the SBE does not anticipate any student-athlete being offered such a deal, nor has research by the SBE has found no evidence of such deals in other states. Accordingly, this restriction will not have a substantial economic impact.

## Clarification of Appeals Process

Proposed Rule .0215 sets for the process for appealing the final decision of a rule administrator regarding the administration or enforcement of SBE interscholastic athletics rules to an independent appeals board

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<sup>58</sup> *Id.*

<sup>59</sup> *See, e.g.,* Gary Adornato, "North Carolina's Top 10 High School Football Recruits: Where They Signed," SPORTS ILLUSTRATED, Dec. 20, 2023, <https://www.si.com/high-school/north-carolina/2023/12/20/north-carolinas-top-10-football-recruits-where-they-signed> (last accessed Aug. 26, 2024).

<sup>60</sup> To be clear, the rule only prohibits such promotions or endorsements pursuant to an NIL agreement. Nothing would prevent any student, whether a student-athlete or not, from informally recommending or endorsing a product of the student's own volition.

<sup>61</sup> *See* Johnson, *supra*, at n. 53.

<sup>62</sup> *See, e.g.,* Wake County Public School System Policy 5220, [https://boardpolicyonline.com/bl/?b=wake\\_new#&&hs=420390](https://boardpolicyonline.com/bl/?b=wake_new#&&hs=420390) (last accessed Aug. 26, 2024) (prohibiting students, school organizations and others from selling commercial products during the instructional day).

<sup>63</sup> *See, e.g.,* "Marketing of Tobacco to Children and Youth," National Association of Secondary School Principals, <https://www.nassp.org/marketing-of-tobacco-to-children-and-youth/#:~:text=In%201998%2C%20the%20attorneys%20general,promotional%20activities%2C%20or%20engagin%20in> (last accessed Aug. 26, 2024) (discussing the 1998 settlement agreement between the United States Attorney General and the nation's largest tobacco companies prohibiting manufacturers from "directly or indirectly targeting youth in their promotional activities, or engaging in activities with the primary purpose of initiating, maintaining, or increasing youth smoking").

appointed by the Superintendent of Public Instruction. The basic framework of proposed Rule .0215 finds its substantive antecedent in Paragraph (m) of existing Rule .0204 and is therefore part of the regulatory baseline. The new rule, however, contains some modifications necessary to comply with the statutory changes in S.L. 2023-133 and clarifies other aspects of the rule.

First, the new rule states that the Superintendent, rather than the State Board, appoints the members of the appeals board, as required by G.S. 115C-407.55(4). Second, the rule specifies what information an aggrieved party must submit as part of their appeal. This reflects the SBE's desire to provide more structure for the process and to switch from freewheeling written responses to a standardized appeal form. Third, it removes the requirement that the parties to an appeal serve all documents on the other parties, thus permitting them to be shared electronically and reducing the regulatory burden. Fourth, the rule clarifies that the appeals panel will not consider evidence on appeal that was not presented to the rule administrator in the first instance and allows the appeals board to remand a case if a party presents new evidence on appeal. This preserves the appeals board's intended status as an appellate body, which typically only reviews issues of law based on a complete record. Fifth, it allows the Superintendent or the Superintendent's authorized designee to stay a decision of a rule administrator pending the final judgment of the appeals board. This reflects the SBE's desire to allow the appeals board sufficient time to review a case, such as when an aggrieved party appeals a penalty that disqualifies them from participating in an imminent interscholastic athletic contest. Finally, it allows any "aggrieved party," as defined in proposed Rule .0201, to file an appeal, rather than just a PSU. This change was necessary to comply with the requirements of G.S. 115C-407.55(4), as amended by S.L. 2023-133.

This rule has no direct financial impact because there is no fee associated with filing an appeal, and members of the appeals board serve voluntarily. There is at most a *de minimis* regulatory impact on students and parents that choose to file an appeal, which consists of time spent completing an appeal form, compiling supporting documentation, and attending at hearing that lasts at most for one hour. Moreover, it is important to note that no student or parent is required to file an appeal, such that any time expended preparing such an appeal is voluntarily assumed.

The regulatory impact of these rules is limited to the additional workload that it may impose on State employees of the SBE and DPI and on employees of PSUs, which in turn creates an opportunity cost of lost productivity in other areas of responsibility for those employees. Although some of this additional workload is baked into the regulatory baseline because the appeals process is part of existing Rule .0204 and the affected employees have been performing this work for over a year, the expansion of the appellate right from exclusively PSUs to any "aggrieved party" could increase that workload. Arguably, this additional workload should also be baked into the regulatory baseline because the expansion of the appellate right is required by G.S. 115C-407.55(4), as amended by S.L. 2023-133. Nevertheless, in the interest of being thorough and transparent, this fiscal note includes a brief analysis of the workload requirement.

If a PSU chooses to appeal a decision of an administering organization, a representative of the PSU (usually the athletic director or principal of the participating school involved) must complete an appeal form, compile supporting documentation, and attend at hearing that lasts at most for one hour. The SBE estimates that the average appeal takes approximately **3-5 hours** of professional work time for the PSU representative, with the exact time commitment varying based on the complexity of a case.<sup>64</sup>

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<sup>64</sup> For example, if the PSU is appealing a final decision of an administering organization rendering a student ineligible due to the student's failure to pass the requisite percentage of attempted courses in the preceding semester, preparation for the appeal could be as simple as obtaining the student's transcript. On the other hand, if the student is appealing a finding by the administering organization that a student transferred schools for athletic purposes in violation of the transfer rule, preparation could involve interviewing and obtaining statements from witnesses and collecting evidence demonstrating other reason for the transfer.

The Superintendent of Public Instruction has delegated oversight of the appeals process to two staff attorneys as part of their regular job responsibilities. For a single appeal, the attorneys must conduct an initial evaluation of the appeal to ensure that it is properly filed, identify three panel members to review the case, schedule a hearing, and serve as a communication link between the panel and the various parties to the case. Staff attorneys also draft letters on behalf of the panel communicating the final judgment of the panel in the appeal. The SBE estimates that the average appeal takes approximately **4-5 hours** of professional work time for the staff attorneys collectively.

Between July 1, 2022, when the appeals process was first introduced, and June 30, 2024, the appeals board reviewed **16 appeals** from final decisions of the NCHSAA, an average of eight per school year. Since July 1, 2024, the appeals board has reviewed **two appeals**, both concerning individual student eligibility heading into the 2024-2025 school year. Both appeals were filed by a PSU on behalf of the students involved, notwithstanding the direct right of appeal that students now have under the temporary rules and will continue to enjoy under the permanent rules. It is too early in the new process to know whether the change in the appellate rules will significantly increase the number of appeals that the staff attorneys are required to manage. While additional full-time or part-time staff may be necessary to oversee this process in the future if the volume of appeals increases, there are no immediate plans to create such positions.

## No Substantial Economic Impact

As previously noted, the SBE concludes that it is highly unlikely that the interscholastic athletics rules will have a substantial economic impact, as defined in G.S. 150B-21.4(b1), when compared to the regulatory baseline.

## Summary

As this fiscal note has made clear, notwithstanding the breadth and scope of the SBE's proposed rules on interscholastic athletics, their real-world financial and regulatory cost is projected to be minimal. Except for the expansion of proposed Rule .0206 to apply to charter schools and to cover athletic activities related to wrestling, which may require some expenditures by those institutions to hire an athletic trainer, the new rules are not expected to require the expenditure of state or local funds. In terms of indirect costs, the new rules may require additional work requirements for select SBE, DPI, and PSU employees, but the SBE does not anticipate the need to hire additional staff or appropriate additional funds to satisfy these requirements. The rules are not anticipated to have a substantial economic impact. Indeed, given the history of interscholastic athletics in North Carolina and fact that most of these rules follow long-standing regulations of the NCHSAA, the SBE does not anticipate that these rules will significantly impact the current practices of the public school system, its constituent PSUs, or its student-athletes.

On the other hand, the proposed rules bring several financial and regulatory benefits. Proposed Rule .0206 increases student safety by requiring all public schools to have an athletic trainer or first responder at wrestling activities, in addition to football activities, and promotes equity by extending those requirements to charter high schools. Proposed Rule .0207 ensures that long-standing and well-developed rules regarding student eligibility continue to be enforceable moving forward now that administering organizations like the NCHSAA and CAA4SC have lost their authority to independently adopt eligibility rules. Proposed Rule .0208 clarifies that certain types of activities that the SBE as a matter of policy wishes to encourage and promote, including student participation in the Olympics or involvement with youth sports programs, will not affect their athletic eligibility. Finally, proposed Rule .0211 imposes important guardrails around the emerging phenomenon of NIL to increase transparency and protect students from the possibility of

exploitation. The SBE believes that these proposed rules will promote long-term stability, success, and fairness for interscholastic athletics in the North Carolina public school system.



# Appendix A - Copy of Proposed Rules

16 NCAC 06E .0201 is proposed for adoption as follows:

## **SECTION .0200 - ~~SCHOOL ATHLETICS AND SPORTS MEDICINE~~ INTERSCHOLASTIC ATHLETICS**

### **16 NCAC 06E .0201      DEFINITIONS**

As used in this Section, the following definitions apply:

- (1) "Administering organization" is defined in G.S. 115C-407.50(1).
- (2) "Aggrieved party" means a student, coach, participating school, PSU, or other party that is directly and adversely affected by a final decision of a rule administrator including a determination of ineligibility under Rule .0207 of this Section, a penalty imposed under Rule .0209 of this Section, or a finding of undue influence or a recruiting violation under Rule .0210 of this Section. If a student is affected, the student's parent shall be allowed to appeal the final decision pursuant to Rule .0215 of this Section.
- (3) "Bona fide purpose" means a purpose not primarily related to participation in interscholastic athletics.
- (4) "Final decision" means a written decision of a rule administrator regarding the application or enforcement of rules under this Section to a set of facts or circumstances.
- (5) "Initial entry" means:
  - (A) a student's first day of attendance at a participating school in which the student is enrolled as recorded by that school; or
  - (B) the first day on which a student practices or otherwise participates as a member of an interscholastic athletics team at a participating school.
- (6) "Interscholastic athletics" or "interscholastic athletic activity" means any extracurricular athletic activity that:
  - (A) involves students in any Grades 6 through 12;
  - (B) is sponsored by an individual school, PSU, or administering organization; and
  - (C) includes students from more than one school or PSU.
- (7) "Local superintendent" means the superintendent of a local school administrative unit, as provided in Chapter 115C, Article 18 of the General Statutes, or the staff member with the highest decision-making authority for a PSU, if there is no superintendent.
- (8) "NFHS" means the National Federation of State High School Associations.
- (9) "Parent" is defined in G.S. 115C-407.50(6).
- (10) "Participating school" means a middle school, junior high school, or high school that elects to participate in interscholastic athletic activities.

- (11) "Principal" means a school administrator employed as the principal of a school, as provided in Chapter 115C, Article 19 of the General Statutes, or the staff member with the highest decision-making authority at a school, if there is no principal.
- (12) "Rule administrator" means any of the following:
- (A) An administering organization, when administering and enforcing the rules provided by this Section at the high school level.
- (B) A local superintendent or his or her authorized designee, when administering and enforcing the rules provided by this Section at the middle and junior high school level.
- (C) The Superintendent of Public Instruction, if necessary pursuant to 16 NCAC 06E .0204(e).

*History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60; 115C-407.65; 116-235(b);*  
*Eff. July 1, 1986;*  
*Exp. Eff. June 1, 2022 pursuant to G.S. 150B-21.3A.*  
*Temporary Adoption Eff. July 1, 2024;*  
*Eff. July 1, 2025.*

16 NCAC 06E .0204 is proposed for amendment as follows:

**16 NCAC 06E .0204     ~~INTERSCHOLASTIC ATHLETICS AND ADMINISTERING ORGANIATIONS~~**  
**~~FOR HIGH SCHOOL ATHLETICS~~     ADMINISTRATION OF**  
**INTERSCHOLASTIC ATHLETICS**

**(a) Definitions:**

- (1) ~~"Administering organization" is defined in G.S. 115C 407.50(1).~~
- (2) ~~"Participating school" is defined in G.S. 115C 407.50(7).~~
- (3) ~~"Public school unit" (PSU) is defined in G.S. 115C 5(7a).~~

~~(b) PSUs are authorized to determine whether and to what extent students in grades 6 through 12 may participate in interscholastic athletics, provided students in grade 6 are not eligible to participate in tackle football. This Rule shall not apply to charter school athletic programs in kindergarten through grade 8.~~

**(c) ~~To participate in public school interscholastic athletics, a student shall meet the following requirements:~~**

- (1) ~~A student who attends a school supervised by a local board of education shall only participate in the school to which the student is assigned under G.S. 115C 366. A student enrolled in a charter, regional, statewide public school, or school operated by the University of North Carolina, shall meet all the enrollment criteria for that school and attend that school. If a student is over the age requirements for the school the student attends, the student may participate at the school to which the student would be assigned or attend at the next higher grade level.~~

~~(2) — A student shall meet the age requirements at each grade level to participate. PSUs shall determine the age of participating students based on a preponderance of the evidence known to them. A student ineligible to participate at one grade level due to age shall be eligible to participate at the next higher grade level only, provided no student shall be eligible to participate at the middle school level for a period lasting longer than six consecutive semesters, beginning with the student's entry into grade 6, and no student shall be eligible to participate at the high school level for more than eight consecutive semesters, beginning with the student's first entry into grade 9 or participation on a high school team, whichever occurs first.~~

~~(A) — A student shall not participate on a grade 6, 7, or 8 team if the student becomes 15 years of age on or before August 31 of that school year.~~

~~(B) — A student shall not participate on a grade 9 through 12 team if the student becomes 19 years of age on or before August 31 of that school year.~~

~~(d) To be eligible to participate during any semester in grades 6, 7, or 8, the student shall have passed at least one less course than the number of required core courses the prior semester and meet promotion standards established by the PSU, provided a student who is promoted from grade 5 to grade 6 shall be deemed to have satisfied the requirement set forth in this Paragraph to participate in the first semester of grade 6. To be eligible to compete during any semester in grades 9 through 12, the student shall have passed at least five courses (or the equivalent for non-traditional school schedules) the prior semester and meet promotion standards established by the PSU, provided a student who is promoted from grade 8 to grade 9 shall be deemed to have satisfied the requirement set forth in this Paragraph to participate in the first semester of grade 9.~~

~~(e) To be eligible to participate, a student shall receive a medical examination every 395 days by a licensed physician, nurse practitioner, or physician assistant, subject to the provisions of G.S. 90-9.1, G.S. 90-9.2, G.S. 90-9.3, G.S. 90-18.1, and G.S. 90-18.2.~~

~~(f) A student shall not participate in interscholastic athletics after any of the following:~~

~~(1) — graduation, except that the student may continue to participate in playoff and state championship contests in spring sports after graduation;~~

~~(2) — signing a professional athletic contract, except that the student may continue to participate in any sport for which the student has not signed a professional contract;~~

~~(3) — receiving remuneration as a participant in an athletic contest, except that the student may accept a gift, merchandise, trophy, or other thing of value, provided:~~

~~(A) — the value does not exceed two hundred fifty dollars (\$250.00) per student per sports season;~~

~~(B) — the item is totally consumable and nontransferable, or labeled in a permanent manner, for example, monogrammed or engraved items; and~~

~~(C) — the item is approved by the student's principal and superintendent; or~~

~~(4) — participating on an all star team or in an all star game that is not sanctioned by the administering organization of which the student's school is a member, provided the student shall be ineligible only for the specific sport involved.~~

~~(g) Each PSU shall require the principal of a school that participates in interscholastic athletics to sign and date a list of eligible students for each sport. The PSU shall maintain copy of the most current list in the principal's office and the office of the superintendent.~~

~~(h) A PSU shall impose at least the following penalties on a student, coach, or school official in grades 6 through 12 who is ejected from an interscholastic athletic contest:~~

- ~~(1) — for the first offense, the person shall be reprimanded and suspended from participating in the next game at that level of play (varsity or junior varsity);~~
- ~~(2) — for a second offense, the person shall be placed on probation and suspended from participating in for the next two games at that level of play (varsity or junior varsity);~~
- ~~(3) — for a third offense, the person shall be suspended for one calendar year; and~~
- ~~(4) — a coach who is suspended shall not coach any team for any grade level during the period of suspension.~~

~~Penalties are cumulative from sport to sport and from sport season to sport season. If no member of the school's coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.~~

~~(i) (a) PSUs The governing body of a PSU may allow high schools under ~~their~~ its jurisdiction to belong to an administering organization designated by the ~~State Board of Education~~, Superintendent of Public Instruction.~~

~~(j) (b) An administering organization that has entered into a memorandum of understanding with the ~~State Board of Education~~ Superintendent for the purpose of administering interscholastic athletics under this ~~Rule~~ Section shall apply and enforce all of the requirements of this ~~Rule~~. Section. An administering organization shall provide training and resources to ensure that all students, parents, and PSU personnel involved in the administration of interscholastic athletics understand and comply with the provisions of this Section.~~

~~(k) (c) The If the Superintendent enters a memorandum of understanding with one or more administering organizations consistent with G.S. 115C-407.61, the State Board of Education shall delegate to an administering organization the administering organization(s) its authority over participating schools that are members of the administering organization to:~~

- ~~(1) — waive any student eligibility requirement contained in this Rule, if it finds in a particular case that the requirement fails to promote academic progress, health, safety, and fair play, or it works an undue hardship on a student who has lost eligibility due to circumstances that made participation impossible such as prolonged illness or injury or if a waiver is necessary to reasonably accommodate a student's disability, as required under the Americans with Disabilities Act, U.S.C. 1201 et seq;~~
- ~~(1) Apply and enforce student participation rules, as established in Rule .0207 of this Section.~~
- ~~(2) Waive any student participation rule as applied to a specific student, in accordance with Rule .0207(k) of this Section.~~
- ~~(3) Apply and enforce student health and safety requirements, as established in Rule .0205 of this Section.~~
- ~~(2) (4) adopt, Adopt, apply, and enforce penalty rules rules, as defined in G.S. 115C-407.55(3) 115C-407.55(3), that establish a system of demerits that includes reprimands, probations, suspensions,~~

forfeitures of contests, forfeitures of titles, and ~~disqualifications~~; disqualifications, consistent with Rule .0209 of this Section.

~~(3)~~ (5) ~~adopt~~, Adopt, apply, and enforce administrative rules, as defined in G.S. ~~115C-407.55(5)~~; 115C-407.55(5).

~~(4)~~ (6) ~~adopt~~, Adopt, apply, and enforce gameplay rules, as defined in G.S. ~~115C-407.55(6)~~; 115C-407.55(6).

~~(5)~~ (7) ~~establish and collect~~ Collect from all its members a uniform membership fee of either:

(A) one thousand dollars (\$1,000) for each participating school, or

(B) one dollar (\$1.00) for each student enrolled in a participating school.

~~(4)~~ (d) An administering organization shall:

(1) ~~enter~~ Enter into a memorandum of ~~understanding~~ understanding, consistent with the requirements of G.S. 115C-407.55(8) and 115C-407.61, with the State Board of Education Superintendent no later than March 15 prior to the academic start of the school year in which it is to begin administering interscholastic athletics and no later than the March 15 before the expiration of an existing memorandum of understanding;

(2) ~~submit~~ Submit an audit report signed by an independent certified public accountant or accounting firm, which is in good standing with the North Carolina State Board of Certified Public Accountant Examiners and performs no other tasks or functions for the administering organization besides the annual audit, to the State Board of Education no later than March 15 each year;

(3) ~~broadcast~~ Broadcast the meetings of its membership and board of directors in a manner that is announced on its website and which may be viewed electronically by any member of the public;

(4) ~~provide~~ Provide to the State Board of Education within 30 days any requested organizational records, such as, financial information, annual audit reports, and any matters related to or impacting participating schools;

(5) ~~enter~~ Enter into written agreements with PSUs that allow their eligible schools to participate in interscholastic athletics, which agreements shall include an explanation of the fees to be charged, the obligations of the PSU and participating schools, penalties for the violation of this ~~Rule Section~~ that may be imposed, and an explanation of the process to ~~contest or appeal adverse decisions; and file an appeal pursuant to Rule .0215 of this Section; and~~

(6) ~~publish~~ Publish the organization's rules through a link on the home page of its website.

~~(m) State Board of Education will appoint an appeals board to hear and act upon appeals from final decisions of an administering organization, or from the Department of Public Instruction if necessary pursuant to G.S. 115C-407.60(b), regarding student eligibility, penalties, fees imposed, retaliation, or discrimination. Panels of no fewer than three members of the appeals board may hear and decide matters on behalf of the board. A PSU aggrieved by a final decision of the administering organization may file an appeal with the State Board of Education's Office of General Counsel within five days after receipt of the administering organization's final decision.~~

~~The final decision shall be mailed to the Superintendent or board of trustees of the PSU.~~

- ~~(1) The administering organization's final decision shall contain:
    - ~~(A) findings of fact;~~
    - ~~(B) conclusions of law, including citation to any rules related to the decision;~~
    - ~~(C) a description of any penalties; and~~
    - ~~(D) a statement that the PSU may file a notice of appeal within five days of receipt of the administering organization's decision by mailing the notice to the State Board of Education's Office of General Counsel, 301 S. Wilmington Street, Raleigh, N.C. 27601, and emailing a copy of the notice of appeal to Office of General for the State Board of Education.~~~~
  - ~~(2) The PSU's appeal shall:
    - ~~(A) be in writing;~~
    - ~~(B) include a description of the facts of the dispute;~~
    - ~~(C) include any evidence submitted to the administering organization; and~~
    - ~~(D) present an argument explaining why the PSU believes the administering organization's final decision was not based on substantial evidence as defined in G.S. 150B 2(8c) or is affected by an error of law.~~~~
  - ~~(3) The administering organization may file a response to the PSU's submissions within five days. The panel may shorten the time for filing the administering organization's response if the decision affects a student's or coach's eligibility to participate in an intervening athletic contest.~~
  - ~~(4) All documents filed in the appeal shall be simultaneously served on all parties in the manner prescribed in G.S. 1A 1, Rule 5 of the North Carolina Rules of Civil Procedure.~~
  - ~~(5) Any hearing shall be recorded.~~
  - ~~(6) No later than 30 days after the State Board of Education's receipt of the appeal, a panel of the appeals board shall issue its decision. The panel shall affirm the administering organization's final decision unless a majority of the panel determines that the final decision is not supported by substantial evidence or is affected by an error of law.~~
  - ~~(7) The panel's decision shall be final.~~
- ~~(a) The PSU that has jurisdiction over a school may impose penalties in addition to those required by an administering organization.~~
- ~~(c) In the event that the Superintendent is unable to enter a memorandum of understanding with one or more administering organizations in accordance with this Rule, the SBE shall delegate all authority and responsibility provided to an administering organization by this Section to the Superintendent.~~
- ~~(f) A PSU, participating school, PSU employee, or student seeking to report allegations of intimidation or harassment by an administering organization shall file a report with the Superintendent. The report shall be in writing and include a detailed description of the factual basis for the allegations.~~
- ~~(g) The Superintendent shall be responsible for general oversight of interscholastic athletic activities at participating middle and junior high schools. The local superintendent or his or her authorized designees shall apply and enforce~~

the requirements of this Section for participating middle and junior high schools under the jurisdiction of a PSU. The local superintendent or his or her authorized designee may also waive any student participation rule as applied to a specific student enrolled at a middle or junior high school under the jurisdiction of the PSU, in accordance with Rule .0207 of this Section.

(h) Any person or PSU seeking to inquire about or report a violation of any rule enforced by a rule administrator shall direct the initial inquiry or report to the appropriate rule administrator in accordance with the policies and procedures adopted by the rule administrator.

(i) For any question or dispute involving the enforcement of any interscholastic athletics rule provided by this Section, the relevant rule administrator shall render a final decision within 10 business days. The rule administrator's final decision shall contain:

- (1) Findings of fact.
- (2) Conclusions of law, including a citation to and copy of any rules related to the decision.
- (3) A description of any penalties imposed.
- (4) Instructions on how the aggrieved party may file a notice of appeal with the Superintendent and a notice that the appeal must be filed within five days after receipt of the final decision.

(j) An aggrieved party seeking to appeal a final decision with the Superintendent shall do so in accordance with Rule .0215 of this Section.

(k) Nothing in this Section shall be construed as restricting the independent authority of a PSU to further limit or regulate student participation in interscholastic athletics or other extracurricular activities in accordance with local policies adopted by the governing body of the PSU. Limitations or regulations imposed under local policies shall not be subject to appeal under Rule .0215.

*History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50, 115C-407.55; 115C-407.60; 115C-407.65; 116-235(b);  
Emergency Adoption Eff. August 20, 2019;  
Eff. March 1, 2021;  
Temporary Amendment Eff. July 1, 2022;  
Amended Eff. July 1, 2023;  
Temporary Amendment Eff. July 1, 2024;  
Amended Eff. July 1, 2025.*

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16 NCAC 06E .0205 is proposed for adoption as follows:

**16 NCAC 06E .0205 STUDENT HEALTH AND SAFETY**

(a) For purposes of this Rule, a concussion is defined as a traumatic brain injury caused by a direct or indirect impact to the head that results in disruption of normal brain function, which may or may not result in loss of consciousness.



(b) An administering organization shall, on an annual basis, provide a concussion and head injury information sheet to all coaches, school nurses, athletic directors, first responders, volunteers, and students who participate interscholastic athletic activities, and the parents or legal guardians of those students. The information shall include:

- (1) The definitions and symptoms of concussions and head injuries;
- (2) A description of the physiology and the potential short-term and long-term effects of concussions and other head injuries;
- (3) The medical return-to-play protocol for post-concussion participation in interscholastic athletic activities; and
- (4) Any other information deemed necessary by the PSU.

(c) School employees, first responders, volunteers, and students shall sign the information sheet and return it to the coach before participating in interscholastic athletic activities, including tryouts, practices, or competition. Parents shall sign the information sheet and return it to the coach before a child may participate in any such interscholastic athletic activities. The signed sheets shall be maintained in accordance with .0207(b) of this Section.

(d) If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with concussion, the student shall be removed from the activity at the time and shall not be allowed to return to play or practice that day. A student removed from play for exhibiting signs or symptoms consistent with concussion shall not return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such participation from one of the following:

- (1) A physician licensed under Chapter 90, Article 1 of the General Statutes with training in concussion management;
- (2) A neuropsychologist licensed under Chapter 90, Article 18A of the General Statutes with training in concussion management and working in consultation with a physician licensed under Chapter 90, Article 34 of the General Statutes;
- (3) An athletic trainer licensed under Chapter 90, Article 34 of the General Statutes;
- (4) A physician assistant, consistent with the limitations of G.S. 90-18.1; or
- (5) A nurse practitioner, consistent with the limitations of G.S. 90-18.2.

(e) Each participating school shall develop a venue-specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan must be:

- (1) In writing;
- (2) Reviewed by an athletic trainer licensed under Chapter 90, Article 34 of the General Statutes;
- (3) Approved by the principal of the school;
- (4) Distributed to all appropriate personnel;
- (5) Posted conspicuously for community and parental awareness at all athletic-sponsored venues; and
- (6) Reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses, athletic directors, and volunteers for interscholastic athletic activities.

(f) Each participating school's emergency management plan shall include:

- (1) A delineation of roles;

- (2) Methods of communication;
- (3) Available emergency equipment; and
- (4) Access to and plan for emergency transport.

(g) Each school shall maintain complete and accurate records of its compliance with the requirements of this Rule.

*History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.57; 115C-407.58; 115C-407.60;*  
*Interim Rule status conferred Eff. June 27, 2018, pursuant to S.L. 2018-114, sec. 27.(b);*  
*Emergency Rule Eff. August 20, 2019;*  
*Emergency Rule Exp. Eff. August 20, 2020;*  
*Temporary Adoption Eff. July 1, 2024;*  
*Eff. July 1, 2025.*

16 NCAC 06E .0206 is proposed for amendment as follows:

**16 NCAC 06E .0206 ATHLETIC TRAINERS**

(a) Each ~~Local Education Agency (LEA)~~ PSU shall designate for each participating high school within its jurisdiction either a licensed athletic trainer who is qualified pursuant to ~~Article 34 of Chapter 90~~ Chapter 90, Article 34 of the General Statutes of North Carolina or a first responder. These persons may be employed on a full-time or part-time basis or may serve as a volunteer.

(b) If not a licensed athletic trainer, a first responder shall:

- (1) ~~have completed and continue to~~ Complete and maintain certification in cardiopulmonary resuscitation as certified by an organization such as the American Red Cross or the American Heart Association;
- (2) ~~have completed and continue to~~ Complete and maintain certification in first aid as certified by an organization such as the American Red Cross or the American Heart Association;
- (3) ~~have completed and continue to~~ Complete and maintain training in concussion management as offered by an organization such as the ~~National Federation of State High School Associations (NFHS); NFHS;~~
- (4) ~~have completed and continue to~~ Complete and maintain continuing education in injury prevention and management as offered by an organization such as the ~~National Federation of State High School Associations (NFHS); NFHS;~~ and
- (5) ~~complete~~ Complete 10 hours total of staff development each school year specific to first aid and injury recognition and prevention. The 10 hours may include hours necessary for recertifications or renewals.

- (c) The licensed athletic trainer or first responder shall not have concurrent coaching responsibilities during the time in which the person is working as a licensed athletic trainer or first responder.
- (d) A licensed athletic trainer or first responder shall attend all ~~football games and practices~~, practices and games for both football and wrestling, unless excused by the local superintendent due to emergency.
- (e) Each ~~LEA~~ PSU shall monitor the school athletic trainer's or first responder's compliance with this Rule.

*History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60; 115C-407.65; 116-235(b);  
Emergency Adoption Eff. August 20, 2019;  
Eff. March 1, 2021;  
Temporary Amendment Eff. July 1, 2024;  
Amended Eff. July 1, 2025.*

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16 NCAC 06E .0207 is proposed for adoption as follows:

#### **16 NCAC 06E .0207 STUDENT PARTICIPATION RULES**

- (a) A student shall not participate in interscholastic athletics on behalf of a North Carolina public school unless the student has satisfied the eligibility requirements set forth in this Rule. PSUs are authorized to determine whether and to what extent students under their jurisdiction may participate in interscholastic athletics, not inconsistent with the requirements of this Rule.
- (b) Each PSU shall require the principal of a participating school to sign and date a list of eligible students for each sport. The PSU shall maintain a copy of the most current list in the principal's office and the office of the local superintendent.
- (c) Residency Requirements
  - (1) For purposes of this Rule, a student's primary residence shall be determined as follows:
    - (A) If both of the student's parents live together, the residence of both parents.
    - (B) If the student's parents are separated or divorced, the residence of the parent to whom a court of competent jurisdiction has awarded primary custody of the student. If no custody order has been entered, the student and the student's parents shall designate one parent's residence as the primary residence and communicate that designation to the participating school prior to participation in interscholastic athletic activities. The designated primary residence shall be one that would otherwise render the student eligible to attend that school in accordance with state law and the policies of the governing body of the PSU.
    - (C) If the student has only one living parent, the residence of that parent.
    - (D) If a student lives with an individual to whom a court of competent jurisdiction has awarded legal guardianship of the student, the residence of that individual.

(E) If a student has been emancipated in accordance with Chapter 7B, Article 35 of the General Statutes, the student's residence at the time of emancipation.

(F) If a student is a foreign national participating in a foreign exchange program authorized by federal and state law, the residence to which the student is assigned by the program or host PSU.

(2) A student shall not participate in interscholastic athletics following a change in primary residence unless the change was made for a bona fide purpose and with the intent that it be permanent. The relevant administering organization shall resolve, by a preponderance of the evidence, any disputes regarding a high school student's primary residence or whether a change in a student's primary residence was for a bona fide purpose.

(3) Notwithstanding Subparagraph (2) and absent a transfer between participating schools as provided in Paragraph (e), a student shall be eligible to participate in interscholastic athletics on behalf of a participating school in which the student is enrolled if the student has attended any school within the jurisdiction of the same PSU as the participating school for the two preceding semesters.

(d) Enrollment Requirements

(1) A student enrolled in a school supervised by a local board of education shall only participate in interscholastic athletics on behalf of the school to which the student is assigned under G.S. 115C-366.

(2) A student enrolled in a charter school, regional school, or school operated by the University of North Carolina shall meet all the enrollment criteria for that school and attend that school. A student who attends a school described in this Subparagraph shall not participate in interscholastic athletics on behalf of that school unless the student's primary residence is within either:

(A) the county in which the school is located, or

(B) twenty-five miles of the school as determined by an administering organization.

(3) The governing body of a PSU may by policy allow a person who is enrolled in Grade 6 through 12 in a home school, as defined in G.S. 115C-563(a), to participate in interscholastic athletics on behalf of a participating school under the governing body's jurisdiction, provided that the governing body either agrees to cover any such person whom it allows to participate under its catastrophic athletic accident insurance policy or verifies that the person is independently covered by catastrophic accident insurance.

(A) If the governing body is a local board of education, the person enrolled in home school may only participate in interscholastic athletics on behalf of the school to which the student would be assigned under G.S. 115C-366.

(B) If the governing body is any other PSU governing body, the person enrolled in home school may only participate in interscholastic athletics if the person meets the primary residence requirement in Subparagraph (d)(2).

(e) Transfer Requirements

- (1) After a student's initial entry into Grade 9, and absent a change in residence for a bona fide purpose as provided in Paragraph (c) of this Rule:
  - (A) A student who transfers from one participating school to another participating school within the same PSU shall not participate in interscholastic athletics for 365 calendar days following the student's enrollment in the new school, unless the governing body of the PSU has adopted a policy allowing immediate eligibility for students who are assigned by the PSU to a different school within the same PSU.
  - (B) A student who transfers from a participating school in one PSU to a participating school in a different PSU shall not participate in interscholastic athletics for 365 calendar days following the student's enrollment in the new school, unless the governing bodies of both PSUs agree that the transfer was for a bona fide purpose.
  - (C) If the governing bodies of the PSU disagree that the transfer was for a bona fide purpose, the relevant administering organization shall resolve the dispute by a preponderance of the evidence.
- (2) After a student's initial entry into Grade 9, if a student transfers to a new school within 365 calendar days after that school hires a coach for an interscholastic athletics team who was previously employed as a coach for an equivalent sport by the school from which the student is transferring, the student shall be ineligible to participate in interscholastic athletics for that sport for 365 calendar days following the student's enrollment in the new school. An administering organization may waive this restriction if it determines by a preponderance of the evidence that the student's transfer was for a bona fide purpose.
- (3) A student who receives priority enrollment as the child of a full-time employee of a charter school pursuant to G.S. 115C-218.45(f)(3) shall not be eligible to participate in interscholastic athletics for that charter school if the Department of Public Instruction determines that the parent's employment was a fraudulent basis for the student's priority enrollment. A student determined to be ineligible under this Subparagraph shall be ineligible to participate in interscholastic athletics for 365 calendar days following discovery of the violation.
- (4) For purposes of this Paragraph, if a student transfers from a public school to a nonpublic school, including a home school as defined in G.S. 115C-563(a), and within 365 calendar days transfers to a different public school, the transfer from the nonpublic school shall be treated as a transfer from a public school.
- (5) A student who transfers to the North Carolina School of Science and Mathematics is exempt from the requirements of this Paragraph upon initial entry into that school.
- (6) No student shall participate in more than one season of interscholastic athletics per year in the same sport, regardless of the school on behalf of which the student participated.

(f) Scholastic Requirements

- (1) To be eligible to participate in interscholastic athletics, a student must be in good academic standing. For purposes of this Rule, a student shall be deemed to be in good academic standing under the following circumstances:
  - (A) The student attended at least 85 percent of the total number of instructional days in the PSU during the previous semester;
  - (B) The student passed at least 70 percent of the courses taken in the preceding semester; and
  - (C) The student is making sufficient progress toward meeting the academic and curricular requirements of the PSU and the State Board of Education to be promoted to the next grade level or to graduate within the next calendar year.
- (2) For the purpose of determining good academic standing during the fall semester, a student may count any course that the student passed in a summer school session toward the total number of courses passed in the preceding spring semester. The summer school course shall not affect the total number of courses attempted in the preceding spring semester.
- (3) A student who is promoted from Grade 5 to Grade 6 shall be deemed to have satisfied the requirements set forth in this Paragraph to participate in the first semester of Grade 6.
- (4) A student who is promoted from Grade 8 to Grade 9 shall be deemed to have satisfied the requirements set forth in this Paragraph to participate in the first semester of Grade 9.

(g) Age Requirements

- (1) Each PSU shall determine the age of a student participating in interscholastic athletics based on a preponderance of the evidence known to the PSU.
- (2) A student who is ineligible to participate at one grade level due to age shall be eligible to participate at the next higher grade level only, provided that a student:
  - (A) Shall be eligible to participate at the middle school level for no more than six consecutive semesters, beginning with the student's initial entry into Grade 6.
  - (B) Shall be eligible to participate at the high school level for no more than eight consecutive semesters, beginning with the student's initial entry into Grade 9.
  - (C) Shall not participate on a middle school team if the student becomes 15 years of age before August 31 of that school year.
  - (D) Shall not participate on a junior high school team if the student becomes 16 years of age on or before August 31 of that school year.
  - (E) Shall not participate on a high school team if the student becomes 19 years of age on or before August 31 of that school year.
- (3) A student in Grade 6 shall not participate in tackle football.

(h) Biological Requirements. All students participating in interscholastic athletics shall comply with the biological participation requirements as provided in G.S. 115C-407.59.

(i) Medical Requirements. To be eligible to participate in interscholastic athletics, a student shall receive a medical examination every 395 days by a licensed physician, nurse practitioner, or physician assistant, subject to the provisions of Chapter 90 of the General Statutes.

(j) A student shall not participate in interscholastic athletics after pleading guilty or "no contest" to, or being convicted of, a felony under the laws of North Carolina, the United States, or any other state. Prior to deeming the student ineligible, an administering organization shall obtain a certified copy of a criminal record reflecting the conviction and verify that the student is the same individual identified in the criminal record.

(k) An administering organization shall, in an individual student's case, waive any eligibility requirement contained in this Rule if it finds by a preponderance of the evidence that enforcing the requirement:

- (1) fails to promote academic progress, health, safety, and fair play;
- (2) works an undue hardship on a student who has lost eligibility due to circumstances that made participation impossible, such as prolonged illness or injury; or
- (3) prevents the reasonable accommodation of a student's disability, as required by the Americans with Disabilities Act, 42 U.S.C. 12101 et seq, or the Individuals with Disabilities in Education Act, 20 U.S.C. 1400 et seq.

*History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60; 115C-407.65; 116-235(b);  
Temporary Adoption Eff. July 1, 2024;  
Eff. July 1, 2025.*

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16 NCAC 06E .0208 is proposed for adoption as follows:

#### **16 NCAC 06E .0208 AMATEUR RULES**

(a) A student shall not participate in interscholastic athletics after any of the following:

- (1) Graduation, except that the student may continue to participate in playoff and state championship contests in spring sports after graduation.
- (2) Signing a professional athletic contract, except that the student may continue to participate in any sport for which the student has not signed a professional contract.
- (3) Receiving remuneration as a participant in an athletic contest, except that the student may accept a gift, merchandise, or other thing of value, provided that:
  - (A) The value does not exceed two hundred-fifty dollars (\$250.00) per student per season;
  - (B) The item is totally consumable and nontransferable, or labeled in a permanent manner (e.g., an engraved or monogrammed item); and
  - (C) The item is approved by the principal of the student's school and the local superintendent.

- (4) Participating on an all-star team or in all-star game or bowl game that is not sanctioned by the administering organization of which the student's school is a member, provided that the student shall be ineligible only for that sport.
- (5) Entering into an NIL agreement, unless the student has complied with the requirements of Rule .0211 of this Section.

(b) A student shall not be deemed ineligible under this Rule for any of the following:

- (1) Payment by an administering organization, PSU, or athletic booster club affiliated with the student's school or PSU for essential expenses arising from a specific interscholastic athletic contest in which the student participates. Essential expenses shall include the reasonable cost of meals, lodging, and transportation.
- (2) Receipt of a nominal, standard fee or salary for instructing, supervising, or officiating an organized youth sports program, recreational activities, playground, or camp, whether or not affiliated with a PSU.
- (3) Receipt of an Operation Gold Grant from the United States Olympic Committee.

*History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60; 115C-407.65; 116-235(b)  
Temporary Rule Eff. July 1, 2024;  
Eff. July 1, 2025.*

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16 NCAC 06E .0209 is proposed for adoption as follows:

**16 NCAC 06E .0209 PENALTY RULES**

(a) A rule administrator shall impose at least the following penalties on a student, coach, or school official in Grades 6 through 12 who is ejected from an interscholastic athletic contest:

- (1) for the first offense, the person shall be reprimanded and suspended from participating in the next game;
- (2) for a second offense, the person shall be placed on probation and suspended from participating in the next two games;
- (3) for a third offense, the person shall be suspended from participation in interscholastic athletics for one calendar year;
- (4) a coach who is suspended shall not coach any team for any grade level during the period of suspension.



(b) Penalties shall be cumulative from sport to sport and from sport season to sport season. If no member of the participating school's coaching staff is present to assume the duties of a head coach who has been ejected from an interscholastic athletic contest, the contest shall be terminated by forfeit.

(c) The PSU that has jurisdiction over a participating school may impose penalties in addition to those imposed by an administering organization.

*History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60; 115C-407.65; 116-235(b);  
Temporary Adoption Eff. July 1, 2024;  
Eff. July 1, 2025.*

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16 NCAC 06E .0210 is proposed for adoption as follows:

**16 NCAC 06E .0210      LIMITATIONS ON RECRUITING AND UNDUE INFLUENCE**

(a) No student, coach, professional educator, or other employee of a PSU or administering organization shall subject a student to undue influence for the purpose of inducing or causing the student to transfer from one participating school to another to participate in interscholastic athletics on behalf of the receiving school.

(b) For purposes of this Rule, "undue influence" means communication or conduct undertaken for the purpose and intent of soliciting or encouraging a student to enroll in a participating school, including the following:

- (1) Initiating or arranging communication or contact in any form, including letters, email, or phone calls, with the student or a member of the student's family.
- (2) Visiting or entertaining the student or a member of the student's family.
- (3) Providing or arranging for transportation for the student or member of the student's family to visit a participating school or meet with anyone associated with the participating school.
- (4) Communicating to a student or a member of the student's family, either implicitly or explicitly, that a participating school's athletic program or sports team is superior to that of another participating school, or that it would be advantageous for the student to participate in athletics at a specific participating school. Such communication may be oral, written, or audiovisual in format.

(c) A party alleging undue influence shall direct the initial inquiry or report to the appropriate administering organization in accordance with the procedures adopted by the administering organization. The party alleging undue influence bears the burden of proving undue influence by a preponderance of the evidence.

(d) If the administering organization finds by a preponderance of the evidence that the accused party has engaged in undue influence, the administering organization shall impose penalties consistent with its regulations and with Rule .0209 of this Section.

*History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60;*

115C-407.65; 116-235(b);  
Temporary Adoption Eff. July 1, 2024;  
Eff. Jan. 1, 2025.

16 NCAC 06E .0211 is proposed for adoption as follows:

**16 NCAC 06E .0211 NAME, IMAGE, AND LIKENESS**

(a) As used in this Section, the phrase “name, image, or likeness” or “NIL” shall refer to the use of a student’s name, image, or likeness for commercial purposes and in exchange for compensation to the student or an immediate family member of the student. Compensation is defined as anything of value to the student or an immediate family member of the student, including cash, in-kind gifts, discounts, and other tangible benefits.

(b) A student participating in interscholastic athletics may enter an agreement to use the student’s name, image, or likeness (hereinafter "NIL agreement") subject to the following restrictions:

(1) The NIL agreement shall not condition the receipt, type, or extent of any compensation to the student on the extent or quality of the student’s athletic performance.

(2) If the student is under 18 years of age, the student’s parent or legal guardian shall be a party to the NIL agreement.

(3) The NIL agreement shall hold the following parties harmless from any liability related to, or arising from the NIL agreement:

(A) The governing body of the PSU in which the student is enrolled, as well as its officers and employees.

(B) Any administering organization with which the PSU is affiliated, as well as its officers and employees.

(C) The State Board of Education and the Department of Public Instruction, as well as their officers and employees.

(4) The NIL agreement shall otherwise comply with state and federal law.

(c) Prior to a student’s entry into an NIL agreement:

(1) The student shall provide a copy of the NIL agreement to the principal and athletic director of the student’s school, the local superintendent, the chairperson of the PSU governing body, and the head coach of any sport in which the student participates during the terms of the NIL agreement.

(2) The student shall complete the NIL education course offered by the NFHS. If the student is under 18 years of age, the student’s parent or legal guardian shall also complete the course. Those persons required to complete the course shall provide the relevant administering organization with a certificate of completion from the NFHS.

(d) A student participating in interscholastic athletics may enter into an NIL agreement to use the student’s name, image, or likeness in any of the following ways:

(1) Public appearances or commercials.

- (2) Autograph signings.
- (3) Athletic camps and clinics.
- (4) Sale of non-fungible tokens (“NFTs”).
- (5) Product or service endorsements.
- (6) Promotional activities, including in-person events and social media advertisements.

(e) No student engaged in an NIL agreement-related activity shall do any of the following:

- (1) Make any reference to a school, PSU, conference, or administering organization.
- (2) Receive compensation for the use of intellectual property of any school, PSU, conference, administering organization, or the NFHS. Intellectual property includes the name, uniform, mascot, mark, or logo of the entity that owns the intellectual property.
- (3) Appear in the uniform of the student’s school or the school’s sports team, or otherwise display the intellectual property of any school, PSU, conference, administering organization, or the NFHS.

(f) No student shall endorse or promote the goods or services of any third-party entity with which the student has entered an NIL agreement during interscholastic athletic competition or other school-based activities or events. This restriction applies to the wearing of apparel displaying the mark, logo, brand, or other identifying insignia of the third-party entity, unless it is part of the standard uniform for the school or sport.

(g) No student participating in interscholastic athletics shall enter into an NIL agreement or otherwise use the student’s name, image, or likeness to promote any of the following:

- (1) An adult establishment, as defined in G.S. 14-202.10(2), or adult entertainment services.
- (2) Alcohol or alcoholic products.
- (3) Tobacco, vaping or other electronic smoking devices, or other nicotine products.
- (4) Cannabis or cannabis products.
- (5) Controlled substances, as defined in G.S. 90-87(5).
- (6) Opioids or prescription pharmaceuticals.
- (7) Weapons, firearms, or ammunition.
- (8) Casinos or gambling, including sports betting.
- (9) Activities that would disrupt the operations of a school or PSU.

(h) The school athletic director shall submit a current copy of any NIL agreement involving a student at the school to any administering organizations of which the student’s school is a member within 30 days of the disclosure of the NIL agreement by the student or disclosure of any amendment to an existing NIL agreement. The administering organization shall maintain accurate records of all NIL agreements received and provide a summary report of all NIL agreements to the State Board of Education no later than June 30 of each year.

(i) No athletic director, coach, other employee of a PSU, representative of an athletic booster club, or representative of an NIL collective shall use the promise of an NIL agreement to recruit a student to attend a specific participating school or participate in a specific sport. No athletic director, coach, other employee of a PSU, representative of an athletic booster club, or representative of an NIL collective shall act as a student’s agent or marketing representative or otherwise facilitate an NIL agreement between a student and a third party. If the relevant administering organization

finds a violation of this Paragraph by a preponderance of the evidence, the administering organization shall impose penalties consistent with its regulations and with Rule .0209 of this Section.

(j) This rule shall apply to any NIL agreement that a student or the student's parent or legal guardian execute during the time the student is enrolled in a PSU, even if the benefits of said agreement do not accrue to the student or an immediate family member of the student until after the student has graduated.

*History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60; 115C-407.65; 116-235(b);  
Eff. July 1, 2025.*

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16 NCAC 06E .0215 is proposed for adoption as follows:

### **16 NCAC 06E .0215 APPEALS**

(a) The Superintendent of Public Instruction shall appoint an independent interscholastic athletics appeals board ("appeals board") to hear and act upon appeals from the final decision of a rule administrator regarding student eligibility to participate in interscholastic athletics; violations of limitations on recruiting or undue influence; penalties or fees imposed on students, coaches, or participating schools; or other enforcement of rules provided by this Section.

(b) An aggrieved party may file an appeal with the Superintendent within five days after receipt of the final decision by completing an appeal form provided by the Superintendent. The aggrieved party shall submit the following information required by the form:

- (1) The name of the aggrieved party's participating school and PSU.
- (2) The name, address, and phone number of the aggrieved party. If the aggrieved party is a school or PSU, the aggrieved party shall also provide the name, address, phone number, and title of an employee who will serve as the official representative of the school or PSU during the appeal.
- (3) The names, email addresses, and phone numbers of the principal and local superintendent.
- (3) The names of any students affected by the final decision and the sports in which the student participates.
- (4) A description of the facts underlying the final decision.
- (5) A description of the final decision, the date it was issued, and the name, email, and phone number of the rule administrator or staff member thereof who issued the final decision.
- (6) An argument explaining why the aggrieved party believes the rule administrator's final decision was not based on substantial evidence or was affected by an error of law.
- (7) If applicable, the date of any imminent interscholastic athletic activity that the final decision may affect.

(8) Any relevant documents or other evidence that the aggrieved party deems relevant to the appeal and that the aggrieved party provided to the rule administrator for consideration prior to the final decision.

(c) Panels of no fewer than three members of the appeals board may hear and decide matters on behalf of the appeals board. The panel may conduct a live hearing in person or via teleconference. Any hearing so conducted shall be recorded.

(d) The rule administrator may file a response to the aggrieved party's submissions within five days. The panel may shorten the time for filing the rule administrator's response if the decision affects a student's or coach's eligibility to participate in an intervening interscholastic athletic activity.

(e) All parties shall simultaneously provide copies of all records submitted as part of the appeal to the other parties involved. If the aggrieved party is a student, parent, or coach, the parties shall also provide copies of the documents and forms to the local superintendent and principal with jurisdiction over the aggrieved party.

(f) No later than 30 days after the Superintendent's receipt of the appeal, the panel shall issue its judgment.

(g) The panel shall affirm the rule administrator's final decision unless a majority of the panel determines that the final decision is not supported by substantial evidence, as defined in G.S. 150B-2(8c), or is affected by an error of law. The panel may also remand the final decision to the rule administrator for reconsideration in light of new information or evidence that was not provided to the rule administrator prior to its final decision, if there is an intervening change in any relevant law, or if the panel determines that additional information is necessary to inform its judgment. The panel shall not consider information or evidence presented that was not presented to the rule administrator in the first instance.

(h) The Superintendent, or the Superintendent's authorized designee, may stay a determination of ineligibility or a penalty imposed by the rule administrator pending the judgment of the appeals board.

(i) The panel's judgment shall be conclusive and not subject to further appeal.

*History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4); 115C-407.50; 115C-407.55; 115C-407.60; 115C-407.65; 116-235(b);  
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