



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

Peter Hans, President

27 July 2018

IMPORTANT INFORMATION

MEMORANDUM

- TO:** Members of the State Board of Community Colleges
Community College Presidents
Boards of Trustees Chairs
Community College Chief Academic Officers, Chief Admissions Officers, Basic Skills Directors, Business Officers, Continuing Education Officers, Chief Financial Officers, Financial Aid Officers, Public Information Officers, Registrars, Student Development Administrators, & Other Interested Parties
- FROM:** Q. Shanté Martin, *NCCCS General Counsel*
- RE:** **Temporary Adoption of 1A SBCCC 400 - "Appeal Process for Award of the North Carolina Title II Adult Education and Family Literacy Act Fiscal Years 2018 – 2021 Competitive Grants"**

The State Board of Community Colleges (SBCC) temporarily adopted 1A SBCCC 400 pursuant to 3B SBCCC 400.1(c). The SBCC needs to have an appeal process for providers who were not awarded Title II competitive grant funds for fiscal years 2018-2021. It would not be in the best interest of these providers to wait until the completion of the normal rulemaking process to have their appeals considered by the SBCC, so a temporary rule is necessary to bring about prompt resolution of the providers' appeals.

The temporary rule became effective on 20 July 2018. The temporary rule will be effective for a period of 180 days or until the permanent rules becomes effective, whichever is sooner. The temporary rule will be published on the NC Community College System's website, www.nccommunitycolleges.edu, under "State Board Code." For your convenience, a copy of the temporary rule is attached to this memorandum.

**CC18-036
E-mail Copy**

Attachment



**State Board of Community Colleges Code
TITLE 1 – COMMUNITY COLLEGES**

CHAPTER A. STATE BOARD GOVERNANCE

**SUBCHAPTER 400. APPEAL PROCESS FOR AWARD OF THE NORTH
CAROLINA TITLE II ADULT EDUCATION AND FAMILY
LITERACY ACT FISCAL YEARS 2018 – 2021
COMPETITIVE GRANTS**

1A SBCCC 400.1 Applicability

This Subchapter applies solely to grants or contracts awarded by the State Board of Community Colleges for the North Carolina Title II Adult Education and Family Literacy Act Fiscal Years 2018 – 2021 Competitive Grants (Title II Grants). This rule shall also only apply to offerors that submitted a request for proposal (RFP) within the time period designated in the RFP and that was consistent with the RFP requirements but was not awarded a grant or contract by the State Board of Community Colleges.

*History Note: Authority G.S. 115D-5; 29 U.S.C. §§ 3302, 3305, 3321, and 3322;
Temporary Adoption Eff. June 20, 2018.*

1A SBCCC 400.2 Standards for appeal

The sole grounds for appeal shall be:

- (1) Failure to follow the evaluation or award process;
- (2) Unlawful discrimination; or
- (3) Alleged bias.

The appealing party must expressly identify one of the grounds for appeal and provide a written explanation or other documentation to support the basis of appeal identified.

*History Note: Authority G.S. 115D-5;
Temporary Adoption Eff. June 20, 2018.*

1A SBCCC 400.3 Evaluation of appeal

- (a) The appealing party shall submit a written appeal identifying one of the bases in 1A SBCCC 400.2 to the NCCCS Director of Adult Education, College and Career Readiness Section, North Carolina Community College System, via email or via USPS mail at 5016 Mail Service Center, Raleigh, NC 27699-5016. The appealing party's written appeal must be received within 30 calendar days from the date of the award.
- (b) The NCCCS College and Career Readiness Section, shall provide a written response to the appealing party within 10 business days of the expiration date for receipt of the appeal. If the appealing party is not satisfied with the NCCCS College and Career Readiness Section's written response, the appealing party shall have five (5) business days from receipt of the NCCCS College and Career Readiness Section's response to request an informal hearing on the appeal.
- (c) The appealing party shall submit the request for an informal hearing to the NCCCS Senior Vice President, Chief Academic Officer with a copy to the NCCCS Director of Adult Education, College and Career Readiness Section. If the NCCCS Senior Vice President, Chief Academic Officer does not receive the request for informal hearing within five (5) business days from the appealing party's receipt of the NCCCS College and Career Readiness Section's response, the NCCCS College and Career Readiness Section's response shall become the SBCC's final agency decision.

History Note: Authority G.S. 115D-5;

Temporary Adoption Eff. June 20, 2018.

1A SBCCC 400.4 Review Panel

- (a) Upon receipt of the request for informal hearing, the NCCCS Senior Vice President, Chief Academic Officer shall assemble a review panel. The review panel shall meet the following requirements:
 - (1) Be comprised of three people;
 - (2) Be comprised of individuals who did not participate in the award evaluation or award decision; and

- (3) Have professional expertise in either administering or developing educational workforce development programming that serve adults with barriers to employment and is required to meet performance outcomes.
- (b) The NCCCS Senior Vice President, Chief Academic Officer shall designate one of the members of the review panel to serve as Chair of the review panel. The Chair of the review panel shall preside over the informal hearing.
- (c) The purpose of the review panel is to conduct an informal hearing to review appeals brought pursuant to 1A SBCCC 400.1 and provide a recommendation to the SBCC.

History Note: Authority G.S. 115D-5;

Temporary Adoption Eff. June 20, 2018.

1A SBCCC 400.5 Informal Hearing Process

- (a) The NCCCS Senior Vice President, Chief Academic Officer shall calendar the informal hearing no longer than 30 calendar days and no sooner than 15 calendar days after the expiration date for receipt of the request for informal hearing. The NCCCS Senior Vice President, Chief Academic Officer shall provide the notice of informal hearing with the date, time, location, and list of members of the review panel to the parties at least seven (7) business days prior to the informal hearing.
- (b) Parties may participate in the informal hearing via telephonic or other electronic means. If any party is going to participate via telephonic or other electronic means, the party must provide written notification to the NCCCS Senior Vice President, Chief Academic Officer within two (2) business days of receipt of the notice of informal hearing date.
- (c) At the informal hearing, the party appearing on behalf of the NCCCS College and Career Readiness Section shall be the Director of Adult Education or the Director of Adult Education's designee; and the party appearing on behalf of the appealing party shall be an authorized official. Attorneys may serve in an advisory capacity to any party during the informal hearing, but attorneys may not speak on behalf of either party at the informal hearing unless the attorney is an official of the NCCCS College and

Career Readiness Section or an official of the appealing party and not engaged in an attorney-client relationship with either party.

- (d) No later than seven (7) business days prior to the informal hearing, the NCCCS College and Career Readiness Section shall provide one electronic copy each of the RFP, the appealing party's response to the RFP, the award decision, the appealing party's written appeal, and the College and Career Readiness Section's appeal response to the review panel.
- (e) No later than three (3) business days prior to the informal hearing, both parties shall do the following electronically.
 - (1) Exchange a written list of witnesses or presenters each party intends to use at the informal hearing along with a brief summary of each witnesses' testimony or each presenter's statement;
 - (2) Submit the witness or presenter list to the review panel; and
 - (3) Submit any additional written documentation to the review panel and a copy of such additional information to the opposing party for consideration only if such additional information is directly related to the standard of review for the informal hearing.
- (f) The review panel shall conduct the informal hearing as follows.
 - (1) The review panel shall adhere to the following standard of review:
 - (A) Whether the appealing party has provided sufficient evidence to establish that the College and Career Services Section failed to follow the evaluation or award process;
 - (B) Whether the appealing party has provided sufficient evidence to establish that the College and Career Services Section's decision was based on unlawful discrimination; or
 - (C) Whether the appealing party has provided sufficient evidence to establish that the College and Career Services Section was biased against the appealing party in the award decision.
 - (2) The review panel shall not recommend upholding the appeal only because the review panel disagrees with the award decision. The only bases upon which the review panel has the authority to recommend upholding the appeal is if the

appealing party has established the factors specified in 1A SBCCC 400.5(f)(A) – (C).

- (3) The total length of the informal hearing shall be no longer than one (1) hour. Each party shall have a maximum of 20 minutes to present evidence in their case in chief. The appealing party shall present their case first. At the conclusion of each party's case, each party may provide rebuttal evidence for no more than five (5) minutes. The review panel shall have the authority to ask any clarifying questions of any party for the remaining ten (10) minutes of the informal hearing. Any party responding to a review panel member's question when the one hour time period has concluded shall have the right to complete their response to the question.
- (4) The legal rules of evidence shall not be enforced, but the review panel has the discretion to direct the testimony or presentations so that the parties address only those issues that are relevant to the standard of review consistent with 1A SBCCC 400.5(f)(1)(A) – (C).
- (5) Parties have the discretion to call their own witness and question the witness during their own presentation of evidence. Alternatively, parties have the discretion to present evidence in a narrative form.
- (6) If either party believes that the review panel should not give credence to evidence offered by the other party, that party may bring that to the review panel's attention during the presentation of their own case or during their rebuttal. The review panel shall consider those objections when weighing the evidence.
- (7) The review panel shall be responsible for ensuring that the informal hearing is recorded.
- (8) After the informal hearing, the review panel shall provide a written recommendation detailing the basis for the recommendation to the SBCC. In making a recommendation to the SBCC, the review panel shall only consider the RFP, the appealing party's response to the RFP, the award decision, the appealing party's written appeal, the College and Career Services Section's response to the written appeal, and evidence provided at the informal hearing.

History Note: Authority G.S. 115D-5;

Temporary Adoption Eff. June 20, 2018..

1A SBCCC 400.6 SBCC Final Agency Decision

After the informal hearing in 1A SBCCC 400.5, the review panel shall make a final recommendation to the SBCC for the SBCC's consideration at the next regularly scheduled or special called SBCC meeting that occurs at least 10 business days after the informal hearing. The review panel's recommendation to the SBCC shall specify whether the appealing party's appeal should be upheld or denied based upon the standard of review in 1A SBCCC 400.5(f)(1)(A) – (C). The SBCC's evaluation of the review panel's recommendation shall be limited to the standard of review specified in 1A SBCCC 400.5(f)(1)(A) – (C). The SBCC's decision is the final agency decision.

History Note: Authority G.S. 115D-5;

Temporary Adoption Eff. June 20, 2018.