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RE: Legal guidelines for rating, recommending, or requiring instructional materials

EXECUTIVE SUMMARY

This memo analyzes the authority of the North Carolina Department of Public Instruction (“DPI”), the North Carolina State Board of Education (“the Board”), and the North Carolina General Assembly to rate, recommend, or require instructional materials.

Specifically, the memo considers under what authority and in what scenarios the Board or DPI may rank existing materials and evaluate them for quality, create a recommended list of high-quality instructional materials (“HQIM”), and require the use of such materials by local school boards. Additionally, the memo considers whether the Board or DPI can evaluate or recommend materials through the Textbook Commission, whether DPI can negotiate pricing for HQIM, and the range of funding sources for HQIM. The memo also considers the General Assembly’s role in requiring or recommending HQIM.

To answer these questions, the memo surveys North Carolina’s constitutional provisions, statutes, and administrative code. It also draws on relevant caselaw from North Carolina courts, as well as existing DPI policy and procedures.

The memo reaches three main conclusions. First, the memo concludes that the Board and DPI have the authority to require counties to use HQIM that qualify as “textbooks,” as that term is defined by North Carolina law, so long as such materials are funded by the State. Second, the

memo concludes that while the Board and DPI likely cannot require that counties use specific *non-textbook* HQIM, they can evaluate materials and provide specific recommendations of HQIM that counties may wish to adopt as part of the standard course of study. Finally, the memo concludes that the Board and DPI could likely go further and require use of specific non-textbook HQIM, but only if the General Assembly enacted a clarifying amendment.

This memo proceeds as follows. Section I provides the legal backdrop for the issues we explore. This section includes an overview of the structure of educational authority within North Carolina, considering the role of the Board, the Superintendent of Public Instruction, DPI, and local authorities. It next provides an overview of the textbook-adoption process—the function of the Board and DPI that is presently most analogous to the proposed activities regarding recommending or requiring HQIM. It ends by exploring the relevant sources of funding for education in North Carolina generally, and instructional materials in particular.

Section II examines potential sources of authority for the Board, DPI, or the General Assembly to recommend or require that counties use specific HQIM. It discusses the existing framework for selecting textbooks and observes that North Carolina defines “textbook” broadly. It further observes that local school boards must use textbooks from a list adopted by the Board. Given these considerations, the section concludes that the Board could use the textbook-adoption process to require the use of HQIM for materials that qualify as textbooks. It also explains that while North Carolina law does not provide a definite answer regarding recommending other, non-textbook materials, it is likely that the State could provide a recommended list of HQIM as part of the standard course of study. It further concludes that the General Assembly would likely need to enact a clarifying amendment to allow the Board to *require* non-textbook HQIM. Section II concludes by exploring potential sources of funding for HQIM.

There are several areas where further research and analysis could be useful. For example, further research could explore how a potential clarifying amendment should be worded and whether and how such amendment should (or could) provide funding for HQIM. Additionally, an analysis of how local boards are presently exercising their authority over supplementary instructional materials to procure and use HQIM would be helpful to understanding how the State could best support and supplement such efforts.

ANALYSIS

I. Background

This section provides an overview of the relevant legal principles and authorities that bear on whether the Board or DPI may recommend or require local school districts use particular HQIM.

A. Division of Power over Schools and Education

In North Carolina, the public school system is overseen by the State Board of Education and the Superintendent. The Board is established by the North Carolina Constitution, which provides that “[t]he State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session.” N.C. Const. of 1868, art. IX, § 4. The North Carolina Constitution further provides that the Board “shall supervise and administer the free public school system and the educational funds provided for its support . . . and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.” *Id.* § 5. The North Carolina Constitution also establishes the Superintendent, providing that “[t]he Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.” *Id.* § 4.

North Carolina's general statutes provide additional guidance regarding how the Board and Superintendent may exercise the Constitution's broad grants of power. For example, the Board has the power to adopt and supply textbooks and develop content standards for the State. N.C. Gen. Stat. § 115C-12(9), (9c). The general statutes also provide that the Superintendent "shall be an elected officer and Council of State member" and shall serve as the "administrative head of the Department of Public Instruction." *Id.* § 115C-19. Specifically, the Superintendent must "organize and establish a Department of Public Instruction[;] . . . administer the funds appropriated for the operation of the Department of Public Instruction[;] . . . [and] enter into contracts for the operations of the Department of Public Instruction." *Id.* § 115C-21(a)(1).

The division of power between the Board and the Superintendent was amended in 2016 to eliminate some of the Board's oversight over the Superintendent and to shift certain duties from the Board or Governor to the Superintendent. *N.C. State Bd. of Educ. v. State*, 371 N.C. 170, 171, 814 S.E.2d 67, 69 (2018). Among these changes was the addition of a provision providing that the Superintendent shall "have under his or her direction or control, all matters relating to the direct supervision and administration of the public school system" and to "administer funds appropriated for the operations of the State Board of Education and for aid to local school administrative units." *Id.* at 175, 814 S.E.2d at 71 (quoting N.C. Gen. Stat. §§ 115C-21(a)(5), (b)(1b)). The Supreme Court of North Carolina upheld this reallocation of responsibilities as consistent with the North Carolina Constitution. The Court explained that while "the Board has the constitutionally based responsibility for the general supervision and administration of the public school system . . . the Superintendent has the constitutionally based responsibility for directly administering the operations of the public school system." *Id.* at 181, 814 S.E.2d at 75. Under this framework, the Court held that legislation clarifying that the Superintendent has the responsibility for "managing

and administering the day-to-day operations of the school system, subject to rules and regulations adopted by the Board,” is consistent with the division of authority established by the Constitution. *Id.* at 186, 814 S.E.2d at 78. Accordingly, as currently constituted, the Superintendent and DPI handle the day-to-day operations of the school system while the Board maintains general supervisory authority over the public school system.

B. The Power to Adopt a Course of Study & Textbooks

North Carolina law provides additional detail regarding the Board’s power to adopt a standard course of study and textbooks. The Board is required to adopt a “plan of education and standard course of study” which shall provide:

- (1) A core curriculum for all students that takes into account the special needs of children.
- (2) A set of competencies, by grade level, for each curriculum area.
- (3) A list of textbooks for use in providing the curriculum.
- (4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation, that take into account children with disabilities and, in particular, include appropriate modifications.
- (5) A program of remedial education.
- (6) Required support programs.
- (7) A definition of the instructional day.
- (8) Class size recommendations and requirements.
- (9) Prescribed staffing allotment ratios.
- (10) Material and equipment allotment ratios.
- (11) Facilities guidelines that reflect educational program appropriateness, long-term cost efficiency, and safety considerations.
- (12) Any other information the Board considers appropriate and necessary.

N.C. Gen. Stat. § 115C-81.5. The Board’s policies provide that DPI is to review the standard course of study every eight-to-ten years and recommend revisions as needed, taking into account feedback from various stakeholders, including educators, administrators, parents, students,

institutions of higher education, business/industry representatives, national organizations, and other education agencies. N.C. Dep't Pub. Instruction, NCSOS Internal Procedures Manual at 3 (2025), <https://www.dpi.nc.gov/ncscos-manual-sept-2025pdf/open>.

After adopting the standard course of study, the Board “shall proceed to select and adopt textbooks.” N.C. Gen. Stat. § 115C-85. A textbook, as that term is used in the relevant statutory part, means “systematically organized material comprehensive enough to cover the primary objectives outlined in the standard course of study for a grade or course. Formats for textbooks may be print or nonprint, including hardbound books, softbound books, activity-oriented programs, classroom kits, and technology-based programs that require the use of electronic equipment in order to be used in the learning process.” *Id.*

As part of the Board’s duty to select textbooks, the general statutes provide for the appointment of the Textbook Commission, made up of twenty-three members appointed by the Governor, which meets four times a year or at the call of the Commission’s chairman. N.C. Gen. Stat. § 115C-87. The process for selecting textbooks begins with the Superintendent creating a Curriculum Review Committee, which is to advise him regarding criteria to be included in a call letter to publishers requesting submission of textbooks for evaluation and adoption. 16 N.C. Admin. Code § 6D.0205(a) (2025). The Curriculum Review Committee includes members of DPI, representatives from local school systems, the Textbook Commission, and the community. *Id.*

After the Board approves the Superintendent’s call letter, the Superintendent forwards the letter to publishers on North Carolina’s Textbook Publisher Registry. *Id.* § 6D.0204 (2025). Publishers then send textbooks they propose for adoption to the Textbook Commission. *Id.* All textbooks proposed for adoption must then be evaluated by the Commission, and a written

evaluation report must be filed with the Board. N.C. Gen. Stat. § 115C-88. This report must “give special consideration to the suitability of the textbook to the instructional level for which it is offered, the content or subject matter, whether the textbook is aligned with the Standard Course of Study, and other criteria prescribed by the Board.” *Id.* The Textbook Commission is also assisted by Regional Textbook Evaluation Advisory Committees, which the Commission appoints in each of the state’s educational districts and which provide recommendations to the Commission. 16 N.C. Admin. Code § 6D.0206 (2025).

Once the Textbook Commission has filed its reports, the Board selects textbooks it concludes will best meet the State’s requirements and requests sealed bids from the publishers of the books being considered. N.C. Gen. Stat. §115C-89. After opening the bids, the Board may refuse to adopt any of the books offered at the prices bid and may call for new bids. *Id.* §115C-90.

North Carolina law also provides guidance regarding how local educational authorities are to administer the textbook program. After the Board adopts a list of textbooks to be used to provide the core curriculum set forth in the standard course of study, “[l]ocal school systems review adopted textbooks and identify textbooks to be ordered.” 16 N.C. Admin. Code § 6D.0204(8) (2025). Additionally, “[l]ocal boards of education shall adopt rules not inconsistent with the policies of the State Board of Education concerning the local operation of the textbook program.” N.C. Gen. Stat. § 115C-98(a). The local boards are also to “adopt written policies concerning the procedures to be followed in their local school administrative units for the selection and procurement of supplementary textbooks, library books, periodicals, audiovisual materials, and other supplementary instructional materials needed for instructional purposes in the public schools of their units.” *Id.* § 115C-98(b).

In addition to selecting materials from the list of textbooks selected by the Board to implement the standard course of study, local boards “have *sole authority* to select and procure supplementary instructional materials” and “[s]upplementary materials and contracts for supplementary materials are not subject to approval by the State Board of Education.” *Id.* (emphasis added). Local boards also have the authority to “[s]elect, procure, and use textbooks that have not been adopted by the State Board of Education for use throughout the local school administrative unit for selected grade levels and courses.” *Id.* § 115C-98(b2)(1). Any such supplemental materials or additional textbooks selected by local boards must not, however, “displace nor be used to the exclusion of basic textbooks” selected by the Board. *Id.* § 115C-98(b).

C. Funding

As noted above, the North Carolina Constitution provides that the Board shall administer the “educational funds provided” for the support of the public school system, with the exception of certain local funds. N.C. Const. of 1868, art. IX, § 5. North Carolina general statutes reiterate this principle, providing that “[t]he Board shall have general supervision and administration of the educational funds provided by the State and federal governments,” again excepting certain local funds. N.C. Gen. Stat. § 115C-408(a). That section further provides that the Superintendent “shall administer any available educational funds through the Department of Public Instruction in accordance with all needed rules and regulations adopted by the State Board of Education.” *Id.* And the statutes provide that a goal of the General Assembly is for the “focus of State educational funding” to “be to ensure that each student receives a sound basic education” and that a further “goal of the General Assembly [is] to provide supplemental funds to low-wealth counties to allow those counties to enhance the instructional program and student achievement.” *Id.* § 115C-81.5.

As for textbooks, the statutes provide that the children of the public elementary and secondary schools shall be “provided with free basic textbooks” and that the Board should therefore “evaluate annually the amount of money necessary to provide textbooks based on the actual cost and availability of textbooks and shall request sufficient appropriations from the General Assembly.” *Id.* § 115C-96. The State retains title to the textbooks it provides and merely loans them to local boards of education. *Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ.*, 195 N.C. App. 348, 359, 673 S.E.2d 667, 675 (2009).

The general statutes also provide that the Board “is authorized to accept, receive, use or reallocate to local school administrative units any federal funds, or aids, that may be appropriated . . . by the federal government for the encouragement and improvement of any phase of the free public school program which, in the judgment of the Board, will be beneficial to the operation of the schools.” N.C. Gen. Stat. § 115C-409(a). The Board, or any other agency designated by the Governor, “shall have the power and authority to provide library resources, textbooks, and other instructional materials purchased from federal funds appropriated for . . . the use of children and teachers in private elementary and secondary schools in the State.” *Id.* § 115C-409(b) (citation omitted).

II. Recommending or Requiring Specific Materials

Drawing on the above-described legal principles and authorities, this section analyzes whether the Board or DPI can recommend or require use of specific HQIM. Evaluating this question requires examination of both potential sources of legal authority for these actions, as well as any potential legal *limits* on such authority. Based on these legal authorities and limits, the section concludes that the Board’s and DPI’s power to require specific materials turns in part on whether such HQIM are classified as either textbooks or supplementary instructional materials.

A. Sources of Authority for Recommending or Requiring Materials

We have not identified any provision of North Carolina law that provides the Board or DPI with the express authority to require or recommend specific materials. However, we have identified several *general* sources of authority that encompass these specific powers. As discussed, the Board and DPI together have broad authority to administer the State’s public school systems, subject to any laws enacted by the General Assembly. Thus, as the Supreme Court of North Carolina has observed, when acting in an area over which the Constitution provides the Board authority, “in the silence of the General Assembly, the authority of the State Board . . . [i]s limited only by other provisions in the Constitution.” *Guthrie v. Taylor*, 279 N.C. 703, 710, 185 S.E.2d 193, 198-99 (1971).

Accordingly, the first source of authority for the Board to recommend or require specific materials is the Constitution itself, which grants the Board broad responsibility to “supervise and administer the free public school system.” N.C. Const. of 1868, art. IX, § 5. In addition to this broad grant, the power to recommend specific materials falls within several of the Board and Superintendent’s statutory duties.

First, when adopting a standard course of study, the Board is to provide a list of textbooks for use in providing the curriculum. The General Assembly defined “textbooks” broadly to include “activity-oriented programs, classroom kits, and technology-based programs,” so long as such materials are “systematically organized material comprehensive enough to cover the primary objectives outlined in the standard course of study.” N.C. Gen. Stat. § 115C-85. Given this broad definition, the Board can effectively require that local boards use specific instructional materials by selecting them for inclusion on the list of “textbooks” to be used in providing the curriculum.

While local boards retain discretion to select particular textbooks from the adopted list, local boards are required by law to ensure that textbooks from this list are used.

For HQIM selected for inclusion on this list, the selection and purchasing process would follow the textbook-selection process outlined above: publishers propose materials, the Textbook Commission evaluates the materials, and the Board selects materials and requests bids from selected publishers. Because the Textbook Commission's written evaluations must include any "criteria prescribed by the Board," *id.* § 115C-88(b), the Board could require the Commission to evaluate whether a proposed textbook meets certain quality standards.

Second, for HQIM that either do not fall within the statutory definition of textbook or which the Board does not want to include on the textbook list, the Board may still recommend such materials pursuant to its broad authority to recommend a "standard course of study." Importantly, by statute, the Board can include in the standard course of study "[a]ny other information [it] considers appropriate and necessary." N.C. Gen. Stat. § 115C-81.5(b)(12). While the limits on this provision, if any, have not yet been explored by North Carolina courts, this catch-all statutory provision provides an avenue for the Board to develop and disseminate a list of recommended or ranked HQIM.

In developing such a list under this provision, the Board can likely work with the Textbook Commission to assist with evaluating potential materials. The general statutes that provide for the appointment and establishment of the Textbook Commission do not limit the Commission's activities to only selecting textbooks for inclusion on the required list. Instead, one provision of the general statutes provides that the Governor shall appoint members to the Commission, and another provides that the Commission is to evaluate textbooks. N.C. Gen. Stat. § 115C-87, -88. In other words, while the only duty the general statutes expressly assign to the Textbook Commission

is to evaluate textbooks, the general statutes are silent on whether that must be the Commission's *only* duty. Accordingly, there is no legal bar to the Commission evaluating additional instructional materials so long as it also continues to evaluate textbooks.

In addition, the Board could alternatively adopt a rule establishing a new commission or committee devoted to evaluating materials, or to assisting the Textbook Commission in doing so. Such a commission would be similar to the Regional Textbook Evaluation Advisory Committees or the Curriculum Review Committee, which are established by regulation and advise the Textbook Commission and the Superintendent, respectively. 16 N.C. Admin. Code § 6D.0205-0206 (2025). Such a commission could also include members from the Textbook Commission, as does the Curriculum Review Committee. *Id.* § 6D.0205(b).

B. Limits on Authority to Recommend or Require Materials

As described above, this memo concludes that the Constitution, general statutes, and relevant regulations provide authority for the Board or DPI (1) to require HQIM that can be classified as textbooks, and (2) to provide recommendations regarding other HQIM, including through the Textbook Commission or a new committee or commission established by rule. However, there are several limits on the ability of state educational authorities to require local educational authorities to adopt or refrain from adopting HQIM that are classified as supplementary instructional materials. Notably, the general statutes provide that local boards of education have the “sole authority to select and procure supplementary instructional materials.” N.C. Gen. Stat. § 115C-98(b).

The Supreme Court of North Carolina interpreted this statutory provision in 1991, after the Board adopted a rule that prohibited local boards from entering into contracts that would regularly require students to observe commercial advertising. *State v. Whittle Commc'ns*, 328 N.C. 456,

460, 402 S.E.2d 556, 558 (1991). After a local school board nevertheless entered a contract with Whittle Communications to show *Channel One*, a short video news program that contained advertising, the Board sued, joined by both the Superintendent and the State of North Carolina itself. *Id.* at 461, 402 S.E.2d at 558-59. Whittle and the local school board argued that the Board's rule was unlawful, and the Supreme Court agreed, holding that the "State Board of Education did not have the authority to promulgate a temporary rule governing this contract because the contract involves supplementary materials, an area which the General Assembly has delegated to the local school boards to oversee." *Id.* at 462-63, 402 S.E.2d at 560. The Court concluded that *Channel One* was a supplementary instructional material and, pointing to § 115C-98(b), explained that the General Assembly "placed the decision-making process for the selection and procurement of these supplementary instructional materials in the exclusive domain of the local school boards." *Id.* at 464, 466, 402 S.E.2d at 561-62. Accordingly, the court concluded that "the State Board had no authority to make rules regarding supplementary instructional materials, an area which was and still is under the supervision of the local school boards rather than the State Board." *Id.* at 468, 402 S.E.2d at 563.

Whittle's interpretation of § 115C-98(b) likely precludes the Board from requiring local educational authorities use specific HQIM (or prohibiting them from using specific instructional materials) to the extent such materials are deemed supplementary instructional materials, as opposed to textbooks. *Whittle* does not define supplementary instructional material or explain how it reached its conclusion that *Channel One* was such a material. However, that may be because *Channel One*—a short video news program—quite obviously could not fall into any possible definition of a "textbook."

To be clear, even after *Whittle*, nothing in the law prevents the Board or DPI from recommending or requiring HQIM to the extent materials are properly classified as “textbooks,” broadly defined. However, to the extent the Board wishes to recommend a HQIM that does not qualify as a “textbook,” it must do so without intruding on the local boards’ authority to select supplementary instructional materials. As described above, the Board could, as part of its authority to adopt a “standard course of study,” develop a *recommended* list of HQIM that qualify as supplemental instructional materials. Providing such recommendations would merely aid local boards in selecting supplementary instructional materials and would not interfere with their authority to actually select such materials, unlike the prohibitory rule at issue in *Whittle*.

However, for the Board or DPI to go further and *require* that counties utilize specific supplementary instructional materials, the General Assembly would have to pass a clarifying amendment to the general statutes. There is good reason to think that such a clarifying amendment would be consistent with the statute’s original purpose. In *Whittle*, the Court looked to the preamble to the law enacting N.C. Gen. Stat. § 115C-98, which provided that “it is desirable that the selection of supplementary instructional materials be made by each school administrative unit.” 328 N.C. at 465, 402 S.E.2d at 561. But the full preamble provides context as to *why* the General Assembly thought this result was “desirable” in the context of the State’s educational system in 1969. The preamble noted that the “North Carolina public school system cannot now be properly served under the present system of distributing supplementary text materials because of the cumbersome and antiquated contract system which delays introduction into the classrooms of the newest available materials and sometimes keeps items on contract that are no longer appropriate, and since technological breakthroughs in the design and manufacture of supplemental materials have placed an enormous volume and variety of materials within easy reach of most local school

systems.” Act of May 19, 1969, Ch. 519, 1969 N.C. Sess. Laws 440-41. It further noted that “the present system of distributing supplementary materials is also limited because many of these materials can no longer be made available through the current contract system because of the limitations placed on the contract system by publishers; and since the local units should be encouraged to design and develop instructional programs that will meet the specific needs of each child in every school situation, and since the limited supplementary book list restricts and hinders the local school system in accomplishing the goals and objectives for their programs.”

Accordingly, the desirability of placing supplementary instructional materials within the control of local boards was premised not on any failure of the state authorities to select useful materials but because local authorities were best situated to provide up-to-date materials efficiently at that particular moment in time. Indeed, the preamble also provides that “the State Department of Public Instruction, through conferences and other in-service education activities can assist school administrative units in developing sound written selection policies and procedures.” *Id.* at 441. This statutory language makes clear that the General Assembly anticipated that state educational authorities would continue to have some input in “assist[ing]” local school boards to select supplementary instructional materials. *Id.* In addition to providing support for the view that the Board may maintain a list of recommended materials consistent with § 115C-98(b), this context may provide a reason for the General Assembly to amend § 115C-98(b). Such an amendment could clarify that while local boards should have the freedom to adopt supplementary instructional materials as they see fit and the State cannot *prohibit* the adoption of such materials, the State may also require certain supplementary materials as well. An amendment of that kind would better capture the spirit of the 1969 enactment while still protecting local boards against the sort of

prohibition on adopting materials that local boards think will aid students in their district as was at issue in *Whittle*.

Another potential limit on the Board's or DPI's ability to require or recommend specific materials is DPI's current policy, which provides that "[c]urricular decisions are made at the local level." N.C. Dep't Pub. Instruction, NCSOS Internal Procedures Manual at 8 (2025), <https://www.dpi.nc.gov/ncscos-manual-sept-2025pdf/open>. Nothing in the law would bar DPI or the Board from adjusting or clarifying this policy position, however. To the contrary, as detailed in the prior section, the Board has the power to adopt the standard course of study and provide any information it considers appropriate and necessary when doing so. A policy shift to embrace providing local educational authorities with more guidance regarding curricular decisions would not be inconsistent with North Carolina law. And even DPI's current statement of policy—that curricular decisions are *made* at the local level—is not inconsistent with the Board or DPI *recommending* supplemental HQIM that local boards can adopt or not as they see fit.

Finally, to the extent the Board or DPI requires that counties utilize specific materials, it must be mindful of its obligation to fund such materials. As noted above, the general statutes require the State to fund "basic textbooks." N.C. Gen. Stat. § 115C-96. Thus, to the extent that the Board requires specific HQIM by classifying such materials as textbooks, it is likely obligated to obtain and fund such materials for counties, as well as follow the textbook sealed bidding process. *Id.* §115C-89, -90. However, if the HQIM are merely part of a recommended list, and the ultimate decision regarding adoption is left to the local boards, then procurement and funding of the materials would be left to local boards. *Id.* § 115C-98(b). The Board could, however, "provide library resources, textbooks, and other instructional materials purchased from federal funds," *id.* § 115C-409(b), so long as the use of such federal funds was permissible within the

relevant federal statutory framework. *See Hoke Cnty. Bd. of Educ. v. State*, 358 N.C. 605, 648, 599 S.E.2d 365, 397 (2004). If the General Assembly were to enact a clarifying amendment regarding the State’s role in supervising supplementary instructional materials, it could address funding of such materials in that amendment as well.

Conclusion

The Board, the Superintendent, and DPI have broad powers to administer the public school system. North Carolina law presently provides the Board with avenues to recommend and evaluate HQIM, working with the Textbook Commission as needed. Should the Board or DPI wish to require specific HQIM be used, however, a clarifying amendment is likely necessary unless such HQIM can be classified as a “textbook” under North Carolina’s statutory definition.