



**NORTH CAROLINA COMMUNITY COLLEGE SYSTEM**

*Dr. R. Scott Ralls, President*

November 16, 2009

**IMPORTANT ADMINISTRATIVE CODE INFORMATION**

**MEMORANDUM**

**TO:** Members of the State Board of Community Colleges  
Community College Presidents and Boards of Trustees Chairs  
NC Community College System Office Staff  
Other Interested Parties

**FROM:** Q. Shanté Martin  
General Counsel

**SUBJ: Proposed Changes in the Administrative Code**

The State Board has initiated the Rule-making process to amend or adopt the following Proprietary School rules:

- 23 N.C.A.C. 03A .0101, entitled "Definitions and Application for Initial License,"
- 23 N.C.A.C. 03A .0102, entitled "Application for Renewal of License,"
- 23 N.C.A.C. 03A .0116, entitled "Administration of the Student Protection Fund."

The amendments and the adoption were published in the North Carolina Register on November 16, 2009, Volume 24, Issue 10, on pages 797 - 802.

For your convenience a copy of these rules, with the changes indicated, are attached to this memorandum. Please post a copy of these rules in prominent places so that all individuals affected by the proposed changes or adoption will be informed.

In accordance with the Administrative Procedures Act, no public hearing has been scheduled for these rule-making proceedings. Requests for a public hearing should be made in writing within 15 days of publication of the proposed rule in the North Carolina Register to the following address: Q. Shanté Martin, 200 W. Jones Street, 5001 Mail Service Center, Raleigh, NC 27699-5001 or by email to [publiccomments@nccommunitycolleges.edu](mailto:publiccomments@nccommunitycolleges.edu). Written comments for the Rule must be received no later than 5:00 p.m. on January 15, 2010. Written comments should be directed to the following address: Q. Shanté Martin, 200 W. Jones Street, 5001 Mail Service Center, Raleigh, NC 27699-5001 or by email to [publiccomments@nccommunitycolleges.edu](mailto:publiccomments@nccommunitycolleges.edu).

Thank you for your attention to this matter.

**CC09-039**  
**E-mail Copy**

QSM/caa

Attachments

**TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Community Colleges intends to amend the rules cited as 23 NCAC 03A .0101 and .0102 and adopt the rule cited as 23 NCAC 03A .0116.*

**Proposed Effective Date:** *July 1, 2010*

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): To demand a public hearing please send the written demand to Q. Shanté Martin, Rulemaking Coordinator, NC Community College System, 200 West Jones Street, 5001 Mail Service Center, Raleigh, NC 27699-5001 or by emailing the demand to publiccomments@nccommunitycolleges.edu. Demands must be received within 15 days of the publication of the proposed rule in the North Carolina Register.*

**Reason for Proposed Action:** *To comply with the enactment of Session Law 2009-562 and G.S. 115D-95.1.*

**Procedure by which a person can object to the agency on a proposed rule:** *Written objections shall be addressed to President, NC Community College System Office, 5001 Mail Service Center, Raleigh, NC 27699-5001 within the comment period and must be postmarked by 11:59 p.m. on the last day of the comment period.*

**Comments may be submitted to:** *Q. Shanté Martin, Rulemaking Coordinator, 5001 Mail Service Center, Raleigh, NC 27699-5001; email publiccomments@nccommunitycolleges.edu*

**Comment period ends:** *January 15, 2010*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.*

**Fiscal Impact:**

- State**
- Local**
- Substantial Economic Impact ( $\geq$ \$3,000,000)**
- None**

**CHAPTER 03 - MISCELLANEOUS PROGRAMS**

**SUBCHAPTER 03A - PROPRIETARY SCHOOLS**

**SECTION .0100 - BUSINESS, TRADE AND TECHNICAL SCHOOLS**

**23 NCAC 03A .0101 DEFINITIONS AND APPLICATION FOR INITIAL LICENSE**

(a) Classes or schools conducted by employers for their own employees are exempt from the provisions of this Subchapter. Employers may contract with third party agencies to provide training for their employees. Schools or classes conducted by third party agencies for an employer to train his employees are exempt from the provisions of this Subchapter.

~~(a)(b)~~ The following terms shall have the following meaning in this Subchapter unless the context of a specific rule requires a different interpretation.

- ~~(1) "Proprietary school" means any proprietary business school, proprietary trade school, proprietary technical school, or correspondence school which:  
(A) offers postsecondary education or training for profit or for a tuition charge or offers classes for the purpose of teaching, for profit or for a tuition charge, any program of study or teaching one or more of the courses or subjects needed to train and educate an individual for employment; and,  
(B) has any physical presence within the State of North Carolina; and,  
(C) is privately owned and operated by an owner, partnership or corporation.~~
- (1) "Catastrophic loss amount" means the amount of funds required to protect prepaid student tuition in case of a large-scale event that would draw against the Student Protection Fund. The amount is one million dollars (\$1,000,000).
- (2) "Classes or schools" as stated in G.S. 115D-88(4a) means classes or schools, which are offered by the seller of the equipment or the seller's agent.
- (3) "Equipment" as stated in G.S. 115D-88 includes software.
- ~~(4) "Classes or schools" conducted by employers for their own employees are exempt. Employers may contract with third part agencies to provide training for their employees. Schools or classes conducted by third party agencies for an employer to train his employees are exempt.~~
- (4) "Five or fewer students" as stated in G.S. 115D-88(4b) means the total number of students at the time of maximum enrollment during any term.
- ~~(5) "Users" as defined in G.S. 115D-88(4a) means employees or agents of purchasers.~~
- (5) "Fund cap amount" means the catastrophic loss amount plus a reserve amount. The fund cap amount is one million five hundred thousand dollars (\$1,500,000).
- ~~(6) "Five or fewer students" as stated in G.S. 115D-88(4b) means total number of students at the time of maximum enrollment during any term.~~
- ~~(6) "Proprietary school" means any business school, trade school, technical school, or correspondence school which:  
(A) offers postsecondary education or training for profit or for a tuition charge or offers classes for the purpose of teaching, for profit or for a tuition charge, any program of study or teaching one or more of the courses or subjects needed to train and educate an individual for employment; and  
(B) has any physical presence within the State of North Carolina; and  
(C) is privately owned and operated by an owner, partnership or corporation.~~
- (7) "Remote sites" means approved instructional environments in the same county that do not have any administrative staff or administrative functions such as recruiting, accounting and record keeping taking place.
- (8) "Reserve amount" means the difference between the catastrophic loss amount and the fund cap amount. Its purpose is to reduce the possibility of the Student Protection Fund being completely depleted. The reserve amount is five hundred thousand dollars (\$500,000).
- (9) "Student Protection Fund" is a statewide fee-supported fund. The purpose of the Student Protection Fund is to compensate students enrolled in a proprietary school licensed under G.S. 115D-90 who have suffered a loss of tuition, fees, or any other instruction-related expenses paid to the school by reason of the failure of the school to offer or to complete student instruction, academic services, or other goods and services related to course enrollment. Students are eligible to be compensated under the Student Protection Fund

only if the school ceases to operate for any reason, including, but not limited to the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure.

(10) "Users" as stated in G.S. 115D-88(4a) means employees or agents of purchasers.

~~(b)~~(c) Application for an Initial License:

(1) Any person or persons operating a proprietary school with an enrollment of more than five persons in a school in the State of North Carolina shall obtain a license from the North Carolina State Board of Community Colleges except as exempt by G.S. 115D-88.

(2) ~~A preliminary application shall be submitted~~ Any person or persons seeking to operate a proprietary school that requires licensure shall submit a preliminary application setting forth the proposed location of the school, the qualifications of the Chief Administrator of the school, a description of the facilities available, courses to be offered, and financial resources available to equip and maintain the school. Upon approval of the preliminary application, a final application may be submitted. ~~This~~ The final application shall be verified and accompanied by the following:

(A) A certified check or money order for the initial license fee in the amount of two thousand five hundred dollars (\$2,500) made payable to the North Carolina State Treasurer;

(B) A guaranty bond or alternative to a guaranty bond as set forth in G.S. 115D-95. Except as otherwise provided herein, the bond amount for a proprietary school shall be at least equal to the maximum amount of prepaid tuition held at any time during the fiscal year. During the initial year of operation, the ~~bond~~ guaranty bond amount or an alternative to a guaranty bond amount shall be based on the projected maximum amount of prepaid tuition that will be held at any time during that year. In any event, the minimum surety bond shall be ~~ten thousand dollars (\$10,000);~~ twenty five thousand dollars (\$25,000);

~~(C)~~ A certified check or money order for the Student Protection Fund in the amount of one thousand two hundred and fifty dollars (\$1,250) made payable to the North Carolina State Treasurer;

~~(C)~~(D) A copy of the school's catalog or bulletin. The catalog shall include a statement addressing each item listed in G.S. 115D-90(b)(7);

~~(D)~~(E) A financial statement showing capital investment, assets and liabilities, and the proposed operating budget which demonstrates financial stability or a financial statement and an accompanying opinion of the school's financial stability by either an accountant, using generally accepted accounting principles, or a lending institution;

~~(E)~~(F) A detail of ownership; (This must show stock distribution if the school is a corporation, or partnership agreement if the school will be operated as a partnership.)

~~(F)~~(G) Information on all administrative and instructor personnel who will be active in the operation of the school, either in full- or part-time capacity; (This information must be submitted on forms provided for this purpose.)

~~(G)~~(H) Enrollment application or student contract form;

~~(H)~~(I) School floor plan showing doors, windows, halls, and seating arrangement; also offices, rest rooms, and storage space; the size of each room and seating capacity shall be clearly marked for each classroom; lighting showing kind and intensity shall be indicated for each room; the type of heating and cooling system used for the space occupied shall be stated;

~~(I)~~(J) Photostatic copies of inspection reports or letters from proper officials to show that the building is safe and sanitary and meets all local city, county, municipal, state, and federal regulations such as fire, building, and sanitation codes; and

~~(J)~~(K) If the building is not owned by the school, a photostatic copy of the lease held by the school for the space occupied.

- (3) A person or persons purchasing a proprietary school already operating as a licensed school shall comply with all of the requirements for securing an initial license. A license is not transferable to a new owner. All application forms and other data shall be submitted in full. Such terms as "previously submitted" when referring to a former owner's file are not acceptable. If a proprietary school offers classes in more than one county, the school's operations in each such county constitutes a separate school requiring a separate license. Classes conducted by the school in separate locations shall be reported and approved prior to advertising and commencement of classes.
- (4) Remote sites shall not have any administrative staff or any administrative functions such as recruiting, accounting or record keeping. Each remote site shall be subject to an initial remote site fee of one thousand dollars (\$1,000) and an annual remote site renewal fee of seven hundred and fifty dollars (\$750.00) to be paid by a certified check or money order made payable to the North Carolina State Treasurer. Each remote site shall have an initial site visit and a visit during each annual audit.
- (5) Classes conducted at remote sites by licensed schools shall be approved prior to advertising and commencement of classes. Any course offered at a remote site shall be a part of an approved program of study for that licensed school.
- (6) Changes in application information presented for licensure or relicensure relating to mission, programs, location or stock distribution require prior approval and licensure amendment by the State Board of Community Colleges.
  - (A) Program additions require curriculum reviews and program or course approvals prior to initiation. A certified check or money order in the amount of two hundred dollars (\$200.00) made payable to the North Carolina State Treasurer shall accompany each additional program approval request.
  - (B) Single course additions or revisions may be individually approved when schools submit a request for license amendment. Course additions or revisions requiring curriculum review, instructor evaluation, and equipment site assessment are subject to the curriculum review fee of two hundred dollars (\$200.00) to be paid by a certified check or money order made payable to the North Carolina State Treasurer.
  - (C) School relocations require site visits and approvals prior to use. A certified check or money order in the amount of four hundred dollars (\$400.00) made payable to the North Carolina State Treasurer shall accompany each site relocation approval request.
  - (D) Other site assessment visits, such as for program additions and revisions, shall require a certified check or money order made payable to the North Carolina State Treasurer in the amount of two hundred dollars (\$200.00).

*Authority G.S. 115D-88; 115D-89; 115D-90; 115D-91;115D-92; 115D-95.1.*

### **23 NCAC 03A .0102 APPLICATION FOR RENEWAL OF LICENSE**

- (a) Schools shall be licensed annually, and the licensure shall extend from July 1 through June 30, inclusive.
- (b) Schools desiring the renewal of their license shall submit an application on or before April 1 of each year. The application shall be accompanied by the following:
  - (1) All information required of schools applying for an initial license that has not been previously submitted;
  - (2) For a school that has been licensed for one year but less than six years, verification that the guaranty bond or alternative to the guaranty bond is in an amount equal to the greatest amount of unearned paid tuition in the school's possession at any time during the prior fiscal year. This verification shall be in the form of quarterly reports to the President of the North Carolina Community College System evaluating the amount of the guaranty

bond or alternative to the guaranty bond. Quarterly evaluation reports requiring an increase of five percent or more in the amount of the bond held by the school must show an immediate increase in the bond amount at the time of the evaluation. At the time of the school's annual license renewal, the guaranty bond or alternative to the guaranty bond shall be an amount equal to the greatest amount of unearned paid tuition in the school's possession at any time during the prior fiscal year;

~~(2)~~(3) Copy of current catalog containing all information required of schools applying for initial license; and

~~(3)~~(4) Any supplementary information necessary to bring information on the school up to date.

(c) A certified check or money order in the amount of one thousand two hundred and fifty dollars (\$1,250) plus fifty dollars (\$50.00) per program made payable to the North Carolina State Treasurer shall be received on or before April 1.

(d) Proprietary schools shall make payment to the Student Protection Fund as follows:

(1) When the amount in the Student Protection Fund is less than the cap established in G.S. 115D-95.1, a check to be deposited into the Student Protection Fund and made payable to the North Carolina State Treasurer shall be received on or before April 1 from the school based on the school's annual gross tuition revenue generated in North Carolina as follows:

| <u>Annual Gross Tuition Revenue</u> | <u>Amount of Assessment</u>  |
|-------------------------------------|--|
| <u>\$1.00 – \$25,000</u>            | <u>\$200.00</u>  |
| <u>\$25,001 – \$50,000</u>          | <u>\$250.00</u>  |
| <u>\$50,001 – \$100,000</u>         | <u>\$300.00</u>  |
| <u>\$100,001 – \$200,000</u>        | <u>\$400.00</u>  |
| <u>\$200,001 – \$300,000</u>        | <u>\$500.00</u>  |
| <u>\$300,001 – \$400,000</u>        | <u>\$600.00</u>  |
| <u>\$400,001 – \$500,000</u>        | <u>\$700.00</u>  |
| <u>\$500,001 – \$750,000</u>        | <u>\$1,000</u>   |
| <u>\$750,001 – \$1,000,000</u>      | <u>\$1,250</u>   |
| <u>\$1,000,001 – \$1,500,000</u>    | <u>\$1,500</u>   |
| <u>\$1,500,001 – \$2,000,000</u>    | <u>\$2,000</u>   |
| <u>Greater than \$2,000,000</u>     | <u>\$2,000 plus one-twentieth of one percent (.05%) of annual gross tuition revenue over \$2,000,000</u> |

(2) In addition to the payments required under G.S. 115D-95.1, as a condition of license renewal for the 2010-2011 fiscal year, each proprietary school shall pay into the Student Protection Fund an amount based on its total enrollment for the previous calendar year as follows:

| <u>Number of Students</u> | <u>Amount of Assessment</u> |
|---------------------------|-----------------------------|
| <u>0-49</u>               | <u>\$500.00</u>             |
| <u>50-99</u>              | <u>\$1,000</u>              |
| <u>100-499</u>            | <u>\$2,000</u>              |

|                            |                |
|----------------------------|----------------|
| <u>500-999</u>             | <u>\$3,000</u> |
| <u>1,000-1,499</u>         | <u>\$4,000</u> |
| <u>More than<br/>1,500</u> | <u>\$5,000</u> |

- (3) "Total enrollment" means the number of students enrolled on January 1, 2009, plus new students enrolled during the calendar year plus students reentering from a period of nonattendance during the calendar year.
- (4) The full and timely payment into the Student Protection Fund pursuant to this Chapter is a condition of licensure.
- (5) The State Board of Community Colleges shall not refund any payment to the Student Protection Fund in the event that a school's license application is rejected or a school's license is suspended or revoked.
- (e) Proprietary schools shall make adjustments to the guaranty bond or alternative to the guaranty bond requirements of schools based on G.S. 115D-95. A guaranty bond or alternative to the guaranty bond shall be required for license renewal for a school that has been continuously licensed to operate for more than five years in the State, as follows:
- (1) If the balance of the Student Protection Fund in G.S. 115D-95.1 is below the catastrophic loss amount, the school shall file a guaranty bond or alternative to the guaranty bond in an amount equal to the maximum amount of prepaid tuition held by the school during the prior fiscal year multiplied by the percentage amount the fund is deficient.
- (2) If the school held prepaid tuition in excess of the Student Protection Fund catastrophic loss amount during the prior fiscal year, in addition to any guaranty bond or alternative to a guaranty bond amount required by 23 NCAC 03A .0102(e)(1), the school shall file a guaranty bond for the difference between the prepaid tuition amount held in the previous fiscal year and the Student Protection Fund catastrophic loss amount.
- (f) The State Board of Community Colleges, acting by and through the President of the Community College System, will tabulate the balance of the Student Protection Fund as of December 31 of each year and establish the percentage amounts identified in 23 NCAC 03A .0102(e)(1). The State Board of Community Colleges, acting by and through the President of the Community College System, will report these calculations to the Student Protection Fund Advisory Committee for its review on an annual basis.

*Authority G.S. 115D-89; 115D-91; 115D-92; 115D-95.1.*

### **23 NCAC 03A .0116 ADMINISTRATION OF THE STUDENT PROTECTION FUND**

- (a) The State Board of Community Colleges, acting by and through the President of the Community College System, shall administer the Student Protection Fund.
- (b) If the Student Protection Fund balance is equal to or exceeds the Student Protection Fund cap amount, the State Board of Community Colleges shall suspend payments into the Student Protection Fund for schools that have been continuously licensed in North Carolina for more than eight years. The State Board of Community Colleges shall require schools to resume payments into the Student Protection Fund if the balance of the Student Protection Fund is less than the catastrophic loss amount.
- (c) If claims against the Student Protection Fund exceed the catastrophic loss amount, the State Board of Community Colleges may assess additional fees to compensate students qualified for repayment under the Student Protection Fund. The amount of the catastrophic assessment shall not exceed one-half of the amount of the annual revenue payment required by G.S. 115D-95.1. If the amount of the catastrophic assessment will be insufficient to cover qualified claims, the State Board of Community Colleges shall allocate funds among claims proportional to the amount of student loss and the amount in the Student Protection Fund.
- (d) A student, or the student's parent or guardian, who has suffered a loss of tuition, fees, or any other instruction-related expenses paid to a proprietary school licensed under G.S. 115D-90 by reason of the school ceasing to operate for any reason, including, but not limited to the suspension, revocation, or

nonrenewal of a school's license, bankruptcy, or foreclosure, may qualify for repayments under the Student Protection Fund. The State Board of Community Colleges must first issue repayment from the guaranty bonds and alternatives to the guaranty bond issued under G.S. 115D-95. If the Student Protection Fund is insufficient to cover the qualified claims, the State Board of Community Colleges must allocate funds among claims proportional to the amount of student loss and the amount in the Student Protection Fund.

(e) The Student Protection Fund Advisory Committee shall meet once per year to review the Fund adjustments or as needed in order to respond to other matters related to the Fund.

*Authority G.S. 115D-89; 115D-95.1.*