

CHAPTER 40 - NONPUBLIC EDUCATION

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 40 .0101 PURPOSE

History Note: Authority G.S. 115C-563; 115C-566;
Temporary Adoption Eff. August 4, 1998;
Temporary Adoption Expired May 29, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Adoption Eff. August 11, 1999;
Temporary Adoption Expired May 12, 2000.

01 NCAC 40 .0102 ORGANIZATION

History Note: Authority G.S. 115C-563; 115C-566; 143B-12;
Temporary Adoption Eff. August 4, 1998;
Temporary Adoption Expired May 29, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Adoption Eff. August 11, 1999;
Temporary Adoption Expired May 12, 2000.

01 NCAC 40 .0103 DEFINITIONS

History Note: Authority G.S. 115C-547 through 115C-566;
Temporary Adoption Eff. August 4, 1998;
Temporary Adoption Eff. November 25, 1998;
Temporary Adoption Expired May 29, 1999;
Codifier determined that agency findings did not meet criteria for temporary rule;
Temporary Adoption Eff. August 11, 1999;
Temporary Adoption Expired May 12, 2000.

01 NCAC 40 .0104 PURPOSE

History Note: Authority G.S. 115C-553; 115C-561; 115C-563; 115C-566;
Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001;
Temporary Adoption Eff. October 9, 2001;
Temporary Rule Expired April 1, 2003;
Note: See Rule .0301.

01 NCAC 40 .0105 ORGANIZATION

History Note: Authority G.S. 115C-553; 115C-561; 115C-563; 115C-566; 143B-12;
Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001;
Temporary Adoption Eff. October 9, 2001;
Temporary Rule Expired April 1, 2003;
Note: See Rule .0301.

01 NCAC 40 .0106 DEFINITIONS

History Note: Authority G.S. 115C-547 through 115C-566;
Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001;
Temporary Adoption Eff. October 9, 2001;
Temporary Rule Expired April 1, 2003;
Note: See Rule .0302.

SECTION .0200 - DRIVING ELIGIBILITY CERTIFICATES

01 NCAC 40 .0201 DEFINITIONS

History Note: Authority G.S. 115C-566;
 Temporary Adoption Eff. August 4, 1998;
 Temporary Adoption Eff. November 25, 1998;
 Temporary Adoption Expired May 29, 1999;
 Codifier determined that agency findings did not meet criteria for temporary rule;
 Temporary Adoption Eff. August 11, 1999;
 Temporary Adoption Expired May 12, 2000.

01 NCAC 40 .0202 ISSUANCE OF DRIVING ELIGIBILITY CERTIFICATES

History Note: Authority G.S. 115C-566;
 Temporary Adoption Eff. August 4, 1998;
 Temporary Adoption Eff. November 25, 1998;
 Temporary Adoption Expired May 29, 1999;
 Codifier determined that agency findings did not meet criteria for temporary rule;
 Temporary Adoption Eff. August 11, 1999;
 Temporary Adoption Expired May 12, 2000.

01 NCAC 40 .0203 REVOCATION OF DRIVING ELIGIBILITY CERTIFICATES

History Note: Authority G.S. 115C-566;
 Temporary Adoption Eff. August 4, 1998;
 Temporary Adoption Eff. November 25, 1998;
 Temporary Adoption Expired May 29, 1999;
 Codifier determined that agency findings did not meet criteria for temporary rule;
 Temporary Adoption Eff. August 11, 1999;
 Temporary Adoption Expired May 12, 2000.

01 NCAC 40 .0204 STUDENT APPEALS PROCESS

History Note: Authority G.S. 115C-566;
 Temporary Adoption Eff. August 4, 1998;
 Temporary Adoption Eff. November 25, 1998;
 Temporary Adoption Expired May 29, 1999;
 Codifier determined that agency findings did not meet criteria for temporary rule;
 Temporary Adoption Eff. August 11, 1999;
 Temporary Adoption Expired May 12, 2000.

01 NCAC 40 .0205 DEFINITIONS

History Note: Authority G.S. 115C-566;
 Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001;
 Temporary Adoption Eff. October 9, 2001;
 Temporary Rule Expired April 1, 2003;
 Note: See Rule .0302.

01 NCAC 40 .0206 ISSUANCE OF DRIVING ELIGIBILITY CERTIFICATES

History Note: Authority G.S. 115C-566;
 Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001;

Temporary Adoption Eff. October 9, 2001;
Temporary Rule Expired April 1, 2003;
Note: See Rule .0303.

01 NCAC 40 .0207 REVOCATION OF DRIVING ELIGIBILITY CERTIFICATES

History Note: Authority G.S. 115C-566;
Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001;
Temporary Adoption Eff. October 9, 2001;
Temporary Rule Expired April 1, 2003;
Note: See Rule .0304.

01 NCAC 40 .0208 STUDENT APPEALS PROCESS

History Note: Authority G.S. 115C-566;
Codifier determined that findings did not meet criteria for temporary rule on September 19, 2001;
Temporary Adoption Eff. October 9, 2001;
Temporary Rule Expired April 1, 2003;
Note: See Rule .0305.

SECTION .0300 - ADMINISTRATION OF DRIVING ELIGIBILITY CERTIFICATES

01 NCAC 40 .0301 PURPOSE AND ORGANIZATION

The Division of Nonpublic Education has been designated by the Governor as the agency of State government responsible for administering the provisions of G.S. 115C, Article 39 and is the "duly authorized representative of the State" for such purposes, as defined in G.S. 115C-563(b). The Division of Nonpublic education was located in the Department of Administration by order of the Governor effective July 1, 1998.

History Note: Authority G.S. 115C-553; 115C-561; 115C-563; 115C-566;
Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 40 .0302 DEFINITIONS

For the purposes of this Chapter, the following definitions shall apply:

- (1) "High school diploma or its equivalent" means a high school diploma issued by a non-public school which meets the requirements of G.S. 115C, Article 39 and also includes the General Equivalency Diploma or the adult high school diploma.
- (2) "Making progress toward obtaining a high school diploma or its equivalent" means that the student must meet standards established by the chief administrator, or the chief administrator's designee, in the case of conventional nonpublic school or by the chief administrator of the home school or the educational program.
- (3) "Substantial hardship" means a demonstrable burden on the student or the student's family as evidenced by circumstances such as the following:
 - (a) The parent/guardian is unable to drive due to illness or other impairment and the student is the only person of driving age in the household.
 - (b) The student requires transportation to and from a job that is necessary to the welfare of the student's family and the student is unable to obtain transportation by any means other than driving.
 - (c) The student has been unable to attend a conventional nonpublic school due to documented medical reasons, but the student demonstrates the ability to make progress toward obtaining a high school diploma or its equivalent.
- (4) A "student who cannot make progress toward obtaining a high school diploma or its equivalent" shall mean a student who has been identified by the chief administrator, or the chief administrator's designee, in the case of a conventional nonpublic school or by the chief administrator of the home school or the educational program, as not having the capacity to meet the requirements for a high school diploma or its equivalent due to a disability.

- (5) "Exemplary student behavior" means the student has not received school disciplinary action as described in G.S. 20-11(n1)(1)c for the enumerated student conduct listed in G.S. 20-11(n1)(1)d in accordance with G.S. 20-11(n1)(2) through (4).
- (6) "Successful completion of a drug or alcohol treatment counseling program" means the student has completed all requirements of the counseling program which the chief administrator or the chief administrator's designee of the non-public school or educational program has determined best suits that student's needs.
- (7) "Conventional nonpublic school" means a school operating only under either G.S. 115C, Article 39, Part 1 or Part 2.
- (8) "Division" means the Division of Nonpublic Education, except where otherwise identified.
- (9) "Educational program" means an alternative academic program of instruction found by a court prior to July 1, 1998, to comply with the Compulsory Attendance Law, G.S. 115C, Article 26, Part 1.
- (10) "Home school" means a nonpublic school operating under G.S. 115C, Article 39, Part 3.

History Note: Authority G.S. 115C-566;

Eff. April 1, 2003;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

01 NCAC 40 .0303 ISSUANCE OF DRIVING ELIGIBILITY CERTIFICATES

(a) Each conventional nonpublic school, home school and educational program shall be responsible for the issuance of driving eligibility certificates on forms that must be supplied only by the Division. The forms are non-transferable.

(b) Before any conventional nonpublic school or home school can issue a driving eligibility certificate, that school must have on file with the Division a currently valid Notice of Intent to Operate and must be in compliance with all laws and regulations applicable to conventional nonpublic schools or home schools which enroll students subject to compulsory attendance laws. Once the school is in compliance with such laws and regulations as apply to it, the driving eligibility certificate forms may be requested from, and supplied by, the Division.

(c) Before any educational program can issue a driving eligibility certificate, that program must have on file with the Division for at least six months:

- (1) A letter stating the name of the educational program, its address and telephone number, and contact person; and
- (2) Legal documentation in the form of a certified court order or judgment that the program was found to be in compliance with the Compulsory Attendance Law, G.S. 115C, Article 26, Part 1, prior to July 1, 1998.

Once the educational program is in compliance with such laws and regulations as apply, to it, the driving eligibility certificate forms may be requested from, and supplied by, the Division.

(d) Notwithstanding 01 NCAC 40 .0303(b), A nonpublic school shall not request driving eligibility certificate forms from the Division until after the school's currently valid Notice of Intent to Operate has been on file with the Division for at least six calendar months. This provision shall not apply in the case of any student that is newly resident in the State of North Carolina within the 30 days immediately preceding the request for a driving eligibility certificate from a school affected by this provision.

(e) A nonpublic school student under the age of 18 who wishes to obtain a limited learner's permit, a limited provisional license or a full provisional license under G.S. 20-11 must first request and obtain a driving eligibility certificate signed by the chief administrator, or the chief administrator's designee, in the case of a conventional nonpublic school or the chief administrator of the home school or the educational program. It must be obtained no more than 30 days before the student applies for a learner's permit or driver's license.

(f) Before a nonpublic school student is eligible to receive a driving eligibility certificate, the student must be currently enrolled in a nonpublic school which is meeting all the statutory requirements of G.S. 115C, Article 39, or in an educational program at the time the certificate form is issued and meet one of the following requirements:

- (1) The student is making progress toward obtaining a high school diploma or its equivalent -- unless the student is unable to make such progress -- and is exhibiting exemplary student behavior while on school property and at all school-sponsored and school-related activities; or
- (2) The student will have a substantial hardship placed on the student or the student's family if the certificate is not issued.

(g) If a student is denied a certificate, the chief administrator of the nonpublic school or the educational program shall inform the student of the school's or the program's decision and the availability and details of the school's or program's appeals process.

*History Note: Authority G.S. 115C-566;
Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 40 .0304 REVOCATION OF DRIVING ELIGIBILITY CERTIFICATES

(a) Each nonpublic school and educational program shall revoke a driving eligibility certificate held by one of its students, no matter whether it was issued by that school or program or not:

- (1) When the student fails to meet the requirements for the certificate set out in 01 NCAC 40 .0303; or
- (2) When the student is no longer enrolled in the school or program and does not possess a high school diploma or its equivalent upon the student's removal from the school's or program's rolls, if the student will not be enrolled in another school (public, conventional nonpublic, home school, educational program or community college).

(b) Upon revocation of a certificate, the chief administrator of the school or program shall send written notification of the revocation to the Division within five calendar days of the revocation, unless the student protests the decision. If the Appeals Committee upholds the school's or program's decision to revoke the certificate, the notification to the Division will be made within five days from the school's or program's receipt of the committee's decision.

(c) The notification to the Division shall include:

- (1) The student's legal name (first, middle and last name as on the student's birth certificate);
- (2) The student's social security number;
- (3) The student's residence address (including street, city and zip code);
- (4) The student's date of birth;
- (5) The student's gender;
- (6) The student's race;
- (7) The student's learner's permit or driver's license number;
- (8) The name of the parent/guardian with whom the student is living;
- (9) A statement of the reasons for the revocation of the certificate;
- (10) The date of the student's ineligibility or removal from the school's or program's rolls;
- (11) The type of nonpublic school, whether conventional or home school, or educational program;
- (12) The name of the nonpublic school or educational program;
- (13) The county in which the nonpublic school or educational program is located; and
- (14) The name of the chief administrator of the nonpublic school or educational program.

(d) Within five calendar days of the Division's receipt of the written notification of revocation from the on public school, or educational program, the Director of the Division or the Director's designee, shall inform the North Carolina Division of Motor Vehicles of the revocation.

(e) If a student's certificate is revoked, the chief administrator of the nonpublic school or educational program, or the chief administrator's designee, shall immediately inform the student of the school's or program's decision and the availability and details of the school's or program's appeals process.

*History Note: Authority G.S. 115C-566;
Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

01 NCAC 40 .0305 STUDENT APPEALS PROCESS

(a) Each conventional nonpublic school and educational program that enrolls students that are at least 15 years of age shall establish a Driving Eligibility Certificate Appeals Committee to receive and act upon student protests that a driving eligibility certificate was improperly denied or revoked. All student protests shall be made within five days of the school's or program's decision and directed to the chief administrator of the conventional nonpublic school or educational program. The Appeals Committee shall:

- (1) Be appointed by and serve at the pleasure of the chief administrator of the conventional nonpublic school or educational program, or the chief administrator's designee; and
- (2) Consist of at least three members, each of which shall be a member of the school's or program's governing board, administration or staff, or a parent/guardian with a child currently enrolled in the school or program.

(b) The Division shall establish a Home School Driving Eligibility Certificate Appeals Committee exclusively to receive and act upon student protests that a driving eligibility certificate was improperly denied or revoked by a home school. All home

school student protests shall be made within five days of the school's decision and directed to the Director of the Division or the Director's designee, at Division of Nonpublic Education, Department of Administration, 1309 Mail Service Center, Raleigh, North Carolina 27699-1309. The Home School Driving Eligibility Certificate Appeals Committee shall:

- (1) Be appointed by, and serve on a voluntary basis at the pleasure of, the Director of the Division or the Director's designee; and
 - (2) Consist of at least three members, each being the chief administrator of a home school currently operating under G.S. 115C, Article 39, Part 3. The members shall not receive per diem or any other type of compensation for their service. The Director, or the Director's designee, shall appoint a chairperson from the committee's membership. The chairperson shall then direct the decision-making work of the committee.
- (c) All Driving Eligibility Certificate Appeals Committees shall:
- (1) Consider the written protest of the student as to why the driving eligibility certificate was improperly denied or revoked;
 - (2) Decide the protest based on whether the requirements for the certificate were met or whether the certificate was properly revoked; and
 - (3) Render its decision within 30 calendar days of receipt of the written protest from the student, and promptly notify the student and the chief administrator of the school or program of the decision.
- (d) The decision of the appropriate appeals committee shall be final.

History Note: Authority G.S. 115C-566;
Eff. April 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.