

## 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;  
Eff. January 1, 2016;  
Temporary Amendment Eff. August 23, 2019;  
Temporary Amendment Expired Eff. June 12, 2020;  
Temporary Amendment Eff. August 1, 2023;  
Amended Eff. April 1, 2024.

**08 NCAC 17 .0102 DETERMINATION OF REASONABLE RESEMBLANCE BY JUDGES OF ELECTION**

**08 NCAC 17 .0103 IDENTIFICATION REQUIRED OF CURBSIDE VOTERS**

*History Note:* Authority G.S. 163-166.7; 163-82.6A; 163-82.15; 163-88.1; 163-166.7; NAACP v. McCrory, 831 F.3d 204 (4<sup>th</sup> Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e);

*Eff. January 1, 2016;*  
*Temporary Amendment Eff. August 23, 2019 (.0102);*  
*Temporary Repeal Eff. August 23, 2019 (.0103);*  
*Temporary Amendment Expired Eff. June 12, 2020 (.0103);*  
*Temporary Repeal Eff. August 1, 2023;*  
*Repealed Eff. April 1, 2024.*

**08 NCAC 17 .0104      OPPORTUNITY TO UPDATE NAME OR ADDRESS AFTER REASONABLE RESEMBLANCE IS DETERMINED**

A person able to vote a regular ballot but whose name or address does not match the name or address appearing in the registration record shall be provided the opportunity to update his or her name or address in the registration record pursuant to G.S. 163-82.15(d) and 163-82.16(d) to reflect the person's true and current name and address. If the person updates his or her name or address, the person shall be permitted to vote as set out in G.S. 163-166.7 and 163-166.13(b), so long as the person remains eligible to vote based on residence within the county of the voting place.

*History Note:      Authority G.S. 163-82.15(d); 163-82.16(d); 163-166.7; NAACP v. McCrory, 831 F.3d 204 (4<sup>th</sup> Cir. 2016); 163A-1145.1; S.L. 2018-144, s. 3.1(e);*  
*Eff. January 1, 2016;*  
*Temporary Amendment Eff. August 23, 2019;*  
*Temporary Amendment Expired Eff. June 12, 2020.*

**08 NCAC 17 .0105      DECLARATION OF RELIGIOUS OBJECTION TO PHOTOGRAPH**

*History Note:      Authority NAACP v. McCrory, 831 F.3d 204 (4<sup>th</sup> Cir. 2016); S.L. 2018-144, s. 3.1.(a),(e), (h);*  
*Eff. January 1, 2016;*  
*Temporary Repeal Eff. August 23, 2019;*  
*Temporary Repeal Exp. Eff. June 12, 2020;*  
*Temporary Repeal Eff. August 1, 2023;*  
*Repealed Eff. April 1, 2024.*

**08 NCAC 17 .0106      SIGNAGE NOTIFYING ONE-STOP VOTERS OF THE OPTION TO REQUEST AN ABSENTEE BALLOT**

*History Note:      Authority NAACP v. McCrory, 831 F.3d 204 (4<sup>th</sup> Cir. 2016); S.L. 2018-144, s. 3.1.(j);*  
*Eff. March 1, 2016;*  
*Temporary Repeal Eff. August 23, 2019;*  
*Temporary Repeal Exp. Eff. June 12, 2020;*  
*Temporary Repeal Eff. August 1, 2023;*  
*Repealed Eff. April 1, 2024.*

**08 NCAC 17 .0107      VOTER PHOTO IDENTIFICATION CARD**

*History Note:      Authority G.S. 163A-741; 163A-869.1(d); S.L. 2018-144, s. 1.1.(b).*  
*Temporary Adoption Eff. April 29, 2019;*  
*Temporary Adoption Expired Eff. February 9, 2020.*

**08 NCAC 17 .0108      REQUESTS FOR APPROVAL OF STUDENT IDENTIFICATION CARDS AND EMPLOYEE IDENTIFICATION CARDS**

*History Note:      Authority G.S. 163A-741; 163A-1145.2; 163A-1145.3; S.L. 2018-144 s. 1.2.(f); S.L. 2018-146 s. 3.2.(e); S.L. 2019-22 s. 2;*  
*Temporary Adoption Eff. July 26, 2019;*  
*Temporary Adoption Expired Eff. May 11, 2020.*

**08 NCAC 17 .0109      PHOTO IDENTIFICATION FOR ABSENTEE-BY-MAIL BALLOTS**

(a) Identification Requirement for Absentee-by-Mail Ballots. Photo identification accompanying a voter's absentee ballot pursuant to G.S. 163-230.1(f1) is acceptable if it is a photocopy of a type of photo identification acceptable for voting purposes under 18 NCAC 17 .0101(a)(1), is readable, and the name appearing on the identification is the same as or substantially equivalent to the name contained in the voter's voter registration record in accordance with 08 NCAC 17 .0101(a)(3). As used in this Rule, "readable" means that, on the photocopy of identification required by this Rule, the name on the identification can be read and the photograph depicts a person, as opposed to displaying, for example, a mere shadow or outline of a person. A photo identification shall not be rejected due to differences between the address appearing on an absentee voter's photo identification and any address contained on the voter's absentee request form, absentee ballot application, or registration record. A copy of photo identification that is acceptable under this Rule need include only the side of the identification (or, if the identification is a booklet, the page of the identification) where the person's name and photo appears.

(b) Initial Review by County Board Staff. County Board staff shall, upon receipt of a voter's absentee ballot application, determine whether the application is accompanied by a photocopy of photo identification that is acceptable under Paragraph (a) of this Rule, or, if the application is accompanied by an affidavit claiming an exception to the identification requirement pursuant to G.S. 163-166.16(d), determine whether the affidavit includes the affirmations required by G.S. 163-166.16(d) for that exception and, if applicable, the personal identification number required to be provided by G.S. 163-230.1(g)(2). Staff shall review the registration records to determine whether the number provided matches the corresponding number in the registration records. The number required to be provided by G.S. 163-230.1(g)(2) is deficient only if it does not match the corresponding number listed in the voter's voter registration record.

If staff identify any deficiency, they shall mail written notice of the deficiency to the voter within one business day of identifying the deficiency, informing the voter that the voter, the voter's verifiable legal guardian or near relative, or a person of the voter's choice if the voter needs assistance due to the voter's disability, may provide a photocopy of the voter's acceptable photo identification or a completed affidavit claiming an exception. The notice shall state the photocopy or affidavit must be received by the county board by 5 p.m. on the business day before the county canvass. The notice of the deficiency shall also be provided by telephone or email if the telephone number or email address was provided by the voter on the request form for the absentee ballot. The voter may transmit either of the above documentation curing the deficiency in person, by mail, or by email.

(c) Final Review by County Board. The county board shall, at the first meeting held pursuant to G.S. 160-230.1(f) after the application and ballot is received, proceed as follows:

- (1) If the voter has submitted a photocopy of their photo identification, the county board shall make its determination whether the identification is acceptable under Paragraph (a) of the Rule. A final determination that the photocopy of the photo identification is not acceptable under Paragraph (a) of this Rule shall require a unanimous vote by the county board. If the county board makes a final determination that a voter's photocopy of the photo identification is not acceptable, staff shall notify the voter as provided in Paragraph (b) of this Rule, and the county board shall reserve its final decision on the approval of the absentee application until the next official meeting after it receives documentation curing the deficiency or the county canvass, whichever occurs first.
- (2) If the voter has completed an affidavit claiming an exception to the identification requirement pursuant to G.S. 163-166.16(d) and is otherwise eligible to vote, the county board may reject that person's ballot only if 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 rejecting a voter's 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 the completion of 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 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 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.

- (3) If a voter's photocopy of photo identification or affidavit claiming an exception to the identification requirement pursuant to G.S. 163-166.16(d) is deemed deficient upon initial review under Paragraph (b) of this Rule, the county board shall reserve its final decision on the approval of the absentee application until the next official meeting after it receives documentation curing the deficiency identified pursuant Paragraph (b) of this Rule or the county canvass, whichever occurs first.

(d) Exception for Military and Overseas Voters. A voter who is casting a ballot pursuant to G.S. 163, Article 21A, Part 1 is not required to submit a photocopy of acceptable photo identification under Paragraph (a) of this Rule or claim an exception under G.S. 163-166.16(d).

(e) Return of Original Form of Identification. If a voter sends their original form of photo identification in the container-return envelope, or if a voter or other person permitted to return the voter's absentee ballot hand-delivers an absentee ballot to the county board of elections that is not accompanied by a photocopy of the voter's photo identification and the voter or other person has the voter's photo identification that is a type acceptable for voting purposes under 08 NCAC 17 .0101(a)(1) on hand, the county board shall make a photocopy of the identification, which shall serve as an acceptable photo identification accompanying the voter's absentee ballot. When a voter sends their original form of photo identification in the container-return envelope, the county board shall notify the voter by mail and by any email address or phone number that the county board possesses for the voter that the original photo identification will be returned to the voter. The county board shall use a method of return that documents receipt of the photo identification.

*History Note: Authority G.S. 163-22; 163-166.7; 163-166.16; 163-230.1;  
Temporary Adoption Eff. August 23, 2019; January 1, 2020;  
Temporary Rule Exp. Eff. October 11, 2020;  
Temporary Adoption Eff. August 1, 2023;  
Eff. April 1, 2024.*