DISABILITY RIGHTS
NORTH CAROLINA
Champions for Equality and Justice

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

Via Email to 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

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 or (919) 856-2195.

Sincerely,

/s/
Annaliese Dolph
Director of Public Policy