



**North Carolina State Board of Community Colleges  
WRITTEN COMMENTS**

**FOR 23 NCAC 02C .0301 "ADMISSION TO COLLEGES" (Health and Safety Exception)**

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**\*SUBJECT LINE: Please reconsider new "health admissions" policy**  
North Carolina State Board of Communit

Dear State Board of Community Colleges,

As this article on WRAL.com reports (<http://www.wral.com/news/education/story/8303878/>), the North Carolina State Board of Community Colleges is considering a new admissions policy that could potentially bar students from enrolling in the community college system because of certain health conditions.

Quoted in this WRAL.com article is Stephen Scott, President of Wake Technical Community College.

"This may open the door for the possibility of a health background check," Scott said.

This new policy raises several concerns, and I'm hoping you will reconsider or make certain that any new policy takes into consideration two distinct things.

The first is discrimination. On the surface, this policy sounds like it could be used arbitrarily by administrators to bar applicants with certain health conditions. But the terminology proposed seems like it could be misused or abused by administrators to, for instance, deny someone admission based on their HIV-status. It's imperative that any new policy you put forward does not discriminate against an entire population of students.

The second concern is privacy. In a world where health companies have been punished for disclosing medical information about patients, what guarantees are you putting in place to ensure that the information students provide you about their health doesn't become public?

As a staff member at the North Carolina chapter of the ACLU said in the WRAL.com piece: "The way it's written right now, [the proposed policy] seems very broad and vague. There are no real standards included in it, so it seems like it could be used in a very arbitrary way. It raises some red flags as far as privacy and how they're getting information." I echo these concerns, and urge you to address these issues as soon as possible.

Thank you for your time.

*(The above email was sent by the following people between 9/17/10 and 11/09/10:)*

Shawn Revelle

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Email Comments: Page 1 of 28

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**SBCC  
11/18/2010**

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FOR 23 NCAC 02C .0301 "ADMISSION TO COLLEGES" (Health and Safety Exception)

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Celene Chen

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Sheila Ondrachek

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Katerina Virostko  
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Coshocton, OH 43812

Raven Chitalo  
9533 Hwy 17  
Pollocksville, NC 28573

Pilgrim G

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Crab Orchard, TN 37723

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Chris Beck  
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Jason Warner

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Menomonee Falls, WI 53051

Kirk Nix  
4 Carmel Court  
Laguna Beach, CA 92651

Mr. Michael Jones

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Peter Scott

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Bev Brewis

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Tracie Ellis

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Mike Hinkle  
5750 Oak Hill Rd.  
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Ms. Jennifer Hughes

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Jeffrey Harwood

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Caleb Laieski  
P.O. Box 72028  
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John Leaderbrand

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xxx  
Amersfoort, NY 3811

John Ruscigno  
1569 W 7TH ST, Apt - 1C  
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---

>>> "Crocker, Stephen" <Stephen.Crocker@sungardhe.com> 9/15/2010 10:56 AM >>>  
**\*SUBJECT LINE: Board Meeting 16 Sept 2010**

Office of the State Board of Affairs,

Are there any special requirements or preapprovals needed for attending Board Meetings?

Thanks so much,

Stephen Crocker \* Account Executive \* SunGard Higher Education \* 3211 Internet Blvd Ste 230, Frisco, TX 75034 \* Tel 864-556-2221 \* Fax 610-578-3446 \*  
stephen.crocker@sungardhe.com<mailto:stephen.crocker@sungardhe.com> \*  
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>>> Chris Tarnofsky <esc4p3@msn.com> 9/17/2010 2:35 PM >>>

**\*SUBJECT LINE: Please reconsider new "health admissions" policy**  
North Carolina State Board of Communit

Dear State Board of Community Colleges,

NJ

Mr. Chris Tarnofsky  
62 Summit Ave. #1  
Jersey City, NJ 07304

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>>> <denismcal@yahoo.com> 9/23/2010 8:12 AM >>>

**\*SUBJECT LINE: The North Carolina \QGestapo\Q School Board**  
To Whom It May Concern,

Recently I read a news story on WRAL about your "safety" and "health" proposal that your board proposed at your recent hearing. Here is the link in case you forgot: <http://www.wral.com/news/education/story/8303878/>

I have many doubts about the intentions that your board members have on this issue. Personally I am tired of being stripped of my rights from fanatics like you and your members. Why would I have to have a health check to attend classes at your schools? Hmmmm. For "safety" reasons? "Security" reasons? Uh-huh. Well I can tell you that I will not fall by the wayside. You can expect a lawsuit from me and backing from the ACLU. You people have no right whatsoever digging into my health records. I have a real life doctor that looks at my records. He actually knows about the Hippa laws. Do you know about the Hippa laws? I recommend Googling it "in case you forgot".

Also, I will be letting my classmates know about this issue. I will also be circulating a petition in the next few months to get students on this lawsuit bandwagon.

I already feel like a high school/middle school student at one of your campuses. Letting 16-17-18 year old kids on campus takes away from a REAL college experience. Do you know how immature these kids are? Anything for money, right? Or is it for the "good" of the children. It's either for the good of the children, or "safety" reasons that gets the public backing every time! You people should jump into the political circle b/c all I am hearing from is you political talking points/rhetoric.

1st Amendment

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[http://en.wikipedia.org/wiki/First\\_Amendment\\_to\\_the\\_United\\_States\\_Constitution](http://en.wikipedia.org/wiki/First_Amendment_to_the_United_States_Constitution)

9th Amendment

[http://en.wikipedia.org/wiki/Ninth\\_Amendment\\_to\\_the\\_United\\_States\\_Constitution](http://en.wikipedia.org/wiki/Ninth_Amendment_to_the_United_States_Constitution)

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>>> Stuart Wasilowski 9/26/2010 6:03 PM >>>

**SUBJECT LINE: Information: Safety and Health Exception to Admissions**

I understand this is not final yet, but who might introduce the idea to address the students beyond just the curriculum students?

Stuart M. Wasilowski  
Vice President  
Corporate and Continuing Education  
South Piedmont Community College  
4209 Old Charlotte Highway  
Monroe, NC 28110  
704-290-5240  
swasilowski@spcc.edu  
Go Beyond !  
Check out the Language Institute at SPCC  
Powered by Rosetta Stone  
www.spcc.edu ( <http://www.spcc.edu/> )

>>> Linda Weiner 9/24/2010 2:20 PM >>>

Stuart,

Please know that this rule is not final. We'll communicate the final version once it goes through the process. Now, if you're thinking about doing something in advance, let me suggest that you talk to Shante Martin, our general counsel...she's the guru on this.

Many thanks,  
Lw

Linda H. Weiner  
Vice President, Engagement and Strategic Innovation  
NC Community Colleges  
Direct: 919.807.7146  
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FAX: 919.807.7164  
weinerl@nccommunitycolleges.edu  
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WRITTEN COMMENTS

**FOR 23 NCAC 02C .0301 "ADMISSION TO COLLEGES" (Health and Safety Exception)**

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Creating Success  
Hope·Opportunity·Jobs

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>>> Stuart Wasilowski 9/24/2010 2:16 PM >>>  
Linda:

Dr. McKay forwarded this information to me. I am going to advocate for a local policy to cover students in our non-curriculum areas. Do you have any suggestions and/or are you considering these 'other' students that make up a large portion of the community college population?

Stuart M. Wasilowski  
Vice President  
Corporate and Continuing Education  
South Piedmont Community College  
4209 Old Charlotte Highway  
Monroe, NC 28110  
704-290-5240  
swasilowski@spcc.edu  
Go Beyond !  
Check out the Language Institute at SPCC  
Powered by Rosetta Stone  
www.spcc.edu( <http://www.spcc.edu/>)

>>> John McKay 9/24/2010 1:17 PM >>>

John McKay, Ed.D.  
President  
South Piedmont Community College  
(704) 272-5353 - Polkton  
(704) 290-5252 - Monroe  
SPCC is ranked No. 14 in a recent national survey. To see the full report.[Click Here!](http://www.washingtonmonthly.com/features/2007/0709.ccrankings.pdf)  
<http://www.washingtonmonthly.com/features/2007/0709.ccrankings.pdf>

>>> Linda Weiner 9/24/2010 1:08 PM >>>  
Folks,

Attached you will find a set of information points related to the proposed health and safety exception to the Admissions to College policy, the proposed rule and the Notice of the Public Hearing about the exception. The exception is currently undergoing the administrative rules review process, and we have had questions from several organizations about it. We thought it would be helpful to get this information

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WRITTEN COMMENTS

**FOR 23 NCAC 02C .0301 "ADMISSION TO COLLEGES" (Health and Safety Exception)**

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out to everyone to provide answers in advance of any questions that might come your way.

As always, please feel free to contact me if I can be of any assistance.

Many thanks,  
Linda

Linda H. Weiner  
Vice President, Engagement and Strategic Innovation  
NC Community Colleges  
Direct: 919.807.7146  
Cell: 919.806.6902  
FAX: 919.807.7164  
weinerl@nccommunitycolleges.edu  
www.nccommunitycolleges.edu  
Mail: MSC 5001, Raleigh, NC 27699-5001  
Street: Caswell Building, 200 W. Jones St., Raleigh 27603

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>>> <sharonkhomes@msn.com> 9/27/2010 9:08 AM >>>

**\*SUBJECT LINE: Amnesty and Ilegal Immigration**

If you think you have problems, imagine what it is like living in Arizona (or California, Nevada, New Mexico or Texas).

We deal with a stagnant economy coupled with millions of illegals, invading our States every day. The really sad part, is that once a coyote guide brings them over the border, and forces them into a "safe house", their civil rights are totally violated, because their families back across the border, now have to send ransom before they are moved further northward. One can go to any Wal-mart on any Friday afternoon and see these illegal aliens lines up to send whatever money they have made, illegally or legally, back home. They have taken what few construction jobs are left, as well as those in service industries. An estimated 60% of the workers in the hotels in Las Vegas are Hispanic. Many are illegal. Our states' social services, education, healthcare and welfare programs are overloaded, and we are going broke because of it. The United States need to reduce immigration levels to 250,000 LEGAL immigrations per year. We need to send American construction workers to build the border fence. And then we need to deport every undocumented person we can find by profiling, plus every illegal sitting in

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WRITTEN COMMENTS

**FOR 23 NCAC 02C .0301 "ADMISSION TO COLLEGES" (Health and Safety Exception)**

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jails or prisons, or found with a "wprk for food sign sitting on a curb.

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>>> Renarde Earl 10/25/2010 10:03 AM >>>

**\*SUBJECT LINE: Proposed Amendment to Open-Door Policy and Notice of Hearing**

The State Board of Community Colleges seeks to establish a policy that allows community colleges to deny admission to applicants who pose a health or safety risk to themselves or others at the time the applicant seeks admission.

As Director/Chief of Campus Police for Forsyth Tech Community College, I am in support of this proposed policy change. Being in my current position, over the past few years, I have questioned some of the individuals who have been allowed to be admitted to the college based upon their current mental and criminal backgrounds. In some cases, the court system has mandated individuals to seek education. I totally support those who really are making an effort to change their lives, but I have experienced those who bring their current criminal nature/behavior to the community college.

It appears that other North Carolina institutions of higher education have policies or procedures in place in an effort to keep their campuses safe. I believe this policy would aid in this process.

When I look at some of the criminal histories of some of our students, I am amazed and have made the following comment to fellow colleagues: "If individuals can not behave in society, why do we believe they are going to come into the community college environment and be a model citizen". Again, I believe in assisting those who really are making efforts!

I am in support of the policy change.

Thanks,

Renarde D. Earl  
Chief/Director of Campus Police  
Forsyth Technical Community College  
2100 Silas Creek Parkway  
Winston-Salem, NC 27103  
email: rearl@forsythtech.edu  
www.forsythtech.edu  
Office: 336-734-7382  
Fax: 336-734-7245

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>>> Chad Bledsoe 10/26/2010 11:04 AM >>>

**\*SUBJECT LINE: Administrative Code Update: Written Comment Period Ending November 15, 2010 for Open Door Policy**

Dear Mrs. Martin,

Our president at Haywood Community College, Dr. Rose Johnson, asked that we share our thoughts on the proposed Administrative Code Update concerning "Admission to Colleges". As a Chief Academic Officer, I am in full support of the proposed change. Having the ability to deny admission for health and safety risks would greatly reduce problems that occur on our campuses. Typically, serious issues

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WRITTEN COMMENTS

**FOR 23 NCAC 02C .0301 "ADMISSION TO COLLEGES" (Health and Safety Exception)**

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concerning campus safety can be identified early and such a rule would allow the college to be protected from dangerous situations that can occur in the classroom. Additionally, it would provide a mechanism to prevent dangerous individuals from moving from college to college in an effort to remain enrolled even after being expelled from another institution.

If I can provide further detail I would be happy to do so.

Sincerely,

Dr. Chad Bledsoe  
Vice President of Academics and Workforce Development  
Haywood Community College  
185 Freedlander Dr.  
Clyde, NC 28721  
828-627-4576  
cbledsoe@haywood.edu

All e-mail correspondence to and from this address is subject to the North Carolina Public Records Law, which may result in monitoring and disclosure to third parties, including law enforcement.

>>> Rose Johnson 10/25/2010 10:47 am >>>

Admin Team - I have submitted my comments in support of this recommended rule change. It would be particularly beneficial for Chad, Elaine, and Debbie to submit comments in favor. Thanks.

Dr. Rose Harrell Johnson, President  
Haywood Community College  
(828) 627-4516  
(828) 627-1218 (FAX)

All e-mail correspondence to and from this address is subject to the North Carolina Public Records Law, which may result in monitoring and disclosure to third parties, including law enforcement.

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>>> Elaine Barnes 10/26/2010 1:02 PM >>>

**\*SUBJECT LINE: Administrative Code Update: Written Comment Period Ending November 15, 2010 for Open Door Policy**

Good Morning Shante,

I support the State Board of Community Colleges' proposal to establish a policy that allows community colleges to deny admission to applicants who pose a health or safety risk to others or to themselves. As Executive Director of Student Success Services at Haywood Community College, with more than thirty years experience in higher education, I know firsthand the value of a positive, safe learning environment. I believe passionately in the Open Door Policy of community colleges. I believe that providing open, accessible education truly changes lives.

The proposed amendment ensures that not only are the doors of community colleges open; they are

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WRITTEN COMMENTS

**FOR 23 NCAC 02C .0301 "ADMISSION TO COLLEGES" (Health and Safety Exception)**

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safely open. As educational research has taught us, the R-Zone of learning is the optimum place for students because it provides a relaxed, safe, positive learning environment. This amendment proposal will add another layer of protection against imminent and significant threats to students or employees.

Thanks to you and members of the State Board of Community Colleges for your counsel regarding best practices in higher education. e

Elaine D. Barnes  
Student Success Services  
Executive Director  
Haywood Community College  
185 Freedlander Drive  
Clyde, NC 28721  
828-565-4220

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>>> Charles Chrestman 10/31/2010 10:55 PM >>>

**\*SUBJECT LINE: Administrative Code Update: Written Comment Period Ending November 15, 2010 for Open Door Policy**

Ms. Martin, as you know, this was discussed with the Presidents at the Fall Meeting last week. I would encourage you to add language that covers situations involving applicants for non-credit, continuing education programs/courses. Otherwise, I support what is being proposed and will encourage its enactment.

Respectfully,  
Charles

Charles V. Chrestman, Ed.D.  
President  
Robeson Community College  
P. O. Box 1420  
Lumberton, NC 28359

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>>> Ray Scaffa 11/8/2010 6:31 PM >>>

**\*SUBJECT LINE: Proposed amendment to Open Door Policy**

I agree with the proposed amendment to the Open Door Policy.

I agree with having documented evidence to support a decision to refuse admission to a student.

Do you have any suggestions regarding conditions to allow a person who was deemed ineligible for admission to become eligible?

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>>> "Sarah Preston" <aclulegis@nc.rr.com> 11/10/2010 5:13 PM >>>

**\*SUBJECT LINE: public comment on proposed rule change to 23 NCAC 02C.0301**

Dear Ms. Martin,

Please find attached a PDF of the ACLU-NC's written comments on the proposed amendment to 23 NCAC 02C.0301.

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WRITTEN COMMENTS  
FOR 23 NCAC 02C .0301 "ADMISSION TO COLLEGES" (Health and Safety Exception)

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Best regards,

Sarah

Sarah Preston, Policy Director

ACLU of North Carolina  
Post Office Box 28004  
Raleigh, NC 27611-8004  
office phone: (919)834-3466  
fax: (866)511-1344  
web: <<http://www.acluofnorthcarolina.org/>> [www.acluofnorthcarolina.org](http://www.acluofnorthcarolina.org)

\*\*\*ATTACHMENT

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P.O. Box 28004 • Raleigh, North Carolina 27611-8004  
Phone (919) 834-3390 • Fax (866) 511-1344

November 10, 2010

**Via Certified Mail and Electronic Mail**

State Board of Community Colleges  
C/o Q. Shante Martin  
200 W. Jones St.  
Raleigh, NC 27699-5001

*Re: Proposed Rule Change to 23 NCAC 02C.0301*

Dear Members of the Board,

As an organization concerned with fair and equal access to state institutions such as the North Carolina Community Colleges, the American Civil Liberties Union of North Carolina (ACLU-NC) today writes to urge the State Board of Community Colleges to reconsider the proposed change to rule 23 NCAC 02C.0301 as published in the Register on September 15, 2010 (proposed rule). The rule, which would allow colleges to refuse admission to applicants based on perceived “health or safety” risks, is vague and overbroad which will lead to arbitrary application by the 58 Community Colleges across the state. In fact, it seems possible that the rule as drafted could invite discriminatory application by some colleges, allowing the denial of admission based on the applicant’s medical or mental health conditions, or developmental disabilities. Given the possibility that the rule could be applied in a discriminatory manner, it is also troubling that the rule contains no notice to the student regarding the reason for rejection, nor does it provide for an appeals process for students who have been refused admission. Comments made in the press recently also raise concerns about whether community colleges may intend to request private medical records from applicants as part of the admissions process. Such a policy would be objectionably intrusive. Given these concerns, the ACLU-NC urges the Board to reconsider the proposed rule.

**The proposed rule is vague and overbroad which could lead to arbitrary application of the rule.**

As drafted, the proposed rule would allow colleges to refuse admission when a college feels “it is necessary to protect the health and safety of the applicant or other individuals” and provides that the health and safety risk should be an “articulable, imminent, and significant threat to the applicant or other individuals.” However, no further definitions or guidance about what constitutes a health or safety risk or what might be a significant threat is provided. As you know, there are 58 different community colleges in the State of North Carolina and such a vague rule will invite 58 different interpretations of what poses a safety risk to students. Recent news reports regarding the rule have indicated that

at least one community college president believes this rule would allow screenings for mental illness and could therefore be used by that college to prevent people with mental illness from having access to the community college.<sup>1</sup>

Without clear definitions of the terms “health and safety,” the rule similarly seems to be very broad. While an airborne contagious infection might be a good reason for someone to stay home from classes until they are no longer contagious, it should not be considered in admissions decisions as it has no bearing on academic standing or whether, once recovered, the applicant could be successful in community college. Yet, as drafted, the proposed rule seems to allow refusal of admission based on an illness. In addition, were the college to learn that a person has an condition that causes fear or alarm in some people, such as HIV/AIDS, the administration could deny admission to these applicants too, even though this type of illness cannot be contracted simply by sharing a classroom with someone living with HIV/AIDS.

While it seems unclear that this rule is really necessary, if the Board feels that such a rule is, a substantial narrowing of the rule should be devised to make sure the 58 community colleges in the state are not applying the rule arbitrarily so as to avoid unfair or discriminatory result. The Board should consider removing the term “health” as it will likely cause a great deal of confusion and has no real bearing on admissions considerations. In addition, the inclusion of this term has already indicated to one college administrator that the rule would allow “a health background check” on potential students.<sup>2</sup> In addition, the rule could be significantly narrowed if it were made clear that the “articulable, imminent, and significant threat” must be a threat of serious bodily injury. This would, no doubt, allow administrators to achieve their goal of protecting students while not impeding the open enrollment goals established by the Board.

**The proposed rule provides no notice to students as to why they have been denied admission, nor does it provide an opportunity to appeal.**

The Board has demonstrated clear support for open enrollment, yet the policy provides no opportunity for appeal and does not even require that notice be given to the applicant about why they are being denied admission. According the ACLU-NC’s review of several community college student handbooks, it would appear that there is standard due process provided to students who are facing suspension or expulsion. Given that such a procedure already exists, it seems that this procedure could be applied to students denied admission under the proposed rule. In this way, applicants could be afforded notice that they pose a safety risk and an opportunity to demonstrate that they are not a risk.

Especially given the possibility that this rule could be applied arbitrarily or unfairly by the various school systems, it is absolutely necessary to protect the rights of applicants. Applicants should be afforded basic due process through notice of denial of admission and the ability to appeal that decision to some neutral hearing panel.

<sup>1</sup> *Colleges consider barring students for health, safety risks*, WRAL NEWS 14, Sept. 16, 2010, available at <http://www.wral.com/news/education/story/8303878/>.

<sup>2</sup> *Id.*

**The proposed rule raises privacy concerns for applicants and could chill the application process for some students.**

As noted above, at least one school administrator believes that the proposed rule opens the door for requiring medical records from applicants before granting them admission. While the colleges may not gain access to private medical information without the applicant volunteering the information, if the colleges made it a requirement of admission, many applicants would no doubt feel coerced into turning over the information in order to pursue their education. While this type of invasive application process may not have been envisioned by the Board, the breadth of the rule certainly opens the door for colleges to adopt policies requiring medical information from applicants before admission. This would constitute an unnecessary intrusion on privacy rights protected by the Constitution while serving no legitimate safety interest for the college.

What's more, such a policy would no doubt dissuade many potential students from applying for admittance to North Carolina's Community Colleges. It is a sad fact that many mental illnesses, disabilities, and other illnesses still carry a stigma in society. After news of this proposed rule broke, the ACLU-NC received letters from several individuals objecting to the rule. One letter described how the writer's mother never allowed the writer to seek treatment for bi-polar disorder because the mother feared someone would somehow gain access to the information about the condition. This type of stigma could prevent many people from applying for fear that the college to which she or he applies will want to see medical records, or records regarding history of mental illness or substance abuse. The rule, while probably not intended to have such an effect, once again seems to be in contravention of the Board's stated policy of open admission. People who are managing disabilities, chronic illnesses, battling substance abuse, or mental illness are very likely the people who could most benefit from access to a local community college, yet the proposed rule will affect these individuals most severely, creating yet another obstacle for these individuals.

**Conclusion**

In conclusion, the ACLU-NC would urge the State Board of Community Colleges to withdraw this proposed rule. If the Board is convinced of the necessity of such a rule, the ACLU-NC would be happy to work with the Board and disability, mental health, and other interested stakeholders on a new proposal. Given the breadth of the proposed rule, there is a real danger that the rule will be used inappropriately and it should therefore not be adopted. If you have any questions or concerns about this issue, please feel free to contact me. Thank you for your time and careful consideration of this matter.

Best regards,

Sarah Preston



Policy Director  
ACLU of North Carolina  
aclulegis@nc.rr.com

WRITTEN COMMENTS

FOR 23 NCAC 02C .0301 "ADMISSION TO COLLEGES" (Health and Safety Exception)

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>>> <jadams@arcnc.org> 11/15/2010 9:17 AM >>>

**\*SUBJECT LINE: Community College Proposed Rule-Admissions-Comment**

To whom it may concern,

The attached is a copy of a mailed in letter. We were concerned with the holiday that the mailed version did not get received by the community colleges.

The attached letter reflects the concerns from The Arc of North Carolina.

Julia Adams  
Assistant Director of Government Relations  
The Arc of North Carolina  
343 E Six Forks Road, Suite 320  
Raleigh, North Carolina 27609  
Office Phone: 919-782-4632  
Email: jadams@arcnc.org  
Cell Phone: 919-830-5457

The Arc of North Carolina is an affiliated chapter of The Arc of the United States.  
Visit [www.arcnc.org](http://www.arcnc.org) to learn more about how The Arc of North Carolina serves children and adults with developmental disabilities and advocates for their rights.

\*\*\*ATTACHMENT

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The Arc of North Carolina strongly opposes the North Carolina Community College proposed rule to amend 23 NCAC 02C .0301 – "Admission to Colleges." The State Board of Community Colleges seeks to establish a policy that allows community colleges to deny admission to applicants who pose a health or safety risk to themselves or others at the time the applicant seeks admission.

People with developmental and intellectual disabilities have experienced discriminatory practices in the name of "health and safety". In Illinois a child with significant disabilities who uses oxygen and a service animal was denied access to State Special Olympics because she "posed a health and safety risk" to other athletes even though she participated in county based Special Olympics.

In 2007, East Meadow School District in Long Island barred a deaf student from taking his service dog with him to school. The school district in its decision stated they believed it would pose a "health and safety hazard to other students and staff".

These two cases are not unique. They reflect the significant challenges that are faced by people with disabilities who use service animals, adapted equipment, durable medical equipment, or communicate differently.

During the media coverage of this proposed rule, several community college presidents stated that this would permit community colleges to request medical records of all students entering the system. We are strongly opposed to this interpretation of the proposed rule. The Arc of North Carolina presents the following questions if this becomes the standard interpretation of this proposed rule. Who would be reviewing the medical documents? Would each community college employee both a medical and a psychiatric professional? How would the reviews align with current federal regulations around patient confidentiality? This rule as proposed and the varied interpretations of the rule present serious concerns for advocates across the state.

In addition to the historic discriminatory use of "health and safety risk", and the concerns over varied interpretations of what can be requested to establish "health and safety risk"; this proposed rule does not offer clarity on what the community college admissions program would deem what a "health and safety risk" would constitute. Under this rule if a student applicant is denied admission, the rule does not detail or provide for any due process for the individual student denied admission based on being deemed a "health and safety risk".

We strongly encourage the North Carolina Community College system to reassess the proposal of this rule. We encourage them to seek recommendations from disability advocates across the state in the wording of policy that would address their needs without promoting historical discriminatory practices based on "health and safety risks".

Sincerely,  
Dave Richard, Executive Director The Arc of North Carolina.

WRITTEN COMMENTS

FOR 23 NCAC 02C .0301 "ADMISSION TO COLLEGES" (Health and Safety Exception)

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>>> "Annaliese Dolph" <annaliese.dolph@disabilityrightsn.org> 11/15/2010 10:19 AM >>>

**\*SUBJECT LINE: Comments RE: Proposed Amended Rule 23 NCAC 02C .0301**

Attached please find comments of Disability Rights North Carolina.

Thank you in advance.

Annaliese Dolph

Director of Public Policy

Disability Rights NC

2626 Glenwood Avenue, Suite 550

Raleigh, NC 27608

Phone: 919-856-2195

TTY: 1-888-268-5535

Fax: 919-856-2244

annaliese.dolph@disabilityrightsn.org

<mailto:your.name@disabilityrightsn.org>

<http://www.disabilityrightsn.org>

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**SBCC**  
**11/18/2010**



Q. Shante Martin  
200 W. Jones Street  
MSC 5001  
Raleigh, NC 27699-5001

Via Email to [publiccomments@nccommunitycolleges.edu](mailto:publiccomments@nccommunitycolleges.edu)

RE: Proposed Amended Rule 23 NCAC 02C .0301

Dear Ms. Martin:

Disability Rights North Carolina is North Carolina's federally-funded Protection and Advocacy System. Disability Rights NC is federally mandated to protect and advocate for the rights of people with disabilities.

I write to object and provide comment to proposed amended rule 23 NCAC 02C .0301 (e). We have grave concerns that the proposed language runs afoul of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504). Additionally, we object to the lack of procedural protections provided

**Objection to Language Regarding a Health Determination**

We object to the proposed language regarding a "health determination" because it necessitates a discriminatory preadmission inquiry as to whether an applicant has a disability, and will also have a disproportionate, adverse effect on people with disabilities.

The ADA and Section 504 prohibit discrimination against students with disabilities in community colleges. 42 U.S.C. § 12132, 29 U.S.C. § 794. This means that a college cannot have eligibility requirements that screen out people with physical or mental disabilities. 34 C.F.R. § 104.42 (b). In addition, schools must provide students with disabilities "reasonable accommodations," modifications to normal rules and procedures, that enable students to continue and succeed in higher education. 28 C.F.R. § 35.13.

The regulations implementing Section 504 explicitly prohibit preadmission inquiries regarding whether a student has a disability: "In administering its admission policies, a recipient . . . may not make preadmission inquiry as to whether an applicant for admission is a handicapped person . . . [unless the college is] taking remedial action to correct the

*North Carolina's Protection  
and Advocacy System*

2626 Glenwood Avenue  
Suite 550  
Raleigh, NC 27608

919-856-2195  
877-235-4210  
888-268-5535 TTY  
919-856-2244 fax

[www.disabilityrightsn.org](http://www.disabilityrightsn.org)

effects of past discrimination . . . or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation.” 34 C.F.R. 104.42 (b)(4), 104.42 (c). These exceptions are clearly not applicable in this context. Thus, a preadmission inquiry about an applicant’s disability would be discriminatory.

If the State Board of Community Colleges chooses to proceed with the proposed rule amendment, we recommend removing the language regarding a health determination altogether.

**Objection to Language Regarding a Safety Threat**

Additionally, we object to the broad language regarding a “safety threat” that would give rise to a denial of admission. Although the language “articulable, imminent, and significant” is used, it is still not clear how safety is defined. This would lead to differing interpretations and methods of implementation across the community college system. Moreover, we are very concerned that people with certain disabilities will be denied admission on the basis of their disability because of unfounded fears and stereotypes. People with mental illness and certain intellectual or developmental disabilities can be perceived as violent because of their manner, even though these disorders are in no way a predictor of violence. A person with a movement disorder may be perceived as “dangerous” because of the way they move about. An individual with Tourette Syndrome may be perceived as threatening during a verbal outburst even though it is involuntary and there is no physical threat. Many people with disabilities could be excluded from our community college system because of perceived “safety threats,” resulting in a discriminatory impact to people with disabilities.

At the very least, if it is deemed necessary to move forward with this amendment, we recommend clarifying that a safety threat is a significant threat of serious bodily injury. It is imperative that the criteria imposed relate to actual risk and not be based upon stereotypes or assumptions. However, even if the language is modified, we fear that this language will open an avenue of discrimination that may not be easily contained. Such language will have a disproportionate effect on people with certain disabilities, in particular people with mental illness.

**Objection to Lack of Procedural Protections**

Finally, we object to the lack of procedural protections when an applicant is denied admission on these grounds. There is no requirement that the applicant be given notice of the decision and there is no procedure to appeal such a decision. Certainly once a student is admitted and behavior is exhibited that gives rise to a suspension or expulsion, due process protections are afforded that student, and appeal of any decision may be pursued. When basing an admissions decision on such serious grounds, allowing an appeal of the decision is appropriate and good policy.

Thank you for the opportunity to comment. If you have any questions, please feel free to contact me at [Annaliese.dolph@disabilityrightsnc.org](mailto:Annaliese.dolph@disabilityrightsnc.org) or (919) 856-2195.

Sincerely,

/s/

Annaliese Dolph  
Director of Public Policy

WRITTEN COMMENTS

FOR 23 NCAC 02C .0301 "ADMISSION TO COLLEGES" (Health and Safety Exception)

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>>> "Jennifer Mahan" <jmahan@autismsociety-nc.org> 11/15/2010 4:11 PM >>>

**\*SUBJECT LINE: Proposed admissions rules changes**

Ms. Martin,

Please see the Autism Society of North Carolina's comments on proposed rules changes for admissions to community colleges in the attached document and below. Thank you and the State Board of Community Colleges for your consideration. Please contact me if you have any questions.

Jennifer Mahan  
Director of Government Relations

Autism Society of North Carolina

505 Oberlin Road, Suite 230

Raleigh, NC 27605-1345

Main: 919-743-0204, extension 1116  
Toll free: 1-800-442-2762, extension 1116

Direct: 919-865-5068

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Email: jmahan@autismsociety-nc.org

<<http://www.autismsociety-nc.org>> [www.autismsociety-nc.org](http://www.autismsociety-nc.org)

40-years-small-rectangle\_h2

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\*To conserve paper, the Legal Affairs office compiled all emails received by the end of the comment period into this single document. The Legal Affairs office appended this subject line, however the words after "\*SUBJECT LINE:" are as they appeared in the original email.

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**FOR 23 NCAC 02C .0301 "ADMISSION TO COLLEGES" (Health and Safety Exception)**

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Thank you in advance for your compliance with this notice.

November 15, 2010

To: State Board of Community Colleges

From: Autism Society North Carolina

Re: Proposed Admissions Rules Changes

The Autism Society of North Carolina is committed to providing support and promoting opportunities which enhance the lives of individuals within the autism spectrum and their families. More than 50,000 people in North Carolina live with autism, from those significantly disabled by the disorder to those more mildly affected. Early intervention and support have enabled people with autism to continue their education and some have chosen to do so through North Carolina's Community College system.

With the increase in autism incidence worldwide, many more people on the autism spectrum will be seeking admissions to community colleges over the coming decades. It is with this in mind that The Autism Society of North Carolina is writing regarding the proposed admissions rules changes to section 23 NCAC 02C.0301 (e) allowing community colleges in North Carolina to adopt policies refusing admission on the basis of "health and safety of the applicant or other individuals." ASNC believes that the language in the rule creating policy to deny admission based on "health and safety" is much too broad and would result in individuals on the autism spectrum and people with other disabilities being denied admissions.

People on the autism spectrum sometimes display behavior that is considered unusual or odd. Part of the disorder is a difficulty in understanding social cues and relate to others which can result in saying things that are not always acceptable. ASNC is concerned that these behaviors are easy to misinterpret and could result in a denial of admissions for someone who

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Email Comments: Page 27 of 28

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would otherwise be able to succeed in a community college setting.

ASNC would suggest several changes to the proposed rules: 1) the elimination of the "health and safety" language and replacement language that more narrowly focuses on rules around threats made during the admissions process and 2) a clear and standard process for appeal of admissions denial if one should be made under the new rules including notification to the individual denied admission and an ability to request hearing regarding the denial and 3) a standard set of policies for denial of admissions under these rules so there is consistency across the community college system.

Without access to ongoing education, including the programs and degrees available through the community college system, people on the autism spectrum would need to continue relying on government support and benefits. They access community college for the same reasons other students do: they have hopes and dreams that they want to fulfill through education. Please ensure they are able to do so in the future.

Sincerely,

Jennifer Mahan

Director of Government Relations

Autism Society of North Carolina

505 Oberlin Road, Suite 230

Raleigh, NC 27605-1345

[jmahan@autismsociety-nc.org](mailto:jmahan@autismsociety-nc.org)

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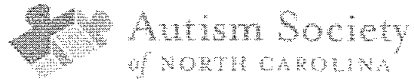
\*\*\*ATTACHMENT

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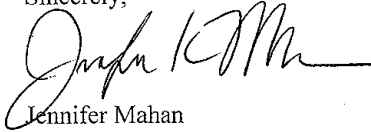
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students do: they have hopes and dreams that they want to fulfill through education. Please ensure they are able to do so in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Mahan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jennifer Mahan

Director of Government Relations

Autism Society of North Carolina

505 Oberlin Road, Suite 230

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[jmahan@autismsociety-nc.org](mailto:jmahan@autismsociety-nc.org)

[www.autismsociety-nc.org](http://www.autismsociety-nc.org)



The Arc of North Carolina strongly opposes the North Carolina Community College proposed rule to amend 23 NCAC 02C .0301 – "Admission to Colleges." The State Board of Community Colleges seeks to establish a policy that allows community colleges to deny admission to applicants who pose a health or safety risk to themselves or others at the time the applicant seeks admission.

People with developmental and intellectual disabilities have experienced discriminatory practices in the name of "health and safety". In Illinois a child with significant disabilities who uses oxygen and a service animal was denied access to State Special Olympics because she "posed a health and safety risk" to other athletes even though she participated in county based Special Olympics.

In 2007, East Meadow School District in Long Island barred a deaf student from taking his service dog with him to school. The school district in its decision stated they believed it would pose a "health and safety hazard to other students and staff".

These two cases are not unique. They reflect the significant challenges that are faced by people with disabilities who use service animals, adapted equipment, durable medical equipment, or communicate differently.

During the media coverage of this proposed rule, several community college presidents stated that this would permit community colleges to request medical records of all students entering the system. We are strongly opposed to this interpretation of the proposed rule. The Arc of North Carolina presents the following questions if this becomes the standard interpretation of this proposed rule. Who would be reviewing the medical documents? Would each community college employee both a medical and a psychiatric professional? How would the reviews align with current federal regulations around patient confidentiality? This rule as proposed and the varied interpretations of the rule present serious concerns for advocates across the state.

In addition to the historic discriminatory use of "health and safety risk", and the concerns over varied interpretations of what can be requested to establish "health and safety risk"; this proposed rule does not offer clarity on what the community college admissions program would deem what a "health and safety risk" would constitute. Under this rule if a student applicant is denied admission, the rule does not detail or provide for any due process for the individual student denied admission based on being deemed a "health and safety risk".

We strongly encourage the North Carolina Community College system to reassess the proposal of this rule. We encourage them to seek recommendations from disability advocates across the state in the wording of policy that would address their needs without promoting historical discriminatory practices based on "health and safety risks".

**[www.arcnc.org](http://www.arcnc.org)**

**State Headquarters** • 343 E. Six Forks Rd. Suite 320 • Raleigh, NC 27609  
919-782-4632 • 800-662-8706 • 919-782-4634 fax



National  
Multiple Sclerosis  
Society  
Eastern  
North Carolina  
Chapter

November 15, 2010

Q. Shanté Martin, Rule-making Coordinator  
North Carolina Community Colleges  
200 W. Jones Street, 5001 MSC  
Raleigh, NC 27699-5001

Via Email to [publiccomments@nccommunitycolleges.edu](mailto:publiccomments@nccommunitycolleges.edu)

RE: Proposed Amended Rule 23 NCAC 02C .0301

Dear Ms. Martin:

Multiple sclerosis stops people from moving. The National MS Society exists to make sure it doesn't. The North Carolina Chapters of the National MS Society serve more than 10,000 individuals affected by MS. We help each person address the challenges of living with MS.

On behalf of these individuals, I join with others representing the disability community to comment and object to the proposed amended rule 23 NCAC 02C .0301 (e). Specifically, we are concerned that the proposed language could be too broadly interpreted and negatively impact the admission of people with disabilities to North Carolina's Community Colleges.

Multiple sclerosis, an unpredictable, often disabling disease of the central nervous system interrupts the flow of information within the brain and between the brain and body. Symptoms range from numbness and tingling to blindness and paralysis. The progress, severity and specific symptoms of MS in any one person cannot be predicted.

Due to the unpredictability and episodic nature of MS, the overbroad language of the rule's proposed "safety threat" opens the possibility of a person exhibiting symptoms of the disease as being deemed a threat. While the terms "articulable, imminent, and significant" are used to narrow the definition, the term "safety" should be more strictly defined. Historically, such language has

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3101 Industrial Drive, Suite 210 Raleigh, NC 27609 <http://www.nationalmssociety.org/nct>

permitted employers and academic institutions to deny access to persons with disabilities.

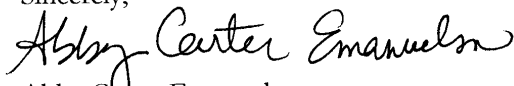
Certain MS symptoms could be misconstrued as a perceived safety threat, for example, aphasia or slurred speech coupled with a lack of balance could be perceived as inebriation. Lack of mobility often requires use of durable medical equipment and/or a service animal. For those uncomfortable with large wheelchairs or dogs perceive these as “dangerous” despite our efforts to educate. Many people with disabilities could be excluded from our community college system because of perceived “safety threats,” resulting in a discriminatory impact to people with disabilities.

We echo others’ statements that it is imperative that the criteria imposed relate to actual risk and not be based upon stereotypes or assumptions

Finally, we also join others in their objection to the lack of procedural protections when an applicant is denied admission on these grounds. There is no requirement that the applicant be given notice of the decision. We support the establishment of an appeals process that requires informing the applicant on the decision and the process of appeal.

Thank you for the opportunity to comment on this proposed rule.

Sincerely,



Abby Carter Emanuelson  
Vice President, Public Policy  
National Multiple Sclerosis Society, NC Chapters  
[abby.emanuelson@nmss.org](mailto:abby.emanuelson@nmss.org)  
919-792-1006