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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	State Board of Education
Division:	N/A
Contact Person:	Angie Sanders
Address:	500 James Robertson Parkway, 5 th Floor, Nashville, TN 37243
Phone:	(615) 253-5707
Email:	Angela.C.Sanders@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Angie Sanders
Address:	500 James Robertson Parkway, 5 th Floor, Nashville, TN 37243
Phone:	(615) 253-5707
Email:	Angela.C.Sanders@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway		
Address 2:	Davy Crockett Building, Conference Room 1C, 1 st Floor		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	07/06/2022		
Hearing Time:	9:30am	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

<p>**Anyone wishing to participate electronically may access the hearing using the following information:**</p> <p>URL: https://tn.webex.com/tn/j.php?MTID=m17b86754ee3dd8b8392cb034dc5c6b65</p> <p>Meeting number: 2306 611 8583 Password: SBerules Phone: +1-415-655-0001 Access Code: 230 661 18583</p> <p>Please check the State Board's website at https://www.tn.gov/sbe/meetings.html for any additional</p>
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information regarding this rulemaking hearing.

Oral comments are invited at the hearing.

In addition, written comments may be submitted via email at angela.c.sanders@tn.gov or mailed to:

Tennessee State Board of Education

Attention: Angie Sanders

Davy Crockett Tower, 5th Floor

500 James Robertson Parkway

Nashville, Tennessee 37243.

Written comments must be received by **4:00 PM CT on July 8, 2022** in order to ensure consideration.

Email comments are preferred as mail is running very slow and may not arrive in time. For further information, please contact Angie Sanders by e-mail at angela.c.sanders@tn.gov.

If attending the hearing in-person, please bring identification so that you may be checked into the building by security. Conference room 1C is located on the first floor.

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0520-02-03	Educator Licensure
Rule Number	Rule Title
0520-02-03-.09	Denial, Formal Reprimand, Suspension, and Revocation

Chapter Number	Chapter Title
0520-14-01	Charter Schools
Rule Number	Rule Title
0520-14-01-.01	Approval of a Charter School

Chapter Number	Chapter Title
0520-01-03	Academic and Instructional Requirements
Rule Number	Rule Title
0520-01-03-.03	Academic Program Requirements
0520-01-03-.16	Promotion and Retention

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-02-03
EDUCATOR LICENSURE**

0520-02-03-.09 DENIAL, FORMAL REPRIMAND, SUSPENSION AND REVOCATION.

(1) Definitions:

- (a) Conviction – Means a judgment entered by a court upon a plea of guilty, a plea of nolo contendere, a finding of guilt by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from the judgment. Conviction includes, but is not limited to, a conviction by a federal court or military tribunal, including a court-martial conducted by the armed forces of the United States, and a conviction, whether upon a plea of guilty, a plea of nolo contendere, or a finding of guilt by a jury or the court, in any other state of the United States, other jurisdiction, or other country. Conviction also includes a plea taken in conjunction with Tennessee Code Annotated (“T.C.A.”) § 40-35-313 or its equivalent in any other jurisdiction.
- (b) Dismissed – With regard to employment action taken by an employing public or non-public school or school system, dismissed means the termination of a licensed educator’s employment with the school or school system or non-renewal of the educator’s contract.
- (c) Formal Reprimand – A less harsh licensing action than the suspension, revocation, or denial of a license, which admonishes an educator for certain conduct under this rule. An educator who has been reprimanded by the State Board of Education (“State Board”) shall receive a letter from the State Board, which shall become part of the educator’s state record and may become part of the educator’s local record, indicating that the inappropriate conduct is discouraged and shall be subject to further disciplinary action if repeated.
- (d) Inappropriate Communication (Explicit) – Any communication between an educator and a student that describes, represents, or alludes to sexual activity or any other illegal activity. This includes, but is not limited to, communication defined as sexual misconduct under T.C.A. § 49-5-417, communication defined as sexually related behavior under T.C.A. § 49-5-1003(b)(15), and communication that would encourage illegal activity such as encouraging the use or purchase of illegal substances. This shall not be construed to prevent an educator from communication regarding sexual or illegal activities for educational purposes such as in teaching family-life curriculum pursuant to T.C.A. §§ 49-6-1307 et seq. or drug abuse resistance education pursuant to T.C.A. § 49-1-402 or to prevent an educator from upholding the educator’s obligation as a mandatory reporter of child abuse, neglect, or child sexual abuse.
- (e) Inappropriate Communication (Non-Explicit) – Any communication between an educator and a student that is beyond the scope of the educator’s professional responsibilities. Examples of such non-explicit inappropriate communications include, but are not limited to, those communications that discuss the educator’s or student’s past or current romantic relationships; those that include the use of profanities or obscene language; those that are harassing, intimidating, or bullying; those that attempt to establish an inappropriate personal relationship with a student; and those that are related to personal or confidential information regarding another school staff member or student.

- (f) Inappropriate Physical Contact – Unlawful and/or unjustified physical contact with a student. Examples of such inappropriate physical contact include, but are not limited to, sexual contact, physical altercations, horseplay, tickling, improper use of corporal punishment, improper restraint or isolation of a student with a disability, and rough housing.
- (g) Inappropriate Physical Contact With Harm – Inappropriate physical contact as described in subparagraph (f) above that results in physical or mental harm.
- (h) Negligence – Failure to exercise the care toward others that a reasonable or prudent person would exercise under the circumstances or taking action that a reasonable person would not. Examples of such negligence include, but are not limited to, situations that expose students to mental or physical harm or the potential for mental or physical harm such as leaving dangerous items in the classroom or in areas easily accessible to students and leaving students unattended.
- (i) Non-compliance with security guidelines for state-mandated test, TCAP or successor test – Any person found to have not followed security guidelines for administration of a state-mandated test, the TCAP or a successor test, including but not limited to, making or distributing unauthorized photos or copies of the test, altering a grade or answer sheet of student responses or answers, providing copies or photos of answers or test questions to students or others, and otherwise compromising the integrity of the testing process (which includes, but is not limited to, providing unauthorized assistance to students during administration of testing).
- (j) Official School Business – Any activity undertaken by an educator in an official capacity and in connection with the educator’s employment. Examples include, but are not limited to, conferences, professional development, trainings, and seminars.
- (k) Other Good Cause – Conduct that calls into question the fitness of an educator to hold a license including, but not limited to, violation of any provision in the Teacher Code of Ethics as contained in T.C.A. §§ 49-5-1001, et seq.
- (l) Permanent Revocation – The nullification of an educator’s license without eligibility for future restoration. Permanent revocation also includes the voluntary permanent surrender of an educator’s license without eligibility for future restoration.
- (m) School Premises – Any real property and/or land owned, leased, managed, controlled, or under the custody of a state or local education agency, school system, or school.
- (n) School Property – Any property owned, leased, managed, controlled, or under the custody of a state or local education agency, school system, or school.
- (o) School Related Activity – Any activity in which a student participates, including but not limited to classes, meetings, extracurricular activities, clubs, athletics, and field trips, sponsored by the school, state educational agency, or local educational agency.
- (p) Suspension – With regard to licensure action by the State Board, suspension means the nullification of an educator’s license for a predetermined term, after which the license may be reinstated. Reinstatement shall be subject to the completion of any terms and conditions contained in the order of suspension. With regard to employment action taken by a public or non-public school or school system, suspension means the temporary removal of an educator from his or her regular duties with or without pay. Suspension also includes the

placement of an educator on administrative leave pending investigation into allegations of misconduct.

- (q) Revocation– The nullification of an educator’s license for a period of at least five (5) years, after which an educator may petition the State Board for restoration under paragraph (7)(b). Revocation also includes the voluntary surrender of an educator’s license for a period of at least five (5) years, after which an educator may petition the State Board for restoration under paragraph (7)(b). A shorter period of revocation may be specified as provided for in paragraph (5)(f) of this rule, allowing an educator to apply for restoration earlier than five (5) years from the date of revocation.

(2) Notification to the State Board of Education.

- (a) Licensed Educators - It is the responsibility of the Director of Schools of the employing public or non-public school or school system or Director of a public charter school (“Director”) to report to the State Board licensed educators who have been suspended or dismissed, or who have resigned, following allegations of misconduct, including sexual misconduct, which, if substantiated, would warrant consideration for license suspension, revocation, or formal reprimand under this rule. The report shall be submitted within thirty (30) days of the suspension, dismissal, or resignation. The Director shall also report felony convictions and convictions for any offense listed in paragraph 4(a) of this rule of licensed educators within thirty (30) days of receiving knowledge of the conviction. Schools and school systems have a duty to respond to State Board inquiries and provide to the State Board, except when prohibited by law, any available documentation requested concerning the allegations contained in the report. If the State Board receives information regarding a licensed educator who was not reported as described in this paragraph, and such information, if substantiated, would warrant licensure action under this rule, the State Board reserves the right to place the educator’s license file in the state’s educator licensure database (TN Compass) under review.

- (b) Educators Teaching on a Temporary Permit – Directors shall report individuals teaching on a temporary permit to the State Board under the same conditions outlined in the above paragraph (2)(a). Schools and school systems have a duty to respond to State Board inquiries and provide to the State Board, except when prohibited by law, any available documentation requested concerning the allegations contained in the report. If the State Board receives information regarding an individual teaching on a permit who was not reported as described in this paragraph, and such information, if substantiated, would warrant disciplinary action under this rule, the State Board reserves the right to place an individual’s file under review in the state’s educator licensure database (TN Compass).

(3) The State Board may revoke, suspend, formally reprimand, or refuse to issue or renew an educator’s license or may refuse to issue a temporary permit for any of the following reasons:

- (a) Conviction of a felony;
- (b) Conviction of possession of illegal drugs;
- (c) Being on school premises, school property, at a school-related activity involving students, or on official school business, while possessing, consuming, or under the influence of alcohol or illegal drugs;
- (d) Falsification or altering of a license or permit or documentation required for licensure or permit;

- (e) Inappropriate physical contact with a student;
 - (f) Failure to report as required under paragraph (2)(a);
 - (g) Noncompliance with security guidelines for state-mandated tests, and/or TCAP or successor test;
 - (h) Denial, formal reprimand, suspension, or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, formal reprimand, suspension, or revocation under this rule;
 - (i) Other good cause as defined in subparagraph (1)(k) of this rule; or
 - (j) Any offense contained in paragraphs (4) and/or (5) of this rule.
- (4) Automatic Revocation and Suspension.
- (a) Automatic Revocation of License – The State Board shall automatically revoke or automatically permanently revoke, without the right to a hearing, the license of an educator for the following:
 1. Upon receiving verification of the identity of the licensed educator together with a certified copy of a criminal record showing that the licensed educator has been convicted of any of the following offenses (including, but not limited to, conviction for the same or similar offense in any jurisdiction). Educators whose conviction includes a plea taken in conjunction with T.C.A. § 40-35-313 and such conviction is eligible for expungement under T.C.A. § 40-35-313, or its equivalent in any other jurisdiction, shall not be subject to automatic permanent revocation.
 - (i) Upon receiving verification of the identity of Communicating a threat concerning a school employee, as described in T.C.A. § 39-13-114;
 - (ii) Statutory rape by an authority figure, as described in T.C.A. § 39-13-532;
 - (iii) Arson or aggravated arson, as described in T.C.A. § 39-14-301 and § 39-14-302;
 - (iv) A burglary offense, as described in T.C.A. § 39-13-1001 - § 39-13-1004;
 - (v) Child abuse, child neglect, or child endangerment, as described in T.C.A. § 39-15-401;
 - (vi) Aggravated child abuse, aggravated child neglect, or aggravated child endangerment, as described in T.C.A. § 39-15-402;
 - (vii) Providing handguns to juveniles, as described in T.C.A. § 39-17-1320;
 - (viii) A sexual offense or a violent sexual offense, as described in T.C.A. § 40-39-202;
 - (ix) A felony offense in T.C.A. title 39, chapter 13;
 - (x) A felony offense in T.C.A. title 39, chapter 17, part 13; or
 - (xi) Any offense listed in T.C.A. § 39-17-417 or § 40-35-501(i)(3); or

2. Being identified by the Department of Children's Services (DCS), after having exhausted or waived all due process rights available to the licensed educator as having committed child abuse, severe child abuse, child sexual abuse, or child neglect as stated in T.C.A. § 49-5-413; or
 3. The licensed educator's name being placed on the state's vulnerable person's registry or the state's sex offender registry.
- (b) The Board shall send notice to educators whose licenses are subject to automatic revocation or automatic permanent revocation at least thirty (30) days prior to the board meeting at which such revocation shall occur, using the educator's contact information in the State of Tennessee's educator licensure database (TN Compass) as required by paragraph (10) of this rule.
- (c) Automatic Suspension of License –The State Board of Education shall automatically suspend, without the right to a hearing, the license of an educator upon receiving notice from the responsible state agency (identified in parts 1 and 2 below) of the identity of the licensed educator together with notification that the educator has committed any of the following offenses, and that the educator has been afforded all notices and due process, including the right to request a hearing with the responsible state agency as required by the responsible state agency's governing statutes and rules:
1. Receipt of notice from the Tennessee Student Assistance Corporation ("TSAC") or guarantee agency that an educator has defaulted on a student loan pursuant to T.C.A. § 49-5-108(d)(2), provided, however, pursuant to T.C.A. § 49-5-108(d)(2)(B), the State Board may elect not to suspend the license or certificate of an educator if the default or delinquency is the result of a medical hardship that prevented the educator from working in the educator's licensed field and the medical hardship significantly contributed to the default or delinquency; or
 2. Receipt of notice from the Tennessee Department of Human Services or other responsible state agency that an educator has failed to comply with an order of support for alimony or child support, pursuant to T.C.A. § 36-5-706.
- (d) The Board shall send written notice to educators whose licenses are subject to automatic suspension at least thirty (30) days prior to the board meeting at which such suspension shall occur, using the educator's contact information in the State of Tennessee's educator licensure database (TN Compass) as required by paragraph (10) of this rule.
- (e) Upon receipt of notice from the responsible state agency that the educator has come into compliance after automatic suspension for one (1) of the offenses set forth in part 1 or 2 of subparagraph (c), Board staff shall reinstate the license of the educator.
- (5) Disciplinary Actions.
- (a) For the following categories of offenses, the State Board may impose disciplinary action upon its findings as detailed below:
1. Conviction of a felony.
 - (i) Upon receiving notification that an individual has been convicted of a felony, the individual shall be subject to disciplinary action within the range of a suspension of not less than two (2) years up to and including permanent revocation of the convicted individual's educator license.

2. Conviction of a misdemeanor where the victim is a minor.
 - (i) Upon receiving notification that an individual has been convicted of a misdemeanor where the victim is a minor, the individual shall be subject to disciplinary action within the range of a suspension of not less than six (6) months up to and including revocation of the convicted individual's educator license.
2. Use, possession, or under the influence of alcohol or illegal substances.
 - (i) An individual holding an educator's license who is found to be in possession of, consuming, or under the influence of alcohol, or illegal substances while on school premises or property when children are present shall be subject to a disciplinary action within the range of suspension for not less than one (1) year up to and including revocation.
 - (ii) An individual holding an educator's license who is found to be in possession of, consuming, or under the influence of alcohol, or illegal substances while on school premises or property without children present shall be subject to a disciplinary action within the range of suspension for not less than one (1) year up to and including revocation.
 - (iii) An individual holding an educator's license who is found to be in possession of, consuming, or under the influence of alcohol or illegal substances while not on school premises or property, but while participating in school related activities with children present, shall be subject to a disciplinary action within the range of suspension for not less than one (1) year up to and including revocation.
 - (iv) An individual holding an educator's license who is found to be in possession of, consuming, or under the influence of alcohol or illegal substances while not on school premises or property, but participating in school related activities without children present, shall be subject to a disciplinary action within the range of suspension for not less than six (6) months up to and including a two (2) year suspension.
3. Negligence in the commission of duties as an educator.
 - (i) An individual holding an educator's license who is found to be negligent in his or her commission of duties as an educator in such a manner that does not result in harm to a child, but presented the potential for physical or mental harm, shall be subject to a disciplinary action within the range of a letter of formal reprimand up to and including a two (2) year suspension.
 - (ii) An individual holding an educator's license who is found to be negligent in their commission of duties as an educator in such a manner that results in harm to a child, shall be subject to a disciplinary action within the range of suspension for no less than one (1) year up to and including permanent revocation.
4. Noncompliance with security guidelines for state-mandated test, TCAP or successor test.

- (i) An individual holding an educator's license who is found to have been noncompliant with security guidelines for a state-mandated test, or TCAP or successor test shall be subject to a disciplinary action within the range of a letter of formal reprimand up to and including revocation.
5. Unprofessionalism.
- (i) An individual holding an educator's license who is found to have engaged in non-explicit inappropriate communication with a student shall be subject to a disciplinary action within the range of a suspension for no less than three (3) months up to and including revocation.
 - (ii) An individual holding an educator's license who is found to have engaged in inappropriate communication of an explicit nature with a student shall be subject to permanent revocation.
 - (iii) An individual holding an educator's license who is found to have inappropriately used school property shall be subject to a disciplinary action within the range of a suspension for no less than three (3) months up to and including revocation.
6. Inappropriate Physical Contact.
- (i) An individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that does not result in harm or potential harm to the student shall be subject to a disciplinary action within the range of a formal reprimand up to and including suspension for two (2) years.
 - (ii) An individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that results in harm or potential harm to the student shall be subject to a disciplinary action within the range of a suspension for not less than two (2) years up to and including permanent revocation.
7. Falsification of Licensure Documentation.
- (i) An individual holding an educator's license who is found to have falsified licensure documentation shall be subject to a disciplinary action within the range of revocation or permanent revocation.
8. Violation of the Teacher Code of Ethics.
- (i) An individual holding an educator's license who is found to have violated the Teacher Code of Ethics contained in T.C.A. Title 49, Chapter 5, Part 10 shall be subject to a disciplinary action within the range of a formal reprimand up to and including revocation.
- (b) Voluntary Surrender of a License in Compliance with a Court Order or Settlement – Upon receipt of information that an educator is required to voluntarily surrender or voluntarily permanently surrender their license as a result of a court order, settlement agreement, or plea agreement, Board counsel shall send the proposed action to the individual in writing using the individual's contact information in the State of Tennessee's educator licensure database (TN Compass). The notice shall include a proposed consent order to be agreed

to by the individual and include notice that they are entitled to request that a hearing be conducted as a contested case under the Uniform Administrative Procedures Act (“UAPA”), T.C.A. §§ 4-5-301, et seq., and the individual’s right to show compliance pursuant to T.C.A. § 4-5-320(c). Should the individual request a hearing, the requirements set forth in paragraph (13) of this rule shall apply. If the individual consents to the proposed licensure action, Board counsel shall present the consent order to the Board for approval. This subparagraph shall not apply to educators subject to automatic revocation under paragraph (4)(a) of this rule.

- (c) Similar Offenses – Actions related or similar to the above-enumerated offenses in paragraphs (3), (4), and (5)(a) shall carry recommended disciplinary action commensurate with the range established for the similar offense. The State Board may take action against an educator’s license for any similar offense occurring in another state in the United States, other jurisdiction, or other country, if the conduct would justify action under Tennessee law or this rule.
 - (d) Reasonable Force – Nothing in this part shall prevent an educator from exercising his or her lawful authority to use reasonable force when necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another person pursuant to T.C.A. § 49-6-4107.
 - (e) Repeated Violations – Individuals holding an educator’s license who are subject to multiple disciplinary actions by the Board shall face disciplinary action in excess of the recommended ranges. A third violation, regardless of severity, shall be subject to a recommendation of revocation.
 - (f) Discipline Range – Nothing in this rule shall prohibit the State Board from imposing a disciplinary action outside of the uniform discipline range upon good cause shown.
 - (g) Eligibility for Employment during Review –The notation on an individual’s educator licensure database file (TN Compass) that an educator’s license is under review by the State Board is not a disciplinary action under this rule and does not prohibit a licensed educator from being employed by a school or school system, as that educator still has an active license. An individual with a notation on their educator licensure database file (TN Compass) that their educator license is under review by the State Board shall continue to be responsible for completing any requirements for renewal or advancement of their license during the period of time that the individual’s educator license is under review, because the license remains active.
- (6) Issuance of Temporary Permits.
- (a) The Commissioner of Education (“Commissioner”) may grant, on behalf of the State Board, under conditions outlined in T.C.A. § 49-5-106(a)(1), State Board Rule 0520-02-03-.12 and this rule, a temporary permit to an unlicensed individual to teach in an unfilled position, which permit shall be valid only until June 30 following the date of issuance.
 - 1. The permit application of any individual who indicates an affirmative answer on the personal affirmation section of the application shall be sent by the Commissioner to the State Board for review in accordance with this rule for a determination of whether the permit may be issued by the Commissioner. If an individual indicates an affirmative answer on the personal affirmation section of the application for a permit, the individual shall show cause why the permit should be issued despite the individual’s affirmative answers. Issuance of a permit is considered on a case-

by-case basis and the burden of proof rests with the individual applying for the permit. In the case of a felony conviction, the individual shall also show that any sentence imposed, including any pre-trial diversion or probationary period, has been completed. Additionally, an application for issuance of a permit may be denied if an action against the individual's license has been taken or is pending in this state or another state.

2. There shall be a rebuttable presumption that any individual applying for a permit who has committed an offense that would subject him or her to discipline under this rule if the individual had a license, shall be presumed ineligible to receive a permit.
3. An individual shall meet the requirements set forth in this rule and State Board Rule 0520-02-03-.12 for each issuance of a permit.
4. If an individual teaching on a permit issued by the Commissioner is reported by a Director as described above in paragraph (2) and the misconduct, if substantiated, would warrant disciplinary action under this rule if the individual had a license, the State Board may direct the Commissioner not to issue a subsequent permit upon expiration of the individual's current permit pursuant to T.C.A. § 49-5-106(a).
5. Case Review –
 - (i) Board counsel shall present an initial recommendation regarding granting or denying a permit application to the case review committee consisting of Board staff who shall review the entire file to determine whether to recommend issuance of a permit or denial of an application for a permit, or in the case of an individual reported by a Director as described above in paragraph (2), whether to direct the Commissioner not to issue any subsequent permits to the individual. The case review committee may also determine that additional investigation is necessary before a recommendation can be made.
 - (ii) If the case review committee recommends that the Board direct the Commissioner to deny an application for a permit or not to issue any subsequent permits to the individual under this rule, the recommendation will be presented to the Board at a regularly scheduled Board meeting. Board counsel will notify the individual of the recommendation and the Board's policy regarding requests to speak at Board meetings.
6. If an individual has had an application for a permit denied by the Commissioner, the individual must indicate such on any future application for an educator license or permit in Tennessee.

(7) Reinstatement or Restoration of a License.

(a) Reinstatement.

1. An individual whose license has been suspended under this rule may have his or her educator license reinstated after the period of suspension has been completed, and, where applicable, the individual has presented proof of compliance with all terms and conditions prescribed by the State Board in the order of suspension. Suspended licenses are subject to the expiration and renewal rules of the State

Board. A suspended license may not be reinstated if an action has been taken or is pending against the educator's license in another state.

(b) Restoration.

1. An individual whose license has been revoked under this rule may apply to the State Board to have the license restored upon application showing that the cause for revocation no longer exists and that the person has complied with any terms and conditions imposed in the order of revocation. To show the cause no longer exists, the individual shall show cause why the license should be restored despite the misconduct that resulted in the individual's license being revoked. The individual shall provide evidence of rehabilitation and fitness to perform the duties authorized and required by the license sought. In the case of a felony conviction, the individual shall also show that any sentence imposed, including any pre-trial diversion or probationary period, has been completed. Application for such restoration shall be made to State Board counsel in accordance with State Board License Reinstatement and License Restoration Applications Policy 5.500.
2. An individual whose license has been revoked under this rule shall not be eligible to reapply for licensure for a period of no less than five (5) years from the time at which the license was initially revoked, unless a shorter period of time is specified in the order of revocation pursuant to paragraph (5)(f) of this rule. An individual whose license has been permanently revoked shall not be eligible to reapply for licensure.
3. In any deliberation by the State Board to restore a license that has been revoked, there shall be a rebuttable presumption that an individual whose license has been revoked is unfit for licensure. Nothing in this rule is intended to guarantee restoration of a license.
4. Restoration of an educator license is considered on a case-by-case basis. The burden of proof rests with the individual applying for restoration of the license. An application for restoration may be denied if an action against the individual's educator license has been taken or is pending in another state.

(8) Denial of a License.

- (a) An individual who has been denied an educator license may reapply for a license at any point after denial provided the individual has complied with any terms and conditions imposed in the order of denial. If the individual indicates an affirmative answer on the personal affirmation section of the application for a Tennessee educator license, the individual shall show why the license should be issued despite the individual's affirmative answers. Issuance of a license is considered on a case-by-case basis and the burden of proof rests with the individual applying for the license. In the case of a felony conviction, the individual shall also show that any sentence imposed, including any pre-trial diversion or probationary period has been completed. An application for issuance of a license may be denied if an action against the individual's license has been taken or is pending in another state.
- (b) Presumptive Denial – There shall be a rebuttable presumption that any individual applying for an educator license who has committed an offense that would subject him or her to revocation or suspension shall be presumed ineligible to receive a Tennessee educator license.

- (9) Scope of Disciplinary Action – An individual whose license has been suspended or revoked, shall not serve as a school volunteer or be employed, directly or indirectly, as an educator, paraprofessional, aide, substitute teacher, or in any other position in a school during the period of the suspension or revocation.
- (10) Duty to Maintain Updated Contact Information - Individuals have a duty to maintain up-to-date contact information, including but not limited to address, e-mail address, and phone number, in the state of Tennessee’s educator licensure database (TN Compass). Any changes to the individual’s contact information shall be updated by the individual in the educator license database (TN Compass) within thirty (30) days of the change. All notices provided by the State Board to individuals under this rule shall be sent to the individual’s contact information in TN Compass.
- (11) Case Review - Board counsel shall present an initial recommendation for licensure action or non-action to a case review committee consisting of Board staff who shall review the entire file to determine whether disciplinary action should be recommended to the Board against an individual’s license, or whether to issue, renew, restore or reactivate an individual’s license. The case review committee may also determine that additional information is necessary before a recommendation can be made.
- (12) Denial of an Initial Application or Application to Reactivate an Expired License - If the case review committee recommends that the Board deny an initial application for a Tennessee educator license or an application to reactivate an expired license under this rule, said denial will be presented to the Board at a regularly scheduled Board meeting. Board counsel will notify individuals of the denial recommendation and the Board’s policy regarding requests to speak at Board meetings.
- (13) Proposed Action and Due Process Rights– If the case review committee recommends that the Board formally reprimand, suspend, or revoke an individual’s license or deny the renewal of an individual’s license under paragraphs (3) or (5) of this rule, or that the Board deny restoration under paragraph (7), Board counsel shall send the proposed action to the individual in writing using the individual’s contact information in the State of Tennessee’s educator licensure database (TN Compass) regarding the proposed licensure action and that they are entitled to request that a hearing be conducted as a contested case under the Uniform Administrative Procedures Act (“UAPA”), T.C.A. §§ 4-5-301, et seq., and the individual’s right to show compliance pursuant to T.C.A. § 4-5-320(c). Board counsel may also include a proposed consent order to be agreed to by the individual. Should the individual fail to request a hearing within the specified time period or fail to take action with regard to the consent order, a contested case proceeding shall be instituted against him or her, of which the individual shall be sent separate notice of official charges for license action and notice directing him or her to appear at a specified time and place for a hearing to be held before an Administrative Law Judge (“ALJ”) sitting on behalf of the Board pursuant to the UAPA, T.C.A. §§ 4-5-301, et seq. Should the individual fail to appear, a default judgment may be taken against his or her license. If the individual requests a hearing, then Board counsel schedules a hearing to be conducted as a contested case proceeding with an ALJ sitting on behalf of the Board pursuant to the UAPA. The Board or the individual may appeal the Initial Order of the ALJ to the Board or to Chancery Court in Davidson County, Tennessee, pursuant to the UAPA, or seek reconsideration from the ALJ.
- (14) Consent Order/Action - If the individual consents to the proposed licensure action, Board counsel shall present the consent order to the Board for approval. The Board is not bound by the recommendation contained in the consent order. The Board may vote to approve the consent order, to impose less harsh disciplinary action, or to pull the item from the agenda for reconsideration of a harsher disciplinary action. If a harsher disciplinary action is recommended by the Board, Board

counsel shall send a new notice to the individual regarding his or her right to request a hearing pursuant to paragraph thirteen (13) of this rule.

- (15) Contested Case Proceedings – All contested case hearings before the Board or an ALJ sitting on behalf of the Board shall be conducted pursuant to the Uniform Rules of Procedures for Contested Case Hearings Before State Administrative Agencies, Rules 1360-04-01-.01 through 1360-04-01-.20.
- (16) Assessment of Costs – When a final order is issued following a contested case hearing, before the Board or an ALJ sitting on behalf of the Board, in which an individual is issued a formal reprimand or the individual’s license is denied, non-renewed, suspended, or revoked under this rule, Board counsel may request that the Board, or an ALJ sitting on behalf of the Board, order that reasonable costs associated with the contested case hearing be assessed against the individual pursuant to T.C.A. § 49-5-419. The reasonable costs associated with the contested case hearing shall be determined by the Board or the ALJ sitting on behalf of the Board and shall be based upon billing associated with the contested case hearing received from the State of Tennessee Department of State Administrative Procedures Division.
- (17) Discipline Schedule – The following chart outlines the least and greatest disciplinary ranges for the offenses listed as indicated by the shaded squares, provided that the Board may impose discipline outside of the stated range as provided in paragraph (5)(f) of this rule.

	Letter of Formal Reprimand	Suspension of 3 months up to and including 6 months	Suspension of 6 months up to and including 1 Year	Suspension of 1 Year up to and including 18 Months	Suspension of 18 months up to and including 2 Years	Suspension of 2 years up to and including Revocation	Revocation	Permanent Revocation
Noncompliance with security guidelines								
Director of Schools Failure to Report								
Negligence w/o Harm or with potential for harm)								
Inappropriate Physical Contact w/o Harm								
Unprofessionalism - Inappropriate Communication (Non-Explicit)								
Unprofessionalism - Inappropriate Use of School Property								
Possession/Use/Under Influence - Off School Premises/Property w/o Children Present During School Related Activity								
Possession/Use/Under Influence - Off School Premises/Property w/ Children								

Possession/Use/Under Influence - On School Premises/Property w/o Children								
Possession/Use/Under Influence - On School Premises/Property w/ Children								
Violation of Teacher Code of Ethics								
Negligence w/ Harm								
Inappropriate Physical Contact with Harm								
Felony Conviction								
Misdemeanor Conviction (Minor Victim)								
Falsification of Licensure Documentation								
Unprofessionalism - Inappropriate Communication (Explicit)								

Authority: T.C.A. §§ 4-5-320, 49-1-302, 49-1-607, 49-5-106, 49-5-108, 49-5-413, 49-5-417, and 49-5-419.
Administrative History: Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Amendment filed May 29, 2015; effective August 27, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016. Emergency rule filed September 5, 2017; effective through March 4, 2018. Amendments filed December 5, 2017; effective March 5, 2018. Amendments filed February 3, 2020; effective May 3, 2020. Amendments filed November 30, 2020; effective February 28, 2021. Amendments filed August 5, 2021; effective November 3, 2021.

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-14-01
CHARTER SCHOOLS**

0520-14-01-.01 APPROVAL OF A CHARTER SCHOOL.

- (1) Charter School Application Requirements Applicable to All Authorizers as Defined by T.C.A. § 49-13-104(3).
 - (a) The Commissioner of Education shall provide an application for charter school sponsors to use in applying for a public charter school and shall provide scoring criteria addressing the elements of the charter school application.
 - (b) All prospective charter school sponsors who intend to submit a charter application for consideration, including a charter school replication application, shall submit a letter of intent to both the Department of Education (Department) and to the appropriate authorizer at least sixty (60) calendar days prior to the date on which the application is due. The letter of intent shall be completed on the form provided by the Department, and the sponsor shall indicate on the letter of intent the application category selected by the sponsor. The authorizer shall determine whether the sponsor has selected the correct application category within ten (10) business days of receiving the letter of intent and notify the sponsor within five (5) business days of a determination that the incorrect application category has been selected. The sponsor must correct and resubmit the letter of intent within five (5) business days of receipt of a notice from the authorizer that the wrong application category was selected.
 - (c) The Department shall aid a sponsor who has been notified that the incorrect application category has been selected to ensure the letter of intent is completed correctly, including ensuring the correct application category is selected.
 - (d) Failure to submit a letter of intent to both the Department and to the appropriate authorizer shall exclude a charter school sponsor from submitting an application for that application cycle.
 - (e) On or before 11:59 p.m. Central Time on February 1 of the year preceding the year in which the proposed public charter school plans to begin operation, the charter school sponsor seeking to establish a public charter school shall prepare and file an electronic copy of the state charter school application with the authorizer and the Department. If the February 1 due date for charter applications falls on a Saturday, Sunday, or state observed holiday, the application materials shall be due on the next business day.
 - (f) Authorizers may charge an application fee of up to \$2,500 for each application the charter school sponsor files.
 - (g) An application shall be considered complete if:
 1. The application is submitted on the Department's state charter application form for that application cycle;

2. The sponsor has completed all required sections of the application aligned to the category indicated by the sponsor in its letter of intent, the application contains all required attachments and signatures,
 3. the application is submitted to the authorizer by the deadline specified in paragraph (e); and
 4. The application fee, if required, is submitted with the application.
- (h) Authorizers shall not be required to review and formally act upon an application if:
1. The charter school sponsor did not submit the letter of intent by the required due date;
 2. The charter application is not complete as defined in paragraph (g); or
 3. The application and applicable fee is not submitted to the authorizer by the required deadline.
- (i) The authorizer must determine whether an application is complete within ten (10) business days of receiving the application, and must notify the sponsor within five (5) business days of the determination if the application is determined to be incomplete.
1. If the charter application is determined to be incomplete due to the sponsor not meeting the requirements of subparagraph (g)(1) or (g)(3) of this rule, the application is not required to be reviewed and any required application fee shall be refunded to the charter school sponsor by the authorizer.
 2. If the charter application is determined to be incomplete due to the sponsor not meeting the requirements of subparagraphs (g)(2) or (g)(4) of this rule, the sponsor shall be provided the opportunity to address any deficiencies and re-submit the application within five (5) business days after the notification from the authorizer that the application is incomplete.
- (j) Authorizers shall review all complete and timely applications in accordance with T.C.A. § 49-13-108 and quality charter authorizing standards approved by the State Board.
- (k) No later than ten (10) calendar days after approval or denial of a charter application or amended charter application, the authorizer shall report to the Department whether the authorizer has approved or denied the application. The authorizer shall simultaneously provide the Department with a copy of the authorizer's resolution setting forth the authorizer's decision and the reasons for the authorizer's decision at the time of the authorizer's report.

(2) Charter School Application Requirements Only Applicable to Local Boards of Education.

- (a) In addition to the state charter school application, each local board of education may ask charter school sponsors to address additional priorities. Charter school sponsors may choose not to address any of those priorities. Local boards of education may not deny

or refuse to review an application for failing to address additional priorities. Local boards of education shall submit to the Department by November 1 of each year all local application requirements.

- (b) All local policies regarding the submission of charter school applications shall be consistent with state law, policies, rules, and regulations.
- (c) The local board of education shall rule by resolution, at a regular or specially called meeting, on the approval or denial of a complete and timely charter application no later than ninety (90) calendar days after the local board of education's receipt of the completed application.
- (d) Should the local board of education fail to either approve or deny a complete and timely charter application within the ninety (90) calendar day time limit, the application shall be deemed approved.
- (e) If a charter school application is denied, the grounds upon which the local board of education based the decision to deny an application must be stated in writing and provided to the charter school sponsor within ten (10) calendar days of the date of the decision to deny, specifying objective reasons for the denial and the deadline by which the charter school sponsor must submit an amended application.
- (f) If a charter school application is denied, the charter school sponsor shall have thirty (30) calendar days from receipt of the grounds for denial to submit an amended application to correct the deficiencies. The local board of education shall have sixty (60) calendar days from receipt of the amended application to either deny or approve the amended application. Should the local board of education fail to either approve or deny the amended application within sixty (60) calendar days, the amended application shall be deemed approved. If the local board of education denies the amended application, it shall provide to the charter school sponsor the grounds upon which the local board of education based the decision to deny in writing within five (5) calendar days of the date of the decision to deny, specifying objective reasons for the denial.
- (g) A denial by the local board of education of an amended application to establish a public charter school may be appealed by the charter school sponsor, no later than ten (10) calendar days after the date of the final decision to deny, to the Tennessee Public Charter School Commission.

Authority: T.C.A. §§ 49-1-302, 49-13-106, 49-13-107, 49-13-108, and 49-13-126. **Administrative History:** Original rules filed March 31, 2003; effective July 29, 2003. Amendments filed January 11, 2019; effective April 11, 2019. Amendments filed September 29, 2020; effective December 28, 2020. Amendments filed November 30, 2020; effective February 28, 2021.

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-03
ACADEMIC AND INSTRUCTIONAL REQUIREMENTS**

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0520-01-03-.03 ACADEMIC PROGRAM REQUIREMENTS.

- (1) The Tennessee state academic standards approved by the State Board shall be used for all courses grades kindergarten through twelve (K-12).
- (2) All textbooks and instructional materials adopted and purchased shall be aligned with state academic standards.
- (3) All courses listed in State Board's Approved High School Courses Policy 3.205 may be offered for credit in grades nine through twelve (9-12). Additional details about approved courses shall be included in the Correlation of Course and Endorsement Codes database managed by the Department of Education.
- (4) LEAs may offer special courses in addition to the courses listed in the State Board's Approved High School Courses Policy 3.205. Such special courses shall be approved by the Department of Education and the State Board. Each special course approved by the Department shall be recommended to the State Board for an approval period of one (1), three (3), or six (6) years.
- (5) Each school shall evaluate and report in writing to the parent or legal guardian each student's progress in each subject, at least every nine (9) weeks, in accordance with the local school board's grading policy.
- (6) LEAs shall implement the Response to Instruction and Intervention (RTI²) framework adopted by the State Board. RTI² shall include high-quality instruction and interventions tailored to student need where core instructional and intervention decisions are guided by student outcome data. Tiered interventions in the areas of reading, mathematics, and/or writing shall occur in the general education setting depending on the needs of the student. If a student fails to respond to intensive interventions and is suspected of having a Specific Learning Disability as defined in State Board Rule 0520-01-09-.02, then the student may require special education interventions.
- (7) LEAs shall award high school credit to students who successfully complete college-level

courses aligned to a graduation requirement course, including general education and elective focus courses.

- (a) Local high schools shall accept postsecondary credits as a substitution for an aligned graduation requirement course, including general education and elective focus courses for those students who take and pass dual enrollment courses at a postsecondary institution for credit.
- (b) Local boards of education may adopt policies providing for college-level courses to be offered during the school day on the high school campus. Such courses must be taught by a licensed high school teacher or credentialed postsecondary faculty member approved by the local school system and partnering postsecondary institution. These courses are to be considered part of the high school program, with content and instruction subject to the supervision of the school principal and local board of education.
- (8) Coursework successfully completed in an LEA, public charter school, or Category I, II, or III private school, including coursework completed during a summer school operated or offered by these entities, is fully transferrable to any other approved school. All summer school teachers at a summer school operated or offered by an LEA or public charter school shall be licensed and hold endorsements in the subject areas in which they are teaching.
- (9) LEAs may offer Work-Based Learning (WBL) experiences that allow students to apply classroom theories to practical problems and to explore career options. All WBL experiences shall align to the State Board's Work-Based Learning Framework set forth in State Board High School Policy 2.103.
- (10) State-mandated student testing programs shall be undertaken in accordance with procedures published by the Department of Education.
 - (a) State-mandated assessments shall be given for grades three through eleven (3-11).
 - (b) End-of-course examinations shall be given in English I, English II, Algebra I, Geometry, Algebra II, Integrated Math I, Integrated Math II, Integrated Math III, U.S. History, and Biology I.
 - (c) A comprehensive writing assessment shall be conducted in at least one (1) grade within elementary, middle grades, and high school as part of the state-mandated assessment program.
 - (d) The Department of Education shall provide raw score data from the end-of-course examinations to each LEA for the purpose of including student scores on the examinations into a student's final grade for the course. The weight of the examination on the student's final average shall be determined by the LEA from a range of not less than fifteen percent (15%) and not more than twenty-five percent (25%). If an LEA does not receive its students' end-of-course examination scores at least (5) instructional days before the scheduled end of the course, then the LEA may choose not to include its students' examination scores in the students' final average.
 - (e) Each local school board shall adopt a policy that details the methodology used and the required weighting for incorporating students' scores on end-of-course examinations into final report card grades.

- (f) Local school boards shall adopt a policy regarding security of test administration, consistent with Department of Education guidelines.
 - (g) The Department of Education shall annually report to the State Board the number and percentage of students who scored below but were promoted to the next grade level by the LEA. This data shall be disaggregated by subgroups similar to those required for federal reporting.
- (11) Prior to grade nine (9), all students, including students with an Individualized Education Program (IEP), shall develop an initial four (4)-year plan of focused and purposeful high school study in accordance with the State Board's High School Policy 2.103.
- (12) Each local board of education shall adopt a credit recovery policy, aligned to the State Board's High School Policy 2.103, to provide standards-based extended learning opportunities for students who have previously been unsuccessful in mastering the standards required to receive course credit or earn promotion.
- (a) Each credit recovery policy shall address, at a minimum:
 - 1. Admission to and removal from credit recovery programs;
 - 2. Instruction; and
 - 3. Grading and awarding of credit.
- (13) Students may transfer from a Category I, II, or III private school, as defined in State Board Rule 0520-07-02, to a public school without loss of credit for completed work. The school which the student leaves must supply a properly certified transcript showing the student's record of attendance, achievement, and the units of credit earned.
- (14) Students transferring from a Category IV or Category V private school, as defined in State Board Rule 0520-07-02, to a public school shall be allowed credit only when they have passed comprehensive written examinations approved, administered, and graded by the principal or designee of the public school. Student scores from a recognized standardized test may substitute for the required comprehensive written examinations.
- (a) The examination administered to students in grades one through eight (1-8) shall cover only the last grade completed.
 - (b) The examinations administered to students in grades nine through twelve (9-12) shall cover the individual subjects appearing on the official transcripts. The examination for graduation requirement subjects may only cover the last course completed by the student (for example, if a student has completed English I, II, and III, the examination may only cover English III).
 - (c) The principal of a Category IV or Category V private school is authorized to transmit transcripts of a student to any school to which the student transfers or applies for admission when the records are requested by the receiving school or parent or guardian. The parent or guardian of the student shall be notified by the private school that the transcript is being sent.
- (15) The High School Equivalency Testing (HiSET) shall be operated in accordance with the HiSET manual of the Education Testing Service and the rules established by the

Department of Labor and Workforce Development.

- (a) The chief examiners shall ensure that all examinees meet the state requirements for age, residency, proper identification, and any other qualifications prior to admission to the testing session.
- (b) A candidate must be eighteen (18) years of age before being eligible to take the HiSET test. A seventeen (17) year old may be allowed to take the examination upon recommendation of the director of schools. The director of schools may require written documentation from the applicant to support this recommendation. This rule shall not be used to circumvent participation in the regular high school program.
- (c) The HiSET test consists of five (5) core areas that count twenty (20) points each. In order to pass, the total composite score on the HiSET test shall not be less than forty- five (45) and no score on any one (1) core area of the test battery shall be less than eight (8).

Authority: T.C.A. §§ 4-3-1422, 49-1-302, 49-1-302(a)(2) and (13), 49-2-110, 49-2-114, 49-6-101, 49-6-201, 49-6-3001, 49-6-3003, 49-6-3005(a) and (a)(4), 49-6-3104, 49-6-3105, and 49-6-6201; Sections 30, 78 through 80, and 88 of Chapter 535 of the Public Acts of 1992; and Public Chapter 652 of 2020. **Administrative History:** Original rule certified June 10, 1974. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed July 19, 1982; effective October 13, 1982. Repeal and new rule filed April 18, 1983; effective May 18, 1983. Amendment filed June 10, 1983; effective September 14, 1983. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed June 28, 1984; effective July 28, 1984. Amendment filed May 28, 1986; effective June 27, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed July 21, 1992; effective October 28, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed May 31, 1996; effective September 27, 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed March 1, 2005; effective July 29, 2005. Amendment filed September 6, 2007; effective January 28, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed October 20, 2009; effective March 31, 2010. Amendment filed March 25, 2010; effective August 29, 2010. Amendment filed December 19, 2012; effective May 30, 2012. Amendments filed March 21, 2012; effective August 29, 2012. Amendment filed February 6, 2013; effective July 29, 2013. Amendment filed May 22, 2015; effective August 20, 2015. Amendments filed October 25, 2017; effective January 23, 2018. Amendments filed March 20, 2018; to have been effective June 18, 2018. However, on May 24, 2018, the Government Operations Committee filed a 5-day stay; new effective date June 23, 2018. Amendments filed January 11, 2019; effective April 11, 2019. Amendments filed August 20, 2020; effective November 18, 2020. Emergency rules filed November 19, 2020; effective through May 18, 2021. Emergency rules expired effective May 19, 2021, and the rules reverted to their previous statuses.

0520-01-03-.16 PROMOTION AND RETENTION.

- (1) The academic program implemented in each public school shall be designed to help students achieve the expectations of the grade-level State Board approved Tennessee Academic Standards and meet the requirements for promotion to the next grade.

- (2) Promotion to the next grade level shall be based on the successful completion of required academic work or demonstration of satisfactory progress in each of the relevant academic areas.
- (3) Each local school board and charter school governing body shall develop and implement promotion and retention policies for students in grades Kindergarten through eight (K-8) in accordance with T.C.A. § 49-6-3115, this rule, and the State Board's Promotion and Retention Policy 3.300. The promotion and retention policy shall include a right for the parent or legal guardian to appeal a decision to retain a student.
- (4) Schools shall identify students who demonstrate difficulty in achieving the requirements for promotion to the next grade level and therefore may be at risk for retention by February 1. However, a student may be identified as at risk for retention after February 1 if reasons for identifying a student as at risk for retention are identified in a lawfully adopted local board policy that identifies limited situations in which students may be identified as at risk for retention. Schools shall notify the parent or guardian of any student who is identified as at risk for retention within fifteen (15) calendar days of identification.
- (5) Factors used to identify students who are at risk for retention shall, at a minimum, include:
 - (a) The student's ability to perform at the expectations of the current grade-level standards;
 - (b) The results of local assessments, screening, or monitoring tools;
 - (c) State assessments, as applicable;
 - (d) Home Literacy Reports provided in accordance with T.C.A. § 49-1-905
 - (e) The overall academic achievement of the student;
 - (f) The student's likelihood of success with more difficult material if promoted to the next grade;
 - (g) The student's attendance record; and
 - (h) The student's maturity.
- (6) Schools shall develop and implement an individualized promotion plan for any student identified as at risk for retention to help the student avoid retention.
 - (a) The individualized promotion plan shall be developed in coordination with the student's teachers, IEP or 504 team, if applicable, and may also include input from the student's parents, school counselor, or other appropriate school personnel. All promotion plans shall include evidence-based promotion strategies and shall be tailored to the student's learning needs. Each promotion plan shall also include expectations and measurements that can be used to verify that a student has made sufficient progress to be promoted to the next grade level. Promotion plans for students in grades three (3) and four (4) shall include the additional requirements for promotion set forth in paragraph (7) of this rule.
 - (b) A copy of a student's promotion plan shall be provided to his or her parent or legal guardian, and the school shall offer to parents or legal guardians the opportunity for a parent-teacher conference to discuss the promotion plan.

- (c) If a student is not making progress on his or her promotion plan, then the promotion strategies shall be modified to support the student in the goal of promotion to the next grade level. A student who demonstrates sufficient academic progress with the strategies included in his or her promotion plan during the school year shall be promoted to the next grade level unless retention is required as set forth in paragraph (7) of this rule.
- (d) If a student has not demonstrated sufficient academic progress as defined in his or her promotion plan by the end of the school year, the student shall be enrolled in a summer reading or learning program if such program is available. For a student in grade three (3) who is identified for retention in accordance with paragraph (7) of this rule and attends a summer reading or learning program, the program must be conducted in accordance with T.C.A. §§ 49-6-3115 and 49-6-1501 et seq.
- (e) If the student was enrolled in a summer reading or learning program then a decision for retention shall be made and communicated to the parent or legal guardian in writing at least ten (10) calendar days prior to the start of the next school year, or, if the student was not enrolled in a summer reading or learning program, a decision for retention shall be made and communicated to the parent or legal guardian in writing at least thirty (30) calendar days prior to the start of the next school year. The notification to the student's parent or legal guardian of the retention decision shall be in writing and sent electronically and shall include information regarding the parent or legal guardian's right to appeal the retention decision in alignment with the LEA or public charter school's promotion and retention policy.
- (f) Retention shall be considered only when it is in the best interests of the student, or if retention is required by paragraph (7) for students in grades three (3) and four (4). Retention decisions affecting a student receiving special education services shall be made in consultation with the student's Individualized Education Program (IEP) team and in accordance with the provisions of the IEP.
- (g) If a retention decision has been made, then the school shall develop an individualized academic remediation plan for the retained student within thirty (30) calendar days after the beginning of the next school year. A copy of the academic remediation plan shall be provided to the student's parent or guardian within ten (10) calendar days of development of such plan.
 - 1. The academic remediation plan shall be developed in coordination with the student's teachers, IEP or 504 team, if applicable, and may also include input from the student's parents, school counselor, or other appropriate school personnel.
 - 2. The academic remediation plan shall be implemented to help the retained student attain and demonstrate learning proficiency and shall include at least one (1) of the following strategies:
 - (i) Adjustment to the current instructional strategies or materials;
 - (ii) Additional instructional time;
 - (iii) Individual tutoring;

- (iv) Modification to the student's classroom assignment to ensure the student receives instruction from a teacher with a level of overall effectiveness of above expectations (level 4) or significantly above expectations (level 5); or
 - (v) Attendance or truancy interventions.
 - (h) A student shall not be retained more than one (1) time in any given grade level.
 - (i) Retention shall not:
 - 1. Be used without an academic remediation plan;
 - 2. Be used as a punitive or disciplinary measure;
 - 3. Be based solely on English language proficiency, for students who are identified as English learners;
 - 4. Be based solely on the student's disability or suspected disability; or
 - 5. Be based solely on a student's maturity.
 - (j) The progress of a retained student shall be closely monitored and reported to the student's parent or legal guardian a minimum of three (3) times during the school year in which the student is retained.
- (7) Each local school board and public charter school governing body shall comply with the following additional requirements for promotion and retention of students in grade three (3) and four (4), in accordance with the Tennessee Learning Loss Remediation and Student Acceleration Act and T.C.A. § 49-6-3115:
 - (a) A student in grade three (3) shall not be promoted to the next grade level unless the student is determined to be proficient in English language arts (ELA) based on the student's achieving a performance level rating of "on track" or "mastered" on the ELA portion of the student's most recent Tennessee comprehensive assessment program (TCAP) test.
 - (b) Notwithstanding paragraph (7)(a):
 - 1. A student in grade three (3) who is not proficient in ELA, as determined by the student's achieving a performance level rating of "approaching" on the ELA portion of the student's most recent TCAP test, may be promoted to the fourth (4th) grade if:
 - (i) The student is an English language learner and has received less than two (2) full school years of ELA instruction;
 - (ii) The student was previously retained in any of the grades kindergarten through three (K-3);
 - (iii) The student is retested in accordance with Department guidelines before the beginning of the next school year and scores proficient in ELA;

- (iv) The student attends a learning loss bridge camp before the beginning of the upcoming school year, maintains a ninety percent (90%) attendance rate at the camp, and the student's performance on the post-test administered to the student at the end of the learning loss bridge camp, as required under T.C.A. § 49-6-1502(4)(F), demonstrates adequate growth, as defined in the State Board's Promotion and Retention Policy 3.300; or
 - (v) The student receives high-dosage, low-ratio tutoring for the entirety of the upcoming school year from a Tennessee accelerating literacy and learning corps (TALLC) tutor. For the purposes of this rule, "high-dosage, low-ratio tutoring" means a minimum of two (2) thirty (30) minute sessions per week with a one to three (1:3) teacher to student ratio. TALLC high dosage, low ratio tutoring may be provided through the following options, in accordance with T.C.A. § 49-6-1507:
 - a. A tutor recruited and trained through the Department's TN ALL Corps grant program.
 - b. A district recruited tutor who has completed the department's TN ALL Corps training.
2. A student in grade three (3) who is not proficient in ELA, as determined by the student's achieving a performance level rating of "below" on the ELA portion of the student's most recent TCAP test may be promoted to the fourth (4th) grade if:
- (i) The student is an English language learner and has received less than two (2) full school years of ELA instruction;
 - (ii) The student was previously retained in any of the grades kindergarten through three (K-3);
 - (iii) The student retested in accordance with Department guidelines before the beginning the next school year and scores proficient in ELA; or
 - (iv) The student attends a learning loss bridge camp before the beginning of the upcoming school year and maintains a ninety percent (90%) attendance rate at the camp, and receives high-dosage, low-ratio tutoring for the entirety of the upcoming school year from a Tennessee accelerating literacy and learning corps (TALLC) tutor. For the purposes of this rule, "high-dosage, low-ratio tutoring" means a minimum of two (2) thirty (30) minute sessions per week with a one to three (1:3) teacher to student ratio. TALLC high dosage, low ratio tutoring may be provided through the following options, in accordance with T.C.A. § 49-6-1507:
 - a. A tutor recruited and trained through the department TN ALL Corps grant program.

- b. district recruited tutor who has completed the department's TN ALL Corps training.
- (c) A student who is promoted to the fourth (4th) grade pursuant to paragraph (7)(b)(1)(v) or (7)(b)(2)(iv) must show adequate growth on the fourth (4th) grade ELA portion of the TCAP test as further defined in State Board Promotion and Retention Policy 3.300 before the student may be promoted to the fifth (5th) grade.
- (d) Notwithstanding paragraph (c), a student shall not be retained in fourth (4th) grade more than once.
- (e) The requirements set forth in paragraphs (7)(a)-(d) do not supersede an LEA's or public charter school's obligation to comply with the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) or Section 504 of the Rehabilitation Act (29 U.S.C. § 794).
- (f) Appeals to the Department.
 - 1. The parent or legal guardian of a student who is identified for retention in third (3rd) grade pursuant to paragraph (7)(a) based on the student's achieving a performance level rating of "approaching" on the ELA portion of the student's most recent TCAP test, may appeal directly to the Department.
 - (i) A decision to retain a student for any other reason, as set forth in paragraphs (1)-(6) of this rule may be appealed at the local level only, pursuant to the LEA or public charter school's promotion and retention policy.
 - 2. The appeal process for a student who is identified for retention in third (3rd) grade pursuant to paragraph (7)(a) based on the student's achieving a performance level rating of "approaching" on the ELA portion of the student's most recent TCAP test shall be administered by the Department. Information regarding the appeals process and timelines shall be posted on the Department's website. All appeals shall be submitted on the appeal forms provided by the Department and posted on its website. If an appeal is not submitted on the appropriate appeal form, the appeal shall be denied.
 - 3. An appeal shall be submitted by a parent or legal guardian to the Department within seven (7) calendar days of receipt of the notice from the LEA or public charter school that the student is identified as at risk for retention based on the student's achieving a performance level rating of "approaching" on the ELA portion of the student's most recent TCAP test. The notice of retention shall be deemed received on the day it is electronically sent. The Commissioner's designee(s) shall review all properly submitted appeals and make a determination and issue an electronic notification of the decision to the parent or legal guardian within fourteen (14) calendar days of receiving the appeal.
 - 4. The Commissioner's designee(s) may overturn the identification of a student as at risk for retention in third (3rd) grade pursuant to paragraph (7)(a) and allow the student to be promoted to the fourth (4th) grade if one (1) or more of the following grounds is met:

5. Ground 1:
 - (i) The student demonstrated growth above the national average in basic reading skills as demonstrated by the student's composite score from a State Board-approved universal reading screener or the Tennessee universal reading screener administered by the LEA or public charter school; and
 - (ii) The student demonstrated growth in standards mastery based on the student's scores on a state-approved standards-based benchmark assessment administered by the student's school; or
6. Ground 2:
 - (i) The parent or legal guardian of the student identified as at risk for retention in third (3rd) grade pursuant to paragraph (7)(a) documents that a catastrophic situation occurred during the days leading up to the third (3rd) grade ELA TCAP test administration that impacted the student and impeded the student's ability to perform on the test. Examples of a catastrophic situation include, but are not limited to, a death in the immediate family, loss of a family home, or significant medical diagnosis.

Authority: T.C.A. §§ 49-1-302, 49-6-1501 et seq., 49-6-3115, 49-6-3001. **Administrative History:**

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 05/11/22

Signature: 

Name of Officer: Angela C. Sanders

Title of Officer: General Counsel

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Filed with the Department of State on: _____

Tre Hargett
Secretary of State