

Department of State
Division of Publications
 312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Email: publications.information@tn.gov

For Department of State Use Only

Sequence
 Number: _____
 Notice ID(s): _____
 File Date: _____

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 :	7/08/2021		
Hearing Time:	10:00 AM	<input checked="" type="checkbox"/> X	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=m144019d8baf0a4b0bad39408517dc5d4</p> <p>Password: SBERules Phone: 1-415-655-0001 Access Code: 172 757 9619</p> <p>Please check the State Board’s website at https://www.tn.gov/sbe/meetings.html for any additional information regarding this rulemaking hearing. If prohibitions on in-person gatherings due to COVID-19 prevent this hearing from occurring in-person, such information will be posted on the State Board’s website and all attendees will utilize the above information to participate electronically.</p>
--

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 4:30 PM CT on July 12, 2021 in order to ensure consideration. For further information, please contact Angie Sanders at the above address or 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 of the building.

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
0520-01-03	Academic and Instructional Requirements
Rule Number	Rule Title
0520-01-03-.15	Universal Student Screeners and State-Adopted Benchmark Assessments

Chapter Number	Chapter Title
0520-01-18	Textbook and Instructional Materials Waivers
Rule Number	Rule Title
0520-01-18-.01	Definitions
0520-01-18-.02	Waiver Application Process
0520-01-18-.03	Factors Affecting Waiver Decision

Chapter Number	Chapter Title
0520-02-03	Educator Licensure
Rule Number	Rule Title
0520-02-03-.09	Denial, Formal Reprimand, Suspension and Revocation
0520-02-03-.12	Permits

Chapter Number	Chapter Title
0520-12-04	Civil Rights Compliance
Rule Number	Rule Title
0520-12-04-.01	Definitions
0520-12-04-.02	General Regulations, Adoption by Reference
0520-12-04-.03	Purpose
0520-12-04-.04	LEA Responsibilities

0520-12-04-.05	Sexual Harassment
0520-12-04-.06	TOCR Responsibilities
0520-12-04-.07	TOCR Investigations

AMENDMENT/ NEW

**RULES
OF
THE STATE BOARD OF EDUCATION**

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

0520-01-03-.01	Purpose	0520-01-03-.08	Repealed
0520-01-03-.02	Uniform Grading	0520-01-03-.09	Special Education Programs and Services
0520-01-03-.03	Academic Program Requirements	0520-01-03-.10	Repealed
0520-01-03-.04	Repealed	0520-01-03-.11	
0520-01-03-.05	Virtual Schools	through	
0520-01-03-.06	Graduation Requirements	0520-01-03-.13	Repealed
0520-01-03-.07	Civics	0520-01-03-.14	Summer Learning Program Requirements
		0520-01-03-.15	Universal Student Screeners and State-Adopted Benchmark Assessments

0520-01-03-.15 UNIVERSAL STUDENT SCREENERS AND STATE-ADOPTED BENCHMARK ASSESSMENTS.

- (1) Definitions. As used in this rule:
- (a) "Nationally Normed" means screener scores, classifications, and score distribution percentiles are reported and calibrated using a representative National Sample.
 - (b) "National Sample" means a sample of students that represents the population of U.S. students. For the screener, a national sample consists of at least 150 students in each of at least three (3) of nine (9) US Census Bureau divisions. Part of completing the sample may include any needed statistical transformations required to achieve demographic representativeness. Such a sampling must be able to produce valid and reliable scores for classifying and identifying students.
 - (c) "Significant Reading Deficiency" means:
 - 1. For students in kindergarten through grade three (K-3), that a student's score on a Universal Reading Screener is in the 15th percentile or below on a Nationally Normed Universal Reading Screener.
 - (d) "Universal Reading Screener" means a uniform tool that screens and monitors a student's progress in foundational literacy skills of phonemic awareness, phonics, fluency, vocabulary, and comprehension.
 - (e) "Innovative Benchmark Assessment Pilot Program" means a program established, funded, and implemented by the Department to provide the Tennessee universal math screener, the Tennessee universal reading screener, and a series of state-adopted benchmark assessments to LEAs and public charter schools to allow teachers to more frequently measure student learning and address student learning loss.

- (2) Pursuant to Section 3 of Chapter 3 of Public Acts of 2021 (1st Extraordinary Session), each LEA and public charter school shall annually administer a Universal Reading Screener to each student in kindergarten through grade three (K-3) during each of the three (3) administration windows established by the Department.
- (3) Student performance on a Universal Reading Screener shall be used to identify students with a Significant Reading Deficiency. Any student in kindergarten through grade three (K-3) who achieves a score within the following range shall be determined to have a Significant Reading Deficiency:
 - (a) A score in the 15th percentile or below on a Nationally Normed Universal Reading Screener.
- (4) Each LEA and public charter school shall indicate the chosen Universal Reading Screener option in their foundational literacy skills plan no later than June 1, 2021.
- (5) All Universal Reading Screeners shall be Nationally Normed. LEAs and public charter schools may choose from the following Universal Reading Screener options:
 - (a) A Nationally Normed Tennessee Universal Reading Screener provided by the Department at no cost to LEAs and public charter schools;
 - (b) A Universal Reading Screener from an approved list of Nationally Normed Universal Reading Screeners identified by the Department and approved by the State Board in State Board Policy 3.302; or
 - (c) LEAs and public charter schools may request from the State Board approval to use a locally identified Universal Reading Screener. LEAs and public charter schools requesting approval from the State Board to use a locally identified Universal Reading Screener shall submit a revised foundational literacy skills plan to the Department by June 1 prior to the school year in which the LEA or public charter school wishes to use the locally identified screener. The request shall identify the Universal Reading Screener and outline evidence that the Universal Reading Screener meets the requirements identified in parts (1) through (6) below. The Department shall review each request and make recommendations to the State Board for approval by July 31 of each year. Each request shall provide proof that the Universal Reading Screener meets the following criteria:
 1. Is Nationally Normed;
 2. Complies with dyslexia screening requirements established in T.C.A. § 49-1-229; and
 3. Complies with the universal screening requirements established in Tennessee's RTI² framework manual.
 4. Produces a range of scores that allows the Department to identify students with a Significant Reading Deficiency;
 5. Produces results that allow for the generation of individual growth scores for teachers as an alternative growth model and;

6. Complies with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g), T.C.A. § 10-7-504, and all other applicable state and federal privacy laws.
- (6) Approved Universal Reading Screeners may be used by LEAs and public charter schools to comply with dyslexia screening requirements established in T.C.A. § 49-1-229 and with the universal screening requirements established in Tennessee's RTI² framework manual.
 - (7) LEAs and public charter schools may need to find an alternate tool to measure reading proficiency if a student has a documented disability in an Individualized Education Program (IEP) or section 504 plan that indicates the student has a language or physical barrier to using one (1) of the approved Universal Reading Screeners outlined in paragraph (5) of this rule.
 - (8) Each LEA and public charter school shall submit the results of each Universal Reading Screener administered to students to the Department. All student information must be maintained in accordance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g), T.C.A. § 10-7-504, and all other applicable state and federal privacy laws.
 - (9) LEAs and public charter schools may choose to administer a Universal Reading Screener to pre-Kindergarten students.
 - (10) The Department shall implement an Innovative Benchmark Assessment Pilot Program to provide the Tennessee Universal Reading Screener, the Tennessee universal math screener, and state-adopted benchmark assessments to LEAs and public charter schools to more frequently measure student learning and address student learning loss.
 - (11) Pursuant to Chapter 1 of Public Acts of 2021 (1st Extraordinary Session), LEAs and public charter schools may use the state-adopted benchmark assessments, the Tennessee universal math screener, the Tennessee Universal Reading Screener, or a Universal Reading Screener approved by the State Board to identify priority students for after-school learning mini-camps, learning loss bridge camps, and summer learning camps.
 - (a) The Tennessee Universal Reading Screener and Tennessee universal math screener provided by the Department shall serve as the state-adopted benchmark assessments under the Innovative Benchmark Assessment Pilot Program for kindergarten through grade three (K-3).
 1. Any student in kindergarten through grade three (K-3) scoring in the 40th percentile or below on a Nationally Normed Universal Reading Screener or universal math screener shall be identified as a priority student, as defined in Section 1 of Chapter 1 of Public Acts of 2021 (1st Extraordinary Session).
 - (b) For grades four (4) through eight (8) the state adopted benchmark assessments under the Innovative Benchmark Assessment Pilot Program are the locally adopted benchmark assessment approved by the department for use by the LEA or public charter school. Each LEA or public charter school shall request from the Commissioner of Education approval to use locally adopted benchmark assessments as the state adopted benchmark assessment. Each request shall include:
 1. The name of each locally adopted benchmark assessment requested for use; and

2. The performance category for each locally adopted benchmark assessment that the LEA or public charter school will use to identify priority students, as defined in Section 1 of Chapter 1 of Public Acts of 2021 (1st Extraordinary Session).

Authority: *Chapter 1 of the Public Acts of 2021 (1st Extraordinary Session), Chapter 3 of the Public Acts of 2021 (1st Extraordinary Session).* **Administrative History:**

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-18
TEXTBOOK AND INSTRUCTIONAL MATERIALS WAIVERS**

TABLE OF CONTENTS

0520-01-18-.01	Definitions
0520-01-18-.02	Waiver Application Process
0520-01-18-.03	Factors Affecting Waiver Decision

0520-01-18-.01 DEFINITIONS.

- (1) As used in this chapter:
- (a) “Textbook” has the same meaning as in T.C.A. § 49-6-2202(e) and the Rules of the State Textbook Commission 0520-05-01-.01.
 - (b) “Instructional Materials” has the same meaning as in the Rules of the State Textbook Commission 0520-05-01-.01.
 - (c) “Open Education Resources (OER)” means freely accessible, open-licensed curriculum that includes text, media, and other digital assets that constitutes a full curriculum that conforms to the relevant Tennessee Academic Standards.
 - (d) “Supplemental Materials” means resources used to complement or enhance the adopted Textbook and Instructional Materials for specific lessons, units, or topics, but which do not comprise the majority of standards for the grade-specific subject.
 - (e) “State Board” means the Tennessee State Board of Education.
 - (f) “The Department” means the Tennessee Department of Education.
 - (g) “Textbook Commission” means the Tennessee State Textbook and Instructional Materials Quality Commission established pursuant to T.C.A. § 49-6-2201.
 - (h) “LEA” means a Tennessee local education agency and has the same meaning given in T.C.A. § 49-1-103(2).
 - (i) “Local Board” means a Tennessee local board of education.

Authority: T.C.A. §§ 49-6-2202 and 49-6-2206. **Administrative History:** Emergency rules filed August 26, 2020; effective through February 22, 2021.

0520-01-18-.02 WAIVER APPLICATION PROCESS.

- (1) A Local Board may apply for a waiver to use Textbooks and Instructional Materials that are not on the list approved by the Textbook Commission and State Board when, in the State Board’s judgment, the unique or unusual needs of the LEA require it; provided, however, waivers are not required for Textbooks and Instructional Materials previously included on the list of approved by

the Textbook Commission and State Board and purchased with public funds. A waiver request may be submitted for the following categories of Textbooks and Instructional Materials:

- (a) Textbooks or Instructional Materials that were reviewed by the Textbook Commission but that did not pass the review and were not included on the list approved by the Textbook Commission and the State Board.
 - (b) Textbooks or Instructional Materials that were not reviewed by the Textbook Commission, including:
 - i. Publisher-Created Materials;
 - ii. Open Education Resources; and
 - iii. District-Created Materials.
- (2) Each waiver request shall be approved by the Local Board and submitted by the Director of Schools or the Director's designee to the State Board on the waiver application developed by the State Board staff and posted on the State Board's website. The application shall include, but not be limited to, the following information:
- (a) The publisher(s) and title(s) of the requested Textbooks and/or Instructional Materials, if applicable;
 - (b) Grade levels and/or courses for the requested waiver;
 - (c) A clear explanation of the unique or unusual needs of the school system necessitating the waiver request;
 - (d) Evidence of student outcomes with the requested Textbooks and/or Instructional Materials, if applicable;
 - (e) Evidence of improved student outcomes when utilizing Textbook and/or Instructional Materials waivers the district has been granted in the past, if applicable;
 - (f) A statement of assurance by the LEA that the requested Textbooks and/or Instructional Materials and any Supplemental Materials the LEA plans to use as part of the waiver request were not created to align exclusively with the Common Core State Standards or are not marketed or otherwise identified as Common Core Textbooks or Instructional Materials;
 - (g) For Textbooks and/or Instructional Materials that were reviewed by the Textbook Commission but did not pass and were not included on the list approved by the Textbook Commission and the State Board, the Local Board shall submit a completed rubric from the local adoption committee created pursuant to T.C.A. § 49-6-2207 and an explanation for how it will address the deficiencies identified by the Textbook Commission;
 - (h) For Textbooks and/or Instructional Materials that were not reviewed by the Textbook Commission:
 - i. A completed rubric from the local adoption committee created pursuant to T.C.A. § 49-6-2207 that indicates the extent to which the Textbook and/or Instructional Materials are aligned to the Tennessee Academic Standards;

- ii. Any planned use of Supplemental Materials to address areas of misalignment, if any, with the Tennessee Academic Standards to ensure comprehensive coverage; and
 - (i) Any additional evidence of the requested Textbooks and/or Instructional Materials' quality.
- (3) Waiver requests shall be submitted during the adoption cycle established by the Textbook Commission for the applicable subject area; provided, however, a Local Board may submit an emergency waiver request outside of the adoption cycle for the applicable subject if emergency circumstances exist justifying the emergency waiver request. Emergency circumstances include:
 - (a) The LEA has submitted a request to the Department to implement its Continuous Learning Plan as defined in State Board Rule 0520-01-17 and the LEA's CLP includes the use of the requested Textbooks and/or Instructional Materials.
 - (b) The LEA has submitted an application to the Department to open a new virtual school and is seeking a waiver specifically to use Textbooks and/or Instructional Materials that support virtual learning.
 - (c) The LEA intends to offer, for the first time, a course for which no state-approved Textbooks and/or Instructional Materials exist.
- (4) The Department shall assist the State Board staff in administering the Textbook and Instructional Materials waiver review process by providing staff to serve as subject-matter experts for each content area. The Department subject matter experts shall provide feedback on the rubric developed by State Board staff for each completed and properly submitted waiver application within 60 calendar days of receipt of the waiver request from State Board staff. State Board staff shall develop a process for review of completed and properly submitted waiver applications in consultation with the Department's subject-matter experts.
- (5) State Board staff may request additional information, clarifications, and/or revisions to waiver applications from the Local Board prior to preparing a recommendation for the State Board.
- (6) In consultation with Department subject-matter experts, State Board staff shall prepare and present a recommendation to the State Board on each completed and properly submitted waiver application utilizing the rubric ratings provided by Department subject-matter experts, additional input from Department subject-matter experts, and information provided to State Board staff by the Local Board. The recommendation shall address all factors outlined in Rule 0520-01-18-.03. Textbooks and Instructional Materials waiver requests that do not comply with the requirements of T.C.A. § 49-6-2206(b)(2) and (c) shall not be recommended for approval.
- (7) Waivers approved by the State Board shall remain in effect until the next adoption cycle for the course for which the waiver was granted, unless a shorter period of time is specified by the State Board or by the local board of education. A waiver request that has been denied by the State Board shall not be re-submitted by the local board of education to the State Board for consideration during the term of the adoption cycle for the specific content area.
- (8) LEAs shall not use textbooks or instructional materials that are not either on the state-approved adoption list or approved for use in the LEA via the waiver process set out in this rule, pursuant to T.C.A. § 49-6-2206.

- (9) A public charter school may request a waiver for the use of Textbooks and Instructional Materials in accordance with T.C.A. § 49-13-111.

Authority: T.C.A. § 49-6-2206. **Administrative History:** Emergency rules filed August 26, 2020; effective through February 22, 2021.

0520-01-18-.03 FACTORS AFFECTING WAIVER DECISION.

- (1) In determining whether or not, in the State Board's judgment, the unique or unusual needs of the LEA merit the approval of a waiver application, the State Board may consider a number of factors, including, but not limited to:
- (a) The feedback of the Department subject-matter experts for the relevant content area on the rubric developed by State Board staff.
 - (b) The explanation of the unique or unusual needs of the LEA necessitating the use of the requested Textbooks and/or Instructional Materials in the waiver application.
 - (c) The extent of the Textbook and/or Instructional Materials' alignment to Tennessee Academic Standards and, if necessary, the extent to which the LEA's plan would remediate any areas of misalignment.
 - (d) How the LEA will address deficiencies identified by the Textbook Commission, if applicable.
 - (e) Evidence of improved student outcomes in the LEA when utilizing Textbook and/or Instructional Materials waivers the LEA has been granted in the past, if applicable.
 - (f) The availability of state-approved Textbooks and/or Instructional Materials for the requested course and/or subject.

Authority: T.C.A. § 49-6-2206. **Administrative History:** Emergency rules filed August 26, 2020; effective through February 22, 2021.

**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 Board shall receive a letter from the State Board of Education, 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, 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 TCAP or successor test – Any person found to have not followed security guidelines for administration of 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 may be subject to the completion of 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 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).

(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 of Education 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 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 of Education 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 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. § 39-14-401 - § 39-14-404;
 - (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 notify persons 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.

(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 of the identity of the licensed educator together with notification that the educator has committed any of the following offenses:

1. Default 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 of Education may elect not to suspend, deny, or revoke the license or certificate of a teacher if the default or delinquency is the result of a medical hardship that prevented the person from working in the person's licensed field and the medical hardship significantly contributed to the default or delinquency; or
2. Failure to comply with an order of support for alimony or child support, pursuant to T.C.A. § 36-5-706.
3. The Board shall notify persons whose licenses are subject to automatic suspension at least thirty (30) days prior to the board meeting at which such suspension shall occur.

(5) Disciplinary Actions

(a) For the following categories of offenses, the State Board of Education 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 educator 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. 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 TCAP or successor test
 - (i) An individual holding an educator's license who is found to have been noncompliant with security guidelines for TCAP or successor test shall be subject to a disciplinary action within the range of a letter of formal reprimand up to and including a suspension not to exceed two (2) years.
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 – 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 – 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) 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.
 - (c) 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.
 - (d) 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.
 - (e) 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 in extraordinary circumstances.
 - (f) 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 prescribed by the State Board. 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 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.
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. An individual whose license has been permanently revoked shall not be eligible to reapply for licensure.
3. In any deliberation by the Board of Education 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 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 denied, suspended, or revoked may not serve as a school volunteer or be employed, directly or indirectly, as an educator, paraprofessional, aide, substitute teacher, or in any other position during the period of the denial, 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 educator in the educator license database (TN Compass) within thirty (30) days of the change.

- (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 reinstate an individual's license. The case review committee may also determine that additional investigation 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 receive 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") 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 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 State 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)(e) 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								
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.

0520-02-03-.12 PERMITS.

- (1) After the director of schools or the director of a charter school notifies the director's local board of education or the governing body of the director's charter school, as applicable, that the LEA or charter school is unable to secure a qualified teacher with a valid license for the type and kind of school in which a vacancy exists, the director of schools or the director of a charter school may certify to the Commissioner that the LEA or charter school is unable to secure a qualified teacher with a valid license for the position in which a vacancy exists.
- (2) In accordance with T.C.A. § 49-5-106, upon the Commissioner's receipt of the certification, the Commissioner may grant a temporary permit to teach in the unfilled position to an individual who does not hold an active Tennessee educator license under the conditions set forth in this rule.
- (3) The LEA or charter school shall provide evidence of a targeted recruitment strategy for the vacant position.
- (4) The director of schools or charter school leader shall recommend the individual for a teaching permit.
- (5) The recommended individual shall hold a minimum of a bachelor's degree.
- (6) 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. The permit application of any individual who indicates an affirmative answer on the personal affirmation section of the application shall be sent to the State Board for review in accordance with State Board Rule 0520-02-03-.09 for a determination of whether the permit may be issued by the Commissioner.
- (7) If an individual teaching on a permit issued by the Commissioner is reported to the State Board by a Director as described in State Board Rule 0520-02-03-.09 and the misconduct, if substantiated, would warrant disciplinary action under State Board Rule 0520-02-03-.09, the State Board may direct the Commissioner to not to issue a subsequent permit to the individual upon expiration of the individual's current permit pursuant to T.C.A. § 49-5-106 and State Board Rule 0520-02-03-.09.
- (8) In reviewing a permit application for approval, the Commissioner may consider, but is not limited to, the following:
 - (a) The individual's previous work experience;
 - (b) The individual's postsecondary coursework and degrees held;

- (c) The individual's relevant experience in the subject area where the individual is seeking to teach; and
 - (d) The individual's progress toward obtaining a Tennessee educator license.
- (9) Individuals with a teaching permit shall not teach a physical education class required under T.C.A. § 49-6-1021(e), a course in which a state-level end of course examination is required, in accordance with T.C.A. § 49-6-6006, or a special education course in accordance with Federal laws.
 - (10) Each permit issued by the Commissioner shall be valid only until June 30 following the date of issuance.
 - (11) An individual may be issued no more than three (3) permits. An individual shall meet the requirements set forth in this rule for each issuance of a permit.
 - (12) A local board of education or governing body of a charter school may employ an individual holding a permit, but not holding a valid license, only for such period of time for which the local board of education or the governing body of the charter school is unable to secure a qualified teacher with a valid license for the type and kind of school. The permit issued to an unlicensed individual is only valid for the school and LEA identified in the permit application submitted to the Department and shall not be used for any other purpose.
 - (13) If an individual has had a permit application denied by the Commissioner pursuant to paragraph six (6) or seven (7) of this rule, the individual must indicate such on any future application for an educator license or permit in Tennessee.

Authority: T.C.A. § § 49-1-302, 49-5-106, 49-5-108, 49-5-403. **Administrative History:** Original rule filed November 16, 1989; effective February 29, 1990. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999. 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. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal filed October 27, 2015; effective January 25, 2016.

**RULES
OF
THE STATE BOARD OF EDUCATION
THE TENNESSEE DEPARTMENT OF EDUCATION**

**CHAPTER 0520-12-04
CIVIL RIGHTS COMPLIANCE**

TABLE OF CONTENTS

0520-12-04-.01	Definitions	0520-12-04-.05	Sexual Harassment
0520-12-04-.02	General Regulations. Adoption by Reference.	0520-12-04-.06	TOCR Responsibilities
0520-12-04-.03	Purpose	0520-12-04-.07	TOCR Investigations
0520-12-04-.04	LEA Responsibilities		

0520-12-04-.01 DEFINITIONS

- (1) “Complainant” means an individual who is alleged to be the target of conduct that could constitute harassment or discrimination under Title VI or Title IX.
- (2) “Complaint” means a report or notice of discrimination or harassment under Title VI or Title IX filed with an LEA or with TOCR that does not meet the definition of “Formal Complaint” as defined by this rule.
- (3) “Department” means the Tennessee Department of Education.
- (4) “English Learner” (EL) means a non-English language background student who qualifies for English as a second language services via a Department-approved English Language Proficiency screener,
- (5) “Federal Financial Assistance” means the definition of “federal financial assistance” provided at 34 C.F.R. §100.13(f) and §106.2(g).
- (6) “Formal Complaint” means a document filed by a Complainant or signed by a Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that an LEA investigate an allegation of Sexual Harassment.
- (7) “LEA” means local education agency and has the same meaning given in T.C.A. § 49-1-103(2).
- (8) “Pass-through Entity” means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.
- (9) “Respondent” means an individual who is reported to be the perpetrator of conduct that could constitute harassment or discrimination under Title VI or Title IX.
- (10) “Sexual Harassment” is conduct on the basis of sex that satisfies one or more of the following:
 - (a) A school employee conditioning an aid, benefit, or service of an education program or activity on an individual’s participation in unwelcome sexual conduct;

- (b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the education program or activity; or
 - (c) Sexual assault, dating violence, domestic violence, or stalking as defined by federal law.
- (11) “Supportive Measures” mean non-disciplinary, non-punitive, individualized services offered to the Complainant and the Respondent, as appropriate, including, but not limited to: counseling, course modifications, schedule changes, and increased monitoring or supervision.
 - (12) “Title VI” means Title VI of the Civil Rights Act of 1964, a federal statute codified at 42 U.S.C. § 2000d et seq. that prohibits discrimination based on race, color, or national origin in programs or activities receiving Federal Financial Assistance.
 - (13) “Title IX” means Title IX of the Education Amendments of 1972, a federal statute codified at 20 U.S.C. § 1681 et seq. that prohibits discrimination based on sex in education programs and activities that receive Federal Financial Assistance.
 - (14) “Title IX Personnel” means any individual designated by an LEA as a Title IX Coordinator, investigator, decision-maker, or any person designated by an LEA to facilitate an informal resolution process under Title IX.
 - (15) “TOCR” means the Tennessee Department of Education Office for Civil Rights.

Authority: T.C.A. §§ 49-1-102, 49-1-302, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq., 34 C.F.R. Part 100, 34 C.F.R. Part 106. **Administrative History:**

0520-12-04-.02 GENERAL REGULATIONS. ADOPTION BY REFERENCE.

The State Board of Education adopts by reference the Compilation of Federal Regulations at 34 C.F.R. Parts 100 and 106 in their entirety unless otherwise provided in this chapter.

Authority: T.C.A. §§ 49-1-102, 49-1-302, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq. 34 C.F.R. Part 100, 34 C.F.R. Part 106. **Administrative History:**

0520-12-04-.03 PURPOSE.

The purpose of this chapter is to effectuate Department and LEA compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.).

Authority: T.C.A. §§ 49-1-102, 49-1-302, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq. 34 C.F.R. Part 100, 34 C.F.R. Part 106. **Administrative History:**

0520-12-04-.04 LEA RESPONSIBILITIES.

- (1) Each LEA shall:

- (a) Prohibit discrimination and harassment on the basis of race, color, national origin, and sex in all school and/or LEA programs and activities;
 - (b) Appoint a Title VI and Title IX coordinator(s) to oversee compliance with Title VI and Title IX;
 - (c) Prominently display the required contact information of the Title IX coordinator in a manner in accordance with 34 C.F.R. § 106.8(b)(2);
 - (d) Draft and implement policies and procedures to ensure compliance with Titles VI and IX;
 - (e) Provide notice of applicable policies and procedures to staff, students, and families;
 - (f) Train staff regarding applicable policies and procedures;
 - (g) Implement measures aimed at preventing violations of Titles VI and IX;
 - (h) Investigate reports and suspected violations of Titles VI and IX;
 - (i) For any reports containing allegations of child abuse, report such allegations to appropriate authorities;
 - (j) Take remedial action, as appropriate, when violations of Titles VI and IX occur.
- (2) LEAs shall meet the following additional obligations regarding English Learners:
- (a) Ensure English Learners have equal access to and meaningful participation in educational programs and opportunities.
 - (b) LEA practices shall not result in the inappropriate placement of EL students in, or the exclusion from, special programs or activities based on English language proficiency or national origin.
 - (c) LEAs shall not deny enrollment to a student on the basis of the student's or their parents' or guardians' actual or perceived citizenship or immigration status.
- (3) In accordance with T.C.A. § 49-6-4503, LEAs shall annually submit a civil rights and bullying compliance report to the Department. The report shall be in the format provided by the Department and shall be submitted by August 1 of each year.
- (4) All Title VI and Title IX policies drafted pursuant to this chapter shall comply with all applicable state and federal laws, both civil and criminal, including, but not limited to the U.S. Constitution, the Tennessee Constitution, T.C.A. Title 39 and other State statutes falling outside of T.C.A. Title 49.

Authority: T.C.A. §§ 49-1-102, 49-1-302, 49-6-4503, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq. 34 C.F.R. Part 100, 34 C.F.R. Part 106. **Administrative History:**

0520-12-04-.05 SEXUAL HARASSMENT

- (1) Each LEA shall have a Title IX policy prohibiting Sexual Harassment. The policy shall:
 - (a) Require that the LEA responds to an alleged instance of Sexual Harassment in a manner in accordance with 34 C.F.R. § 106.44(a);
 - (b) List the name and contact information of the LEA's Title IX coordinator;
 - (c) Establish a grievance process for responding to Formal Complaints of Sexual Harassment that complies with 34 C.F.R. § 106.45(b) by:
 1. Treating parties equitably and when applicable, issuing remedies to the complainant designed to restore or preserve equal access to the LEA's education program or activity;
 2. Requiring objective evaluation of all relevant evidence and providing that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;
 3. Requiring that Title IX personnel be free from conflicts of interest or bias and be trained on:
 - (i) The definition of Sexual Harassment;
 - (ii) The scope of the LEA's education program or activity;
 - (iii) How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable;
 - (iv) How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, bias;
 - (v) Any technology used to conduct live hearings as applicable; and
 - (vi) Issues of relevance and evidence;
 4. Including a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;
 5. Including reasonably prompt time frames for conclusion of the grievance process, including appeals and informal resolutions, with allowance for temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action;
 6. Describing the range of possible remedies and disciplinary sanctions the LEA may implement following determinations of responsibility;

7. Stating the standard of evidence to be used by the LEA to determine responsibility;
8. Describing the procedures and permissible bases for the complainant and respondent to appeal;
9. Describing the range of Supportive Measures available;
10. Not requiring, allowing, relying on, or otherwise using questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege;
11. Requiring that, upon receipt of a Formal Complaint, an LEA provides parties with written notice of the allegations;
12. Allowing for the dismissal of a Formal Complaint;
13. Allowing for consolidation of Formal Complaints;
14. Describing procedures for investigating a Formal Complaint;
15. If applicable, establishing a process for a live hearing with cross examination;
16. Affording each party the opportunity to:
 - (i) Submit written, relevant questions that the party wants asked of any other party or witness;
 - (ii) Be provided with the answers to such questions; and
 - (iii) Submit additional, limited follow-up questions before a determination regarding responsibility is reached;
17. Describing procedures for issuing a determination regarding responsibility;
18. Establishing an appeal process that allows both parties to appeal the LEA's determination regarding responsibility and the dismissal of a Formal Complaint;
19. If applicable, establishing an informal resolution process;
20. Establishing a recordkeeping system;
21. Applying all provisions, rules, and practices not required by Title IX equally to both parties.

Authority: T.C.A. §§ 49-1-102, 49-1-302, 20 U.S.C. § 1681 et seq., 34 C.F.R. Part 106. **Administrative History:**

0520-12-04-.06 TOCR RESPONSIBILITIES.

- (1) TOCR shall:
 - (a) Ensure LEA compliance with Titles VI and IX and this chapter pursuant to its obligations under 34 C.F.R. 76.770 and as a Pass-through Entity under 2 C.F.R. § 200.332;
 - (b) Provide training and technical assistance to LEAs regarding compliance with Titles VI and IX and this chapter, upon request;
 - (c) Investigate complaints arising under Titles VI and IX filed with TOCR in accordance with State Board rule 0520-14-02-.07; and
 - (d) Annually submit a civil rights and bullying compliance report to the education committees of the General Assembly pursuant T.C.A. § 49-6-4503.

Authority: T.C.A. §§ 49-1-102, 49-1-302, 49-6-4503, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq. 34 C.F.R. Part 100, 34 C.F.R. Part 106. **Administrative History:**

0520-12-04-.07 TOCR INVESTIGATIONS.

- (1) Upon receiving a Complaint arising under Title VI or Title IX, TOCR shall:
 - (a) Assign the Complaint a complaint number;
 - (b) Contact the Complainant to obtain any additional information or clarification, as needed;
 - (c) Determine if TOCR has jurisdiction to investigate;
 - (d) Send an acknowledgement letter to the Complainant stating whether TOCR will pursue an investigation.
- (2) The following timeliness requirements apply to TOCR's investigation of a Complaint arising under Title IV or Title IX:
 - (a) TOCR may investigate allegations that have been filed within one hundred eighty (180) days of the date on which the discrimination is alleged to have occurred.
 - (b) If the Complaint alleges discrimination of an ongoing or continuous nature, TOCR will include older events in its investigation as long as the most recent event of the ongoing discrimination occurred within one hundred eighty (180) days of submitting the Complaint.
 - (c) TOCR may grant waivers of timeliness if:
 1. The Complainant could not reasonably be expected to have known the act was discriminatory within the 180 calendar day period and the Complaint was filed within 60 calendar days after the Complainant could have become aware of the alleged discrimination. Lack of previous awareness of TOCR's complaint process or the civil rights laws and regulations enforced by TOCR shall not a basis for a waiver;
 2. The Complainant was unable to file a Complaint because of incapacitating illness or other incapacitating circumstances during the 180 calendar day period that rendered the

Complainant physically or mentally incapable of filing a Complaint or obtaining assistance so that a Complaint could be filed on their behalf, the Complainant provides to TOCR documentation demonstrating such lack of capacity, and the Complaint allegation was filed within 60 calendar days after the incapacitation ended;

3. The Complainant filed a Complaint alleging the same or similar allegation based on the same operative facts within the 180 calendar day period in federal or state court, and filed a Complaint with TOCR within 60 calendar days after there had been no decision on the merits or settlement of the complaint allegations. Dismissal with prejudice shall be considered a decision on the merits;
 4. The Complainant filed a Complaint alleging the same or similar allegation based on the same operative facts within the 180 calendar day period with another federal, state or local agency, and filed a Complaint with TOCR within 60 calendar days after the other agency completed its investigation; or
 5. The Complainant filed, within the 180 calendar day period, an internal grievance with their school or LEA alleging the same discriminatory conduct that is the subject of the TOCR Complaint, and the Complaint is filed no later than 60 calendar days after the internal grievance is concluded.
- (3) If TOCR opens an investigation, it shall send a copy of the Complaint and a letter to the LEA requesting a response.
- (a) The LEA's response shall include the information requested by TOCR and any relevant documentation and witness information the LEA believes will aid TOCR in properly investigating and resolving the allegations.
- (4) The LEA shall make available to TOCR all information, documents, personnel, students, and evidence needed to resolve the investigation.
- (5) TOCR shall maintain the confidentiality of confidential student information in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g;
- (6) TOCR shall comply with the Tennessee Public Records Act at T.C.A. § 10-7-503 while maintaining the confidentiality of student records protected by FERPA.
- (7) Failure of the LEA to provide necessary documentation, grant necessary interviews, or respond to specified questions may result in a finding of noncompliance against the LEA.
- (8) An LEA may ask to resolve the Complaint with a resolution agreement before TOCR completes its investigation.
- (9) In accordance with Department procedures, TOCR may execute a resolution agreement in order to execute a mutually agreeable early resolution prior to the conclusion of the full investigation.
- (10) At the conclusion of an investigation, TOCR shall determine that there is either sufficient or insufficient evidence to support a conclusion of noncompliance. In its investigative summary and findings, TOCR shall include:
- (a) A statement of the issues raised by the Complainant;
 - (b) A statement of TOCR's jurisdiction over the Complaint;

- (c) TOCR's determination of sufficient or insufficient evidence to conclude noncompliance; and
 - (d) A clear explanation of the pertinent legal standard and factual analysis, referencing the evidence relied upon in making the determination.
- (11) The Complainant or LEA may file a written request for reconsideration to the Department of Education's Office of General Counsel (OGC).
- (a) The request for reconsideration shall be as specific as possible and highlight factual or legal concerns that could change the disposition of the case. General dissatisfaction with the investigative summary and findings shall not be a sufficient basis for a request for reconsideration.
 - (b) In its review, the OGC shall examine the documentation obtained throughout TOCR's investigation. If deemed prudent by the OGC, the OGC may, in limited circumstances, request and include in the review additional responses or submissions from the Complainant and/or the LEA. It may also be necessary to re-interview certain witnesses if records do not reflect clear responses to the alleged violations of law. The OGC shall not consider issues or concerns that were not raised during the initial investigation.
- (12) In addition, the Complainant or LEA may file for review of the Department's initial decision or reconsideration decision with the U.S. Department of Education Office for Civil Rights.
- (13) If TOCR determines that the evidence supports a conclusion that the LEA failed to comply with applicable regulations, TOCR shall negotiate a resolution agreement with the LEA after issuing its investigative summary and findings. Each resolution agreement shall:
- (a) Be approved by the LEA's board or staff attorney and signed by a person with authority to bind the LEA;
 - (b) Be approved by TOCR or a person specifically designated as acting on its behalf;
 - (c) Acknowledge the LEA's noncompliance, state the LEA's willingness to correct the noncompliance, and commit the LEA to achieve and maintain compliance in the future; and
 - (d) Include a corrective action plan, which provides:
 1. The purpose of the plan;
 2. Specific acts or steps the LEA will take to resolve compliance issues;
 3. Dates for implementing each act or step and anticipated completion; and
 4. Dates for submission of reports and documentation verifying implementation.
- (14) TOCR shall monitor resolution agreements to ensure LEA compliance with the terms of each agreement.
- (a) TOCR may require the LEA to submit written reports and documentation that provides evidence of LEA's continued compliance with the resolution agreement.
 - (b) TOCR shall provide written notice to the LEA of any deficiencies in implementation and shall request immediate and appropriate action to address those deficiencies. When necessary, TOCR

shall require additions to the resolution agreement to address the failure of the LEA to fully implement commitments in the original agreement.

- (15) TOCR may permit modification or termination of the resolution agreement or corrective action plan if it learns that circumstances have arisen that either fully resolve or render moot some or all of the compliance concerns that were addressed by the resolution agreement.
- (16) TOCR may modify the resolution agreement or corrective action plan in response to changes in controlling case law, statutes, and regulations.
- (17) Modification of any resolution agreement provision will be granted on a case-by-case basis. The Complainant will be notified, in writing, of significant modifications to the resolution agreement.
- (18) TOCR will conclude the monitoring of a case when it determines that the LEA has fully implemented the terms of the resolution agreement. The LEA and Complainant will be promptly notified, in writing, of the conclusion of monitoring.

Authority: T.C.A. §§ 49-1-102, 49-1-302, 42 U.S.C. § 2000d et seq., 20 U.S.C. § 1681 et seq. 34 C.F.R. Part 100, 34 C.F.R. Part 106. **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: 5/17/2021

Signature: *Angela C. Sanders*

Name of Officer: Angela C. Sanders

Title of Officer: General Counsel

Department of State Use Only

Filed with the Department of State on: _____

Tre Hargett
Secretary of State