



TENNESSEE
STATE BOARD OF EDUCATION

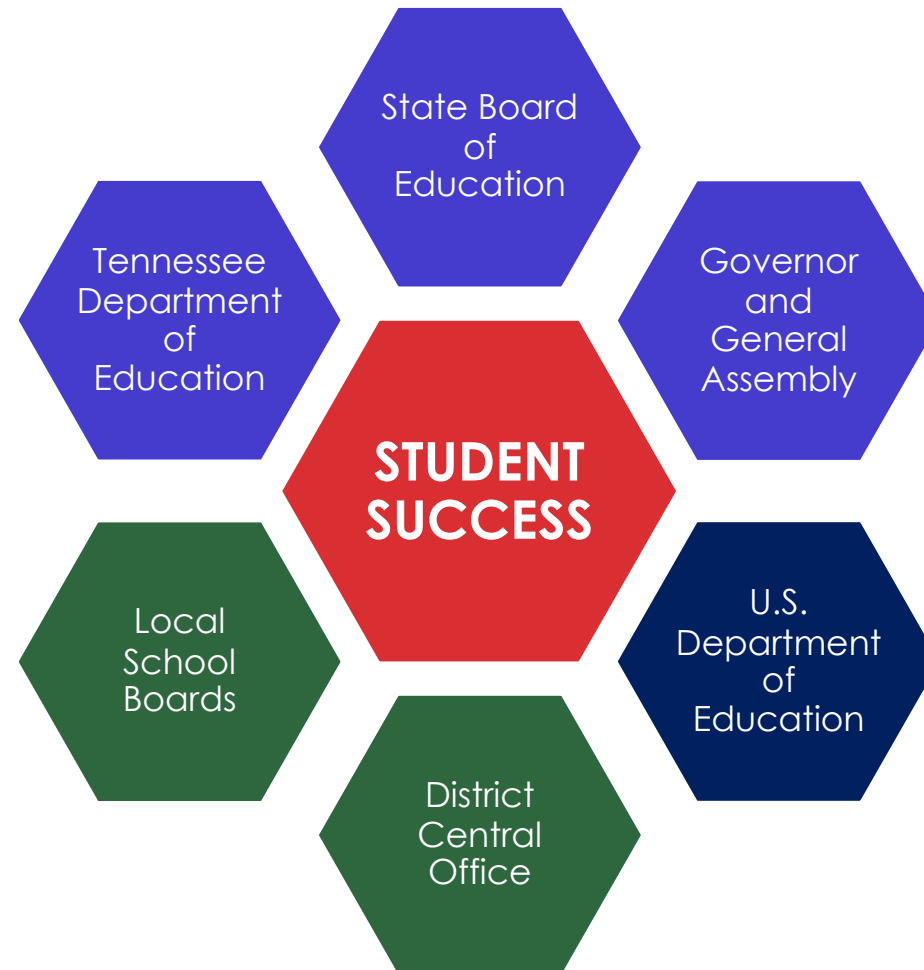
Open Meetings, Public Records, and Rule v. Policy Overview

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OF EDUCATION

TENNESSEE PUBLIC CHARTER SCHOOL COMMISSION ORGANIZING
SESSION

FEBRUARY 18, 2020

STATE BOARD OF EDUCATION: FOCUSED ON STUDENT SUCCESS



AGENDA

- Open Meetings Act
- Public Records Act
- -BREAK-
- Rule and Policy Making Primer

OPEN MEETINGS

TENN. CODE ANN. §§ 8-44-101- 111

OPEN MEETINGS ACT

- **Tenn. Code Ann. §8-44-101, et. seq**
 - “The formation of public policy and decisions is public business and shall not be conducted in secret.”
 - Applies to “meetings” of “governing body”
- Meetings open to the public at all times
 - Right to attend, not to participate
- Adequate notice to public
- Recorded minutes open to inspection
- All votes shall be by public vote or public ballot or public roll call

OPEN MEETINGS ACT

- **Who does it apply to?**

- “Governing Body”
- The members of any public body which consists of two (2) or more members, with the authority to make **decisions for or recommendations to** a public body on policy or administration.

- **What does it apply to and when?**

- “Meeting”
- A meeting occurs when a governing body of a public body convenes “to **make a decision** or to **deliberate** toward a decision on any matter.”
 - What is deliberation? “to examine and consult in order to form an opinion.... to weigh arguments for and against a proposed course of action.”
- Doesn't apply to informational sessions or workshops- i.e. information gathering

OPEN MEETINGS ACT

- Must give adequate public notice of meetings
 - Time and place
 - Reasonable opportunity for public to exercise right to attend
- Must record minutes
- All votes must be by public vote, public ballot or public roll call

SPECIAL CALLED MEETINGS/ELECTRONIC PARTICIPATION

- Special called meetings are subject to the Open Meetings Act
 - Must give adequate public notice of such meeting
- If a physical quorum cannot be present at a meeting, may allow electronic participation by members if the body determines the matter is urgent and necessary.
 - Must have statement of necessity read into the record and statement must be filed with the Secretary of State's office within two working days after the meeting.
 - Public must be able to hear members participating by phone or other electronic means.
 - Roll call votes must be taken
- If a physical quorum is present, those participating electronically cannot be counted in quorum

EXCEPTIONS

- Chance meetings
 - incidental or unplanned encounters by two (2) or more members — are not considered violations unless they evolve into or are used “to decide or deliberate public business.”
 - Cannot use “chance meetings” to deliberate public business in circumvention of the Act
 - **Cannot use email to circumvent the requirements of the Act by deciding and deliberating public business via email.** See T.C.A. § 8-44-102(c).
- Attorney-Client Meetings
 - Can discuss courses of action with attorney, but must publicly deliberate which action to take.

ATTORNEY GENERAL'S OPINION

12-60

- Question: “Can members of a county or city legislative body share a meal together and casually discuss county or city business and/or issues before their respective legislative bodies under the Open Meetings Act, if the discussion is for informative purposes only and no decisions are reached or attempts made to obtain commitments?”
- Opinion: “ ...to avoid any violation of the Act the best advice is that, while two or more members may share a meal together in which public business is discussed, such discussion should not constitute deliberations, *i.e.*, “examin[ing] and consulting] in order to form an opinion ... weighting] arguments for and against a proposed course of action.”

CURING A VIOLATION

- Any action taken in violation of the Open Meetings Act is null and void.
- A violation may be cured by “new and substantial” reconsideration of the actions; essentially doing it over in a public meeting following the law.

QUESTIONS?

TN PUBLIC RECORDS ACT

TENN. CODE ANN. CHAPTER 7, PART 5

TN PUBLIC RECORDS ACT

- What is a “public record?”
 - Records created or received by local or state government as part of transacting official business are open for inspection by citizens.
 - Whether on paper or in electronic form, it is still a public record.
 - Does not include the device or equipment that may have been used to create or store a public record.
 - Includes records in draft form

POP QUIZ!



EXTRA CREDIT



TN PUBLIC RECORDS ACT

- Public records shall:
 - At all times during business hours
 - Be open for personal inspection
 - By any citizen of this state
 - Unless otherwise made confidential by state law
- Presumption of OPENNESS!
- Public Chapter 712 of 2018 : All state government entities must adopt rules regarding public records

EXAMPLES OF PUBLIC RECORDS

- Personnel records/applications, resumes, and references
- Contracts/bidding documents
- Emails, text messages
- Travel/leave information
- Documents
- Financial or performance audits
- Annual reports
- Meeting agendas/minutes
- Budgets

COMMON EXEMPTIONS

- All investigative files of the TBI
- Health and medical information in government hands
- Adoption records
- Certain student records (FERPA)
- Records regarding contemplated legal or administrative actions of the state Attorney General
- Personally identifying information of individuals or state , county or public employee
- Law enforcement and school emergency contingency plans
- Library checkout records of individuals
- Most personal or company tax information held by the state revenue department.

RESPONSE REQUIREMENTS

- Records custodian shall promptly make records available upon request
- If not practicable to make records promptly available, must do one of the following within 7 days
 - Make the information available
 - Deny the request in writing with the basis for denial, or
 - Respond with the time reasonably necessary to produce the records or information
- Requests must be sufficiently detailed so that you can identify the records. Can respond to ask for additional information.
- Failure to respond = denial

QUESTIONS?

RULES AND POLICIES

RULES

- A rule is an agency regulation that implements, prescribes or interprets an enactment of the legislature or congress.
 - New law in 2018 expanded definition
- Governed by the Uniform Administrative Procedures Act (TCA Title 4, Chapter 5, Part 2)
- Must have specific statutory authority to adopt rules
- State Board has broad statutory authority to adopt rules governing many aspects of K-12 education, approval of educator preparation programs, educator licensure, charter schools, etc.

3 TYPES OF RULES

- Rulemaking Hearing Rules
- Proposed Rules
- Emergency Rules
 - 1) Immediate danger to public health, safety or welfare
 - 2) Delay the effective date of another rule
 - 3) Required by constitution or court order
 - 4) Required by federal agency
 - 5) Required by law to implement within a certain period of time
- Recent Example: Amendment Petitions Emergency Rule

RULE PROMULGATION

- Rules must go through a formal promulgation process.



RULE PROMULGATION

- Proposed Rules and Rulemaking Hearing Rules become effective 90 days after filing with Secretary of State's Office.
- Full process typically takes 6-9 months after final approval by SBE.
- Rules carry the weight of law.

COMMISSION RULES

- Rulemaking Authority:
 - TCA 49-13-105(m): “The commission may promulgate rules and regulations that are solely necessary for the administrative operation and functions of the commission. The commission's rulemaking authority shall not supersede the state board of education's rulemaking authority and may only be exercised in performance of the commission's administrative responsibilities. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.”
- Need to adopt rules to govern Commission functions
 - Appeals process rule
 - Public records rule

POLICIES

- Policies define and/or explain further the implementation of a statute or a rule, or the internal management of state government.
 - New law in 2018 defining policies
- Policies are enforceable but do not carry the weight of law.
- State Board Policies:
 - Two readings
 - Policies become effective upon final approval by the State Board
 - TDOE monitors LEAs for compliance

COMMISSION POLICIES

- Will need to adopt policies to govern your internal operation
- Examples:
 - Mission/goals
 - Commission meetings
 - Members
 - Staff/Personnel
 - Appeal process
 - Local Education Agency policies

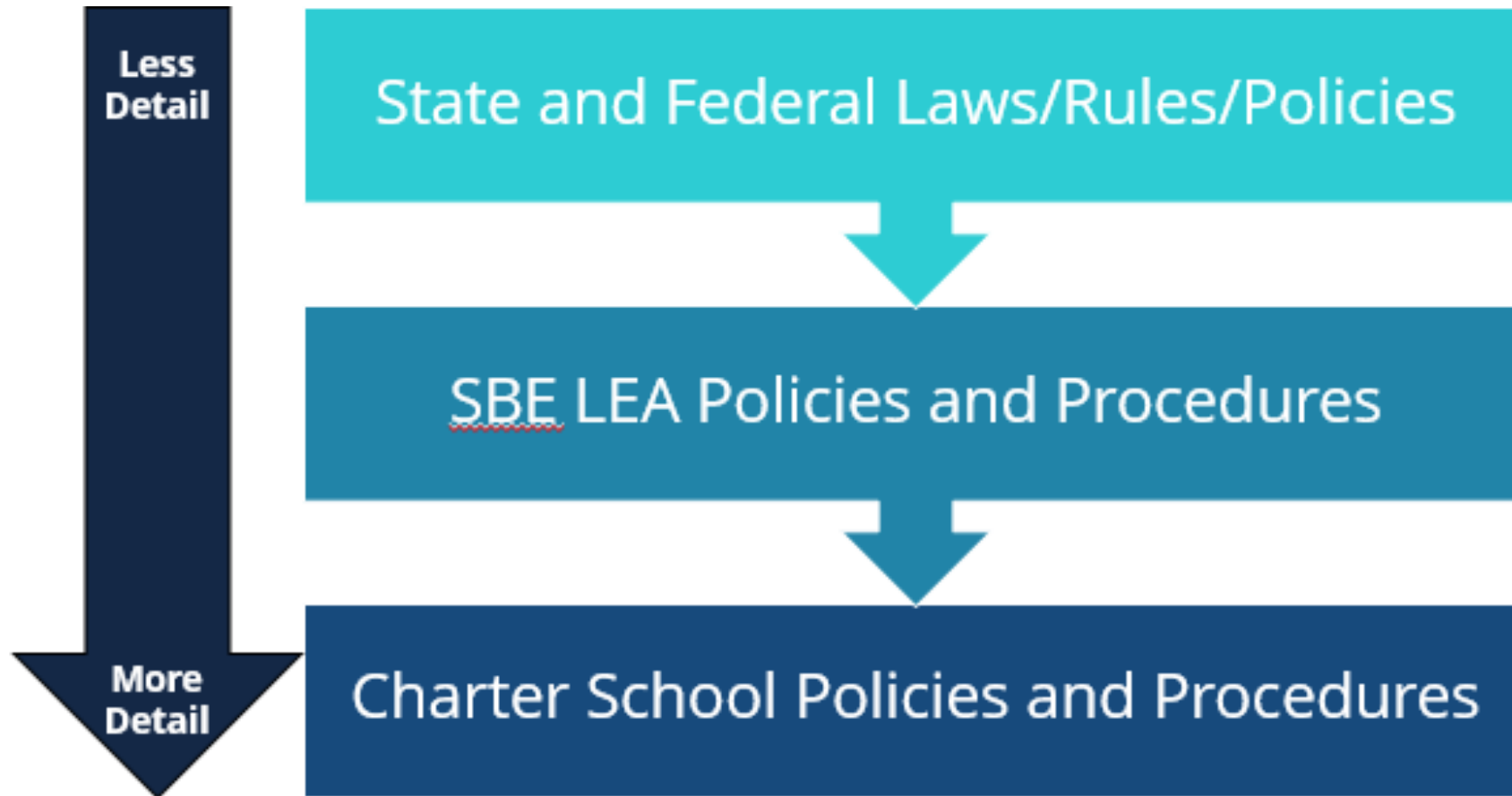
LEA POLICIES

- Background on SBE as a “unique” school district



- Balance responsibilities as an authorizer and an LEA
 - Charter autonomy v. LEA compliance

SBE LEA POLICY HIERARCHY



QUESTIONS?

THANK YOU!

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