

## TITLE 09 – OFFICES OF THE GOVERNOR AND LT. GOVERNOR

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Information Technology intends to adopt the rules cited as 09 NCAC 06A .0104; and 06D .0101-.0104.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://it.nc.gov/rules>

**Proposed Effective Date:** December 1, 2020

**Public Hearing:**

**Date:** September 9, 2020

**Time:** 2:00 p.m.

**Location:** Webex, Link to join: <https://ncgov.webex.com/ncgov/onstage/g.php?MTID=ec981cc268140a3b47da9ea4e714fb65c>

**Reason for Proposed Action:** Agency is submitting the rules for adoption pursuant to G.S. 143B-1321(a)(16), G.S. 150B-20 and G.S. 116E-4(b). Chapter 150B requires that agencies with rulemaking authority adopt rules regarding the public's right to petition the agency to adopt rules. The first proposed rule aims to put the public on notice as to how they can communicate a proposed rule to the NC Department of Information Technology (NC DIT).

Chapter 116E provides that the Government Data Analytics Center (GDAC) within NC DIT is charged with specific oversight and operation of the ELDS, and requires that rules be adopted to implement the Article. GDAC's primary purpose for pursuing rulemaking is to meet the statutory requirement found in Chapter 116E and to ensure that the agencies and institutions that exchange data for the purposes listed in the Chapter are doing so under the same rules and legal framework.

**Comments may be submitted to:** Leigh Jackson, PO Box 17209, Raleigh, NC 27619-7209; phone (919) 917-6620; email [DITrulesrequests@nc.gov](mailto:DITrulesrequests@nc.gov).

**Comment period ends:** October 16, 2020

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- State funds affected
- Local funds affected
- Substantial economic impact ( $\geq$  \$1,000,000)
- Approved by OSBM
- No fiscal note required

### CHAPTER 06 - OFFICE OF INFORMATION AND TECHNOLOGY SERVICES

#### SUBCHAPTER 06A – INFORMATION TECHNOLOGY PROCUREMENT

#### SECTION .0100 – FORMS, TERMS AND CONDITIONS AND DEFINITIONS

##### 09 NCAC 06A .0104 PETITIONS FOR RULE-MAKING

(a) Any person submitting a petition requesting the adoption, amendment, or repeal of a rule under this Chapter shall address the petition to the Rules Coordinator, Attn: DIT Legal Services, Mail Service Center 4101, Raleigh, North Carolina 27699-4101. Alternatively, a petition can also be emailed to [DITrulesrequests@nc.gov](mailto:DITrulesrequests@nc.gov).

(b) The petition shall contain the following:

- (1) for petitions to adopt or amend a rule, a draft of the proposed rule or amendment;
- (2) a statement of the effect of the requested rule change; and
- (3) the name and address of the petitioner.

(c) The petition may contain the following:

- (1) the reason for the proposal;
- (2) the effect of the new rule on existing rules; or
- (3) any data supporting the rule proposal.

*Authority G.S. 143B-1321(a)(16); 116E-4(b).*

## SUBCHAPTER 06D – GOVERNMENT DATA ANALYTICS CENTER

### SECTION .0100 – NORTH CAROLINA EDUCATION LONGITUDINAL DATA SYSTEM

#### 09 NCAC 06D .0101 DEFINITIONS

In addition to the definitions set forth in 116E-1, the following definitions shall apply to the rules in this Section:

- (1) "Aggregated" means the act of collecting or combining information and presenting it in a way that does not include personally identifying information of individuals. Aggregated data can be used for the purposes of making comparisons or identifying patterns within or among groups of subjects or individuals. An example of aggregated data would be the number of high school graduates from Wake County who graduated from the University of North Carolina System with a Bachelor of Science in Engineering within the past three years and their average salary.
- (2) "Applicable law" means all statutes and rules of North Carolina and all relevant United States federal statutes, regulations, standards and policy requirements pertaining to the protection of privacy and security of confidential data. Applicable law includes the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; the Health Insurance Portability and Accountability Act, 42 U.S.C. 300gg, 29 U.S.C 1181 et seq., and 42 USC 1320d et seq.; the Workforce Innovation and Opportunity Act, 29 U.S.C. Ch. 32; and all regulations promulgated thereunder.
- (3) "Contributor" means an entity that discloses Data to the System. The Contributors may be one or more of the entities specified in G.S. 116E-5(d)(1).
- (4) "Data" means student data as defined in G.S. 116E-1(4), workforce data as defined in G.S. 116E-1(7), or other personally identifying data disclosed by the Contributors to the System and any data released from the System in response to data requests.
- (5) "GDAC" means the Government Data Analytics Center, which has the authority to operate and oversee the System pursuant to G.S. 116E-4.
- (6) "North Carolina Education Longitudinal Data System" or "System" means the technical system operated by GDAC along with the technical systems maintained and operated by the Contributors to collect, store, aggregate, and report or disclose Data solely when those systems are being utilized to respond to a Request.
- (7) "Report" means the de-identified or aggregated information, data extract, or data file generated by the System using Data on a specified group of students, workforce members, or both, to fulfill a Request.
- (8) "Request" means an inquiry for a Report containing information on a specified group of students, workforce members, or both from the System by a Requestor.
- (9) "Requestor" means an entity or individual that makes a Request to the System for a Report. A Requestor may also be a Contributor.

*Authority G.S. 143B-1321(a)(16); 116E-4(b).*

#### 09 NCAC 06D .0102 DATA REQUEST PROCESS

(a) In order to initiate a Request for a Report from the System, a Requestor must complete an Education Longitudinal Data System Report Request Form located at: <https://it.nc.gov/services/nc-gdac>. The Requestor shall submit the form through the website if submission is available online, by emailing it to [gdacadmin@nc.gov](mailto:gdacadmin@nc.gov), or by mailing a hard copy to the following address: Government Data Analytics Center, 4101 Mail Service Center, Raleigh, NC 27699-4101.

(b) The Requestor shall include, at a minimum, the following information in the Request form:

- (1) the name of the Requestor individual and his or her contact information;
- (2) the name of the organization for whom Requestor is making the Request on behalf of, if applicable;
- (3) whether or not the Requestor, or the organization the Requestor is making the Request on behalf of, is considered a public official as defined under 20 C.F.R. 603.2(d);
- (4) the categories or types of Data needed to generate the Reports being requested, e.g., data pertaining to students who graduated high school in 2013 who were students in the University of North Carolina School System in 2014;
- (5) the purposes for which the Requestor will utilize the Reports; and
- (6) to whom or in what medium the Requestor plans to publish research based on or interpretations of the Report.

(c) Requestors who receive data shall:

- (1) store Reports on servers or media utilizing safeguards based on nationally accepted standards, including those published by the National Institute of Standards and Technology (NIST);
- (2) comply with all Applicable Law and the Requestor data sharing agreement in storing and using the Reports, if applicable; and
- (3) use a data destruction policy based on nationally accepted standards, including NIST standards, to destroy the Report after it has served the Requestor's stated purpose if the Report contains de-identified but not aggregated workforce data from the Division of Employment Security.

*Authority G.S. 143B-1321(a)(16); 116E-4(b).*

#### 09 NCAC 06D .0103 CONTRIBUTOR DATA SHARING AGREEMENTS

(a) All Contributors that plan to contribute Data to the System shall enter into one or more Memoranda of Understanding with the Government Data Analytics Center and one or more Contributor that contain, at a minimum, the following:

- (1) obligations to comply with all Applicable Law when disclosing, accessing, or using Data in the System;

- (2) limitations on Data access to authorized persons employed or contracted by the parties of the Memorandum of Understanding;
- (3) requirements for safeguarding any Data disclosed by a Contributor; and
- (4) terms regarding the relevant limitations of liability for State and local government agencies and private or non-governmental Contributors.

(b) In accordance with G.S. 143B-1385(d)(2), each Contributor shall be the sole custodian of the Data it stores and maintains and that may be disclosed to the System. Each Contributor shall only disclose Data to the System and to GDAC that the Contributor is authorized to disclose in compliance with Applicable Law.

*Authority G.S. 143B-1321(a)(16); 116E-4(b).*

#### **09 NCAC 06D .0104 REQUESTOR DATA SHARING AGREEMENTS AND REQUIREMENTS**

(a) Except as provided in Paragraph (b) of this Rule, all Requestors shall enter into a data sharing agreement with the Contributors that are the custodians of the Data that may be needed to generate a requested report. The requestor data sharing agreement shall be separate and distinct from the Memorandum of Understanding between the Contributors and GDAC.

(b) Requestors who are also Contributors and parties to the Contributor Memorandum of Understanding shall not be required to enter into a Requestor data sharing agreement unless one or more of the Contributors responding to the party's Request requires a data sharing agreement to be entered into before Data is disclosed. An example of when a Requestor data sharing agreement may be required is an instance where a Contributor is making a Request of the NC Department of Commerce for Data that has not been Aggregated.

(c) The Requestor data sharing agreements shall contain, at a minimum, the following:

- (1) limitations on Report access to authorized persons;
- (2) prohibition on the re-identification of persons included in Reports as only de-identified information may be presented to Requestors in Reports from the System pursuant to G.S. 116E-(5)(e);
- (3) information technology system and data security standards required by the Contributor who will be providing Data for the Report;
- (4) privacy compliance standards;
- (5) data breach procedures, including notification of DIT of any cybersecurity incidents as described by G.S. 143B-1320(a)(12) or G.S. 143b-1320(a)(15) using the incident report form available at: <https://it.nc.gov/resources/cybersecurity-risk-management/statewide-cybersecurity-incident-report-form>;
- (6) terms regarding the disclaimer of liability and warranties as applied to Contributors; and
- (7) data retention and data removal standards, if applicable.

*Authority G.S. 143B-1321(a)(16); 116E-4(b).*