

## CHAPTER 17 – PHOTO IDENTIFICATION

### 08 NCAC 17 .0101 VERIFICATION OF PHOTO IDENTIFICATION DURING IN-PERSON VOTING

(a) When a person presenting to vote checks in at a voting site, an election official shall ask the voter to show photo identification in accordance with G.S. 163-166.16 and this Rule. The election official shall examine any photo identification provided by the person presenting to vote and shall determine the following:

- (1) The photo identification is of the type acceptable for voting purposes pursuant to G.S. 163-166.16(a). A valid United States passport book or passport card is acceptable pursuant to G.S. 163-166.16(a)(1)c.
- (2) The photograph appearing on the photo identification bears a reasonable resemblance to the person presenting to vote. A reasonable resemblance is a similarity in appearance such that an ordinary person would conclude that the photograph on the identification is more likely than not the person presenting to vote. The election official shall make this determination based on the totality of the circumstances, bearing in mind that there are many reasons that a person's appearance could change (such as, for illustrative purposes only, changes in hair, facial hair, or weight; or the effects of medical conditions, aging, or medical treatment). The election official shall also be guided by the purpose of the photo identification requirement, which is to confirm the person presenting to vote is the registered voter on the voter registration records.
- (3) The name appearing on the photo identification is the same as or substantially equivalent to the name contained in the voter's voter registration record. The election official shall make this determination based on the totality of the circumstances, construing all evidence, along with any explanation or documentation voluntarily offered by the person presenting to vote, in the light most favorable to that person. The election official shall consider the name appearing on the photo identification to be substantially equivalent to the name contained in the registration record if differences are attributable to a reasonable explanation, which shall include but is not limited to one or more of the following reasons:
  - (A) Omission or inclusion of one or more parts of the name (such as, for illustrative purposes only, Mary Beth Smith versus Beth Smith, or Patrick Todd Jackson, Jr. versus Patrick Todd Jackson, or Maria Guzman-Santana versus Maria Guzman);
  - (B) Use of a variation or nickname rather than a formal name (such as, for illustrative purposes only, Bill versus William, or Sue versus Susanne);
  - (C) Use of an initial in place of one or more parts of a given name (such as, for illustrative purposes only, A.B. Sanchez versus Aaron B. Sanchez);
  - (D) Use of a former name, including maiden names (such as, for illustrative purposes only, Emily Jones versus Emily Gibson), or a variation that includes or omits a hyphenation or hyphen (such as, for illustrative purposes only, Chantell D. Jacobson-Smith versus Chantell D. Jacobson or Chantell D. Jacobson Smith), an accent (such as, for illustrative purposes only, José Muñoz versus Jose Munoz), or an apostrophe (such as, for illustrative purposes only, Andrea D'Antonio versus Andrea Dantonio);
  - (E) Ordering of names (such as, for illustrative purposes only, Maria Eva Garcia Lopez versus Maria E. Lopez-Garcia); or
  - (F) Variation in spelling or typographical errors (such as, for illustrative purposes only, Dennis McCarthy versus Denis McCarthy, or Aarav Robertson versus Aarav Robertsson).

If a voter is casting a provisional ballot because the voter's record does not appear in the poll book, the election official shall instead compare the name on the photo identification with the name provided by the voter on the provisional ballot application.

(b) The election official checking in the person presenting to vote, when examining the photo identification of that person, shall not require the voter to provide any evidence regarding the identification apart from the identification itself. If the face of the person presenting to vote is covered to such an extent that the election official cannot determine reasonable resemblance under Subparagraph (a)(2) of this Rule, then the election official shall inform the voter that the face covering is preventing the official from determining that the photo on the identification is that of the voter and shall offer the voter the option to briefly remove the face covering. If the voter chooses not to remove the covering, then the election official shall enter a challenge in accordance with Subparagraph (d)(3) of this Rule.

(c) Differences between the address appearing on the photo identification of a person presenting to vote and the address contained in the registration record of that person shall not be considered as evidence that the photographic identification fails to meet the requirements of G.S. 163-166.16 or this Rule.

(d) After examining the photo identification according to Paragraphs (a) through (c) of this Rule, the election official shall proceed as follows:

- (1) If the election official determines that the photo identification meets all the requirements of Paragraph (a) of this Rule, then the election official shall allow the person to vote pursuant to G.S. 163-166.7.
- (2) If the election official determines that the photo identification is not an acceptable type of photo identification under Subparagraph (a)(1) of this Rule, the election official shall inform the person presenting to vote of the reasons for that determination (such as, for illustrative purposes only, that the photo identification is not on the list of student identifications approved by the State Board of Elections) and shall invite the person to provide any other photo identification that is acceptable under Subparagraph (a)(1) of this Rule that the person may have. If the person presenting to vote does not produce photo identification that meets all the requirements of Subparagraph (a)(1) of this Rule, then the election official shall inform the person presenting to vote of both options to vote by provisional ballot in accordance with Paragraph (e) of this Rule.
- (3) If the election official determines that the photo or name on the photo identification do not satisfy Subparagraphs (a)(2) and (a)(3) of this Rule, the election official shall inform the person presenting to vote of the reasons for that determination and shall invite the person to provide any other photo identification that the person may have that is acceptable under Subparagraph (a)(1) and satisfies Subparagraphs (a)(2) and (a)(3) of this Rule. If the person presenting to vote does not produce photo identification that meets all the requirements of Paragraph (a) of this Rule, then the election official shall enter a challenge pursuant to G.S. 163-87 and immediately notify the voting site's judges of election of the challenge. The judges of election shall then conduct a challenge hearing, in accordance with the applicable procedures in G.S. 163-88. At the conclusion of the hearing, the judges of election shall vote on whether the photo appearing on the photo identification of the person presenting to vote bears a reasonable resemblance to that person or whether the name appearing on the photo identification is the same as or substantially equivalent to the name contained in the voter's voter registration record, applying the same standards as the election official initially reviewing the identification under Subparagraphs (a)(2) and (a)(3). Each judge shall record the judge's findings in writing. Only if the judges of election unanimously find that the photo appearing on the photo identification does not bear a reasonable resemblance to the person presenting to vote, or that the name appearing on the photo identification is not the same as or substantially equivalent to the name contained in the voter's voter registration record, the voter shall be offered both options to vote by provisional ballot in accordance with Paragraph (e) of this Rule. Absent such a unanimous finding, the person shall vote with a regular ballot pursuant to G.S. 163-166.7. When the judges of election conduct a challenge hearing under this Rule and the challenge is to a curbside voter, to ensure the voting enclosure remains properly attended, the judges may separately visit the curbside location to assess the voter's identification.

(e) A person presenting to vote who does not present acceptable photo identification in accordance with this Rule shall be offered both of the following options:

- (1) To vote by provisional ballot with an affidavit claiming an exception to the identification requirement, pursuant to G.S. 163-166.16(d). If the voter has completed the affidavit as required in G.S. 163-166.16(d) and is otherwise eligible to vote, the county board shall count the provisional ballot unless the county board unanimously finds that the affidavit is false. The county board shall substantiate any finding of falsity with grounds recorded in a written decision, and those grounds shall be based only on facts and not speculation. Before disapproving a voter's provisional ballot because of a finding of falsity, the county board shall provide the voter advance notice and an opportunity to address the county board prior to completion of the canvass on any grounds that the county board is considering regarding the falsity of the affidavit. The notice shall identify the specific reasons the county board is considering the affidavit to be potentially false and inform the voter how the voter may address the reasons for potential falsity, which shall include the options to provide a written explanation or documentation or to address the board at a meeting in person. The county board shall send the notice via U.S. Mail within one business day of a county board's preliminary finding of falsity, provided that the opportunity to be heard is at least five days from

the date of mailing. The notice shall be mailed for next-day delivery if the opportunity to be heard is less than five days from the date of mailing. Notice shall also be provided within one business day of a county board's preliminary finding of falsity by any email address or phone number that the county board possesses for the voter. The notice and opportunity to address the county board provided for in this Subparagraph shall be offered only to those provisional voters for whom a number of county board members equal to one less than all of the members of the county board, or more, have identified a specific reason, based only on facts and not speculation, to find that the affidavit claiming an exception to the identification requirement is false.

- (2) To vote by provisional ballot and then bring to the office of the county board identification acceptable under G.S. 163-166.16 and this Rule before 5 p.m. on the business day before county canvass. If the voter brings photo identification to the office of a county board in a timely manner, a county board staff member shall examine the photo identification in accordance with Paragraphs (a), (b), and (c) of this Rule. After examining the photo identification, the staff member shall proceed as follows:

- (A) If the photo identification meets all the requirements of Paragraph (a) of this Rule, the staff member shall recommend approval of the provisional ballot to the county board.
- (B) If the photo identification is not an acceptable type of photo identification under Subparagraph (a)(1) of this Rule, then the staff member shall inform the voter of the reasons for that determination, while the voter is at the county board office, and invite the voter to provide an acceptable photo identification in accordance with Subparagraph (d)(2) of this Rule. If the voter does not provide acceptable identification by 5:00 p.m. on the business day prior to the canvass, then county board staff shall recommend disapproval of the provisional ballot to the county board.
- (C) If the photo or name on the photo identification do not satisfy Subparagraphs (a)(2) and (a)(3) of this Rule, then the staff member shall inform the voter of the reasons for that determination and shall invite the voter to provide any other photo identification that meets the requirement of Paragraph (a) of this Rule. If the voter does not produce photo identification that meets the requirement of Paragraph (a) of this Rule, then the staff member shall recommend disapproval of the provisional ballot to the county board. While the voter is at the county board office, the staff member shall inform the voter of the recommendation and provide notice to the voter of the county board meeting at which the voter's provisional ballot will be reviewed and considered by the county board. If the voter appears at that meeting and desires to address the county board on whether their photo identification meets the requirement of Paragraph (a) of this Rule, the county board members are subject to the requirements of this Rule in the same manner as a staff member initially examining a voter's photo identification.

If the voter brings photo identification that is an acceptable type of photo identification under Subparagraph (a)(1) of this Rule to the county board office before 5 p.m. on the business day prior to the canvass, the county board shall count the provisional ballot unless the county board unanimously decides the photo identification presented does not satisfy Subparagraphs (a)(2) and (a)(3) of this Rule, in which case the county board shall record in writing the grounds for its decision.

*History Note:* Authority G.S. 163-22; 163-166.7; 163-166.11; 163-166.16;  
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