



## NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

*Peter Hans, President*

19 November 2019

### MEMORANDUM

**TO:** Members of the State Board of Community Colleges  
Community College Presidents  
Boards of Trustees Chairs  
Community College Chief Academic Officers, Chief Admissions Officers, Basic Skills Directors, Business Officers, Continuing Education Officers, Customized Training Directors, Distance Learning, Chief Financial Officers, Continuing Education Officers, Financial Aid Officers, Personnel Directors, Student Development Administrators, Public Information Officers, Registrars, & Other Interested Parties

**FROM:** Jonathan R. Harris, *NCCCS General Counsel*

**RE:** **Proposed Repeal of 2B SBCCC Subchapter 100 - Process for Refusal to Issue or Renew License**

The State Board of Community Colleges ("SBCC") has initiated the rulemaking process to repeal **2B SBCCC Subchapter 100 - Process for Refusal to Issue or Renew License**. This subchapter is meant to be replaced by a new subchapter, 2B SBCCC Subchapter 400, which is proposed for adoption. The new subchapter is intended to streamline the process for proprietary school license denials by the State Board of Proprietary Schools.

**The proposed repeal is published on the NC Community College System's website, [www.nccommunitycolleges.edu/sbcccode](http://www.nccommunitycolleges.edu/sbcccode).** For your convenience, a copy of the proposed repeal is attached to this memorandum. Please post a copy of the proposed repeal in prominent places so that all individuals affected by the proposed change will be informed.

Any member of the public has the right to submit written comments on the proposed subchapter repeal. Please note that any person who submits a public comment on behalf of their community college should comply with their college's local process for submitting comments on a proposed rule. **Written comments on the subchapter repeal must be received by no later than 5:00 p.m. on 19 December 2019.** Any member of the public has the right to request a hearing on the proposed repeal. **Requests for a**

**hearing must be received by no later than 5:00 p.m. on 4 December 2019.** Written comments and requests for hearing shall be directed to the following address: Jonathan Harris, 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.

**CC19-062  
E-mail Copy**

Attachments



# State Board of Community Colleges Code

## Notice of Proposed Rulemaking Form

Date: 19 November 2019

<b>Title, Chapter, Subchapter, and Rule Number of Rule Proposed to be Adopted, Amended, or Repealed</b>	Repeal of 2B SBCCC 100 - "Process for Refusal to Issue or Renew License"
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Specify whether the SBCC proposes to adopt amend, or repeal a rule:

Adopt (new rule)	Amend (change existing rule)	Repeal (delete entire rule)
		X

<b>Rationale for proposed adoption, amendment or repeal:</b>	The new subchapter is intended to streamline the process for license denials by the State Board of Proprietary Schools.
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<b>Proposed Effective Date of Rule</b>	February 1, 2020
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1 State Board of Community Colleges Code

2 TITLE 2 – PROPRIETARY SCHOOLS

3  
4 CHAPTER B. DUE PROCESS

5  
6 ~~SUBCHAPTER 100. PROCESS FOR REFUSAL TO ISSUE OR RENEW~~  
7 ~~LICENSE~~

8  
9 ~~2B SBCCC 100.1 Standard for Refusing to Issue or Renew License~~

10 ~~The State Board of Community Colleges, by and through the SBPS, may refuse to grant~~  
11 ~~or renew a proprietary school license in accordance with G.S. 150B, Article 3, when it is~~  
12 ~~found that the school has failed to meet the requirements of the law and the rules adopted~~  
13 ~~by the State Board of Community Colleges.~~

14  
15 *History Note: Authority G.S. 115D-89; 115D-93;*

16 *Eff. August 1, 2014.*

17  
18 ~~2B SBCCC 100.2 SBPS Recommendation to Refuse Licensure or License~~  
19 ~~Renewal~~

20 ~~(a) If the SBPS recommends refusal of a proprietary school's license or recommends~~  
21 ~~nonrenewal of a proprietary school's license, the SBPS, by and through its Executive~~  
22 ~~Director, shall document the rationale for its recommendation to the State Board of~~  
23 ~~Community Colleges in a document to be titled, "Refusal to Recommend Initial~~  
24 ~~Licensure or License Renewal."~~

25 ~~(b) The Executive Director shall send a copy of the "Refusal to Recommend Initial~~  
26 ~~Licensure or License Renewal" to the chief administrator of the proprietary school at~~  
27 ~~issue within five business days of the SBPS' recommendation with a copy to the~~  
28 ~~following: 1) the Chair of the SBPS; 2) the NCCCS Executive Vice President for~~  
29 ~~Operations; 3) the NCCCS General Counsel; and 4) the NCCCS Director of Marketing~~  
30 ~~and Public Affairs.~~

1 ~~(c) In the “Refusal to Recommend Initial Licensure or License Renewal,” the Executive~~  
2 ~~Director of the SBPS shall advise the chief administrator or other agent of the~~  
3 ~~proprietary school at issue of the right to provide a written response to the “Refusal to~~  
4 ~~Recommend Initial Licensure or License Renewal” within 10 business days of receipt~~  
5 ~~of the “Refusal to Recommend Initial Licensure or License Renewal.”~~

6 ~~(d) If the Executive Director of the SBPS receives a written response within 10 business~~  
7 ~~days of the proprietary school administrator’s receipt of the “Refusal to Recommend~~  
8 ~~Initial Licensure or License Renewal,” the Executive Director of the SBPS shall submit~~  
9 ~~the written response to the following: 1) the Chair of the SBPS; 2) the NCCGS~~  
10 ~~Executive Vice President for Operations; 3) the NCCCS General Counsel; and 4) the~~  
11 ~~NCCCS Director of Marketing and Public Affairs.~~

12 ~~(e) The SBCC shall consider the SBPS’ “Refusal to Recommend Initial Licensure or~~  
13 ~~License Renewal” and the proprietary school’s written response that is received by~~  
14 ~~the Executive Director of the SBPS within the time specified in 2B SBCCC 100.2(d) at~~  
15 ~~its regularly scheduled meeting that occurs at least 10 business days after the~~  
16 ~~deadline for the proprietary school’s written response to the SBPS’ “Refusal to~~  
17 ~~Recommend Initial Licensure or License Renewal.~~

18  
19 *History Note: Authority G.S. 115D-89; 115D-93;*  
20 *Eff. August 1, 2014.*

21  
22 **~~2B SBCCC 100.3 SBCC’s Evaluation of the SBPS’ Recommendation~~**

23 ~~The SBCC will evaluate the SBPS’ “Refusal to Recommend Initial Licensure or License~~  
24 ~~Renewal” and the proprietary school’s written response, if any, and after due~~  
25 ~~consideration, vote to grant the proprietary school licensure or initiate denial of the~~  
26 ~~proprietary school’s license to operate one or more programs. Within three (3) business~~  
27 ~~days of the SBCC’s disposition on the investigation report, the NCCCS General Counsel~~  
28 ~~shall notify the proprietary school of the SBCC’s decision to grant the proprietary school~~  
29 ~~licensure or initiate denial of the proprietary school’s licensure.~~

30  
31 *History Note: Authority G.S. 115D-89; 115D-93;*

1                    *Eff. August 1, 2014.*

2  
3    **~~2B SBCCC 100.4 Right to Hearing~~**

4    ~~(a) If the SBCC votes to initiate denial of a proprietary school's application for license to~~  
5        ~~operate one or more programs, in the letter notifying the proprietary school of the~~  
6        ~~SBCC's intent to deny the proprietary school's request for a license to operate one or~~  
7        ~~more programs, the NCCCS General Counsel shall notify the proprietary school of its~~  
8        ~~right to an informal hearing prior to the SBCC's final agency decision on denial of~~  
9        ~~licensure.~~

10   ~~(b) The proprietary school shall have 10 business days from the date it receives the~~  
11        ~~SBCC's notice of its intent to deny the proprietary school's application for a license to~~  
12        ~~operate one or more programs to notify the SBCC of its request to be heard. The~~  
13        ~~proprietary school's request for hearing must be in writing and signed by the chief~~  
14        ~~administrator or other authorized agent of the proprietary school and directed to the~~  
15        ~~NCCCS General Counsel on behalf of the SBCC.~~

16   ~~(c) If the NCCCS General Counsel does not receive the proprietary school's signed~~  
17        ~~request for hearing within 10 business days from the date the proprietary school~~  
18        ~~receives the written notification of the SBCC's intent to deny the proprietary school's~~  
19        ~~application for a license to operate one or more programs, the SBCC's intent to deny~~  
20        ~~the proprietary school's application for a license will become the SBCC's final agency~~  
21        ~~decision to deny licensure.~~

22  
23    *History Note: Authority G.S. 115D-89; 115D-93; 150B-22;*

24                    *Eff. August 1, 2014.*

25  
26    **~~2B SBCCC 100.5 Hearing Process~~**

27   ~~(a) If the NCCCS General Counsel receives the proprietary school's signed request for~~  
28        ~~hearing within 10 business days from the date the proprietary school receives the~~  
29        ~~written notification of the SBCC's intent to deny the proprietary school's application for~~  
30        ~~a license to operate one or more programs, the NCCCS General Counsel shall~~  
31        ~~calendar the informal hearing no longer than 45 days and no sooner than 15 business~~

1 days after receiving the signed request for hearing. The NCCCS General Counsel will  
2 serve as the Hearing Officer on behalf of the SBCC. The Hearing Officer shall provide  
3 the notice of hearing with the date, time, and location to the parties at least 10 business  
4 days prior to the hearing.

5 (b) ~~The party appearing on behalf of the SBPS shall be the Executive Director of the~~  
6 ~~SBPS or the SBPS attorney; and the party appearing on behalf of the proprietary~~  
7 ~~school at issue shall be an official of the proprietary school or attorney representing~~  
8 ~~the proprietary school. No later than five (5) business days prior to the hearing, both~~  
9 ~~parties shall exchange the following information and documents with the opposing~~  
10 ~~party or their counsel and deliver three (3) copies to the Hearing Officer:~~

11 (1) ~~A written summary of each party's position.~~

12 (2) ~~A brief of any legal issues the parties believe are applicable to the case.~~

13 (3) ~~The exhibits the parties want the Hearing Officer to consider when making a final~~  
14 ~~recommendation to the SBCC. The three (3) copies for the Hearing Officer shall~~  
15 ~~be separately numbered and placed behind a tab in a notebook or other binder~~  
16 ~~with a table of contents in the front.~~

17 (4) ~~A list of witnesses each party intends to call along with a brief summary of each~~  
18 ~~witnesses' testimony.~~

19 (5) ~~The findings of fact and conclusions of law the parties would like the Hearing~~  
20 ~~Officer to include in the recommendation to the SBCC. Provide one copy of the~~  
21 ~~proposed findings of fact and conclusions of law electronically to the Hearing~~  
22 ~~Officer in Microsoft Word.~~

23 (c) ~~The Hearing Officer will conduct the hearing as follows:~~

24 (1) ~~The total length of the hearing will be no longer than three (3) hours. Each party~~  
25 ~~will have a maximum of one (1) hour to present evidence in their case in chief. The~~  
26 ~~SBPS Executive Director or SBPS attorney will present evidence for no more than~~  
27 ~~one (1) hour to support the recommendation to deny the proprietary school's~~  
28 ~~application for a license to operate one or more programs first. At the conclusion~~  
29 ~~of the SBPS Executive Director or the SBPS attorney's case, the proprietary~~  
30 ~~school's representative has the opportunity to present evidence for no more than~~  
31 ~~one (1) hour to support why the proprietary school's application for a license should~~

1 be approved. After the proprietary school's presentation of evidence, the SBPS  
2 Executive Director or SBPS attorney may provide rebuttal evidence for no more  
3 than 15 minutes. After the SBPS Executive Director or SBPS attorney's rebuttal  
4 evidence, the proprietary school's representative may present rebuttal evidence  
5 for no more than 15 minutes.

6 (2) Documents that have not been provided to the opposing party and to the Hearing  
7 Officer at least five (5) business days prior the hearing will not be considered at  
8 the hearing

9 (3) The legal rules of evidence will not be enforced, but the Hearing Officer has the  
10 discretion to direct the presentations so that the parties address those issues that  
11 are relevant to the claims against the proprietary school.

12 (4) Parties have the discretion to proceed in a question and answer format for their  
13 own presentation of evidence. Alternatively, parties have the discretion to present  
14 evidence in a narrative form.

15 (5) If either party believes that the Hearing Officer should not give credence to  
16 evidence offered by the other party, that party may bring that to the Hearing  
17 Officer's attention during the presentation of their own case. The Hearing Officer  
18 will consider those objections when weighing the evidence.

19 (6) In making a final recommendation to the SBCC, the Hearing Officer will only  
20 consider documents introduced and offered into evidence at the hearing. The  
21 parties may offer all of their exhibits into evidence at once.

22 (7) The Hearing Officer may ask questions at any time throughout the hearing.

23 (8) A court reporter will transcribe the hearing.

24  
25 *History Note: Authority G.S. 115D-89; 115D-93; 150B-22;*

26 *Eff. August 1, 2014.*

27  
28 **2B-SBCCC 100.6—SBCC Final Agency Decision**

29 After the hearing detailed in 2B-SBCCC 100.5, the Hearing Officer shall make a final  
30 recommendation regarding denial of the proprietary school's application for license to the



1 ~~SBCC at the next regularly scheduled board meeting that occurs at least 10 business~~  
2 ~~days after the hearing. The SBCC's decision is the final agency decision.~~

3

4 *History Note: Authority G.S. 115D-89; 115D-93; 150B-22;*

5 *Eff. August 1, 2014.*

DRAFT