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**Interscholastic Athletics Rule 0520-01-23**

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**The Background:**

T.C.A. § 49-6-310 requires local education agencies (LEAs) to adopt and enforce policies to ensure a student's gender for purposes of participation in a public middle school or high school interscholastic athletic activity or event, be determined by the student's sex at the time of the student's birth, as indicated on the student's original birth certificate. Chapter 909 of the Public Acts of 2022 (PC 909) amended T.C.A. § 49-6-310 to require the Commissioner of Education to withhold a portion of the state education finance funds from an LEA that fails or refuses to comply with T.C.A. § 49-6-310(a). PC 909 also requires the State Board to promulgate rules to ensure compliance with the law and to establish a procedure governing the Commissioner's withholding of state funds due to non-compliance. This item creates a new Interscholastic Athletics Rule to outline these procedures.

State Board staff held a rulemaking hearing on September 15, 2022 to collect public comment. Two commenters submitted comments.

Between first and final reading the following revisions were made:

- Adding a definition of "Complaint;"
- Clarifying the definition of "Reporting Party" to include a current student of a Tennessee LEA or public charter school or their parents/guardians;
- Clarifying that parental consent is required for submission of "other evidence indicating the student's sex at the time of birth;"
- Clarifying the process the Department will undertake when investigating a complaint;
- Adding additional clarity regarding what happens if an LEA does not meet the terms of an early resolution agreement with the Department;
- The addition of clear requirements regarding the amount of state education finance funds that shall be withheld by the Commissioner when non-compliance is found by the Department; and
- The addition of language stating that any state funds withheld by the Commissioner shall be returned to the LEA upon the Department's finding that compliance has been established.

**The Fiscal Analysis Impact:**

T.C.A. § 49-1-212 requires that the Department prepare a fiscal analysis of any policy, rule, or regulation proposed to the State Board of Education. This item has no fiscal impact on an LEA but could result in a fiscal impact if an LEA is found noncompliant with T.C.A. § 49-6-310(a).

**Recommendation:**

The Department of Education recommends approval of this item on final reading. The SBE staff concurs with this recommendation.