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Proposed Rule(s) Filing Form - REDLINE

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Public Charter School Commission
Division:	N/A
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1185-01-01	Charter School Appeals
Rule Number	Rule Title
1185-01-01-.01	New Start Charter School Appeals
1185-01-01-.02	Charter School Renewal Application Appeals
1185-01-01-.03	Charter School Revocation Appeals

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

**RULES
OF
THE TENNESSEE PUBLIC CHARTER SCHOOL COMMISSION
CHAPTER 1185-01-01
CHARTER SCHOOL APPEALS**

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1185-01-01-.01 New Start Charter School Appeals.

(1) Pursuant to T.C.A. § 49-13-108(b)(5), the charter school sponsor may appeal a decision by the local board of education to deny an amended application for a newly created public school to the Tennessee Public Charter School Commission (“Commission”) no later than ten (10) calendar days after the date of local board of education’s decision. The charter school sponsor shall submit a notice of appeal by email to the Commission. The notice of appeal must be received by the Commission no later than 11:59 p.m. Central Standard Time on the tenth (10th) day after the local board of education’s decision. In order to be considered a complete appeal, this notice of appeal shall contain the following information:

- (a) Copies of the initial and amended applications submitted to the local board of education;
- (b) A summary of the application timeline including the dates that the initial and amended applications were originally submitted to the local board of education, the date of the public hearing, the date of the capacity/applicant interview (if applicable), and the dates the initial and amended applications were denied by the local board of education;
- (c) Copies of the letters informing the charter school sponsor of the local board of education's reasons for denying the initial and amended applications;
- (d) A clean version of the amended application without any tracked changes that includes all changes made upon resubmission to the local board of education; and
- (e) A brief statement, no longer than three (3) pages, including, but not limited to, an explanation of why the local board of education’s denial of the charter school application was contrary to the best interests of the students, local education agency (“LEA”), or community.

(2) Commission staff shall not accept an incomplete appeal or any additional documentation from the charter school sponsor beyond the contents of the notice of appeal unless requested by the Commission staff. If the sponsor indicates in the notice of appeal that one (1) of the requirements listed in subparagraphs (a)–(e) above cannot be submitted, the sponsor shall include an explanation in the notice of appeal. Commission staff may conditionally accept the appeal and collect additional information to determine whether the appeal may be accepted despite the sponsor’s inability to submit one (1) of the requirements listed in subparagraphs (a)–(e) above.

- (a) Additionally, the Commission staff may request additional documentation from the charter school sponsor, the local board of education, and the Tennessee Department of Education. In such case, each is requested to comply with the document request within five (5) calendar days of the request or as soon as possible thereafter, but in no event more than seven (7) calendar days after the request.

(3) The Commission shall conduct a de novo on the record review of the proposed charter school’s amended application.

(4) The Commission shall conduct a separate analysis for each application that was denied based upon substantial negative fiscal impact. If the local board of education's denial is based on substantial negative fiscal impact, the local board shall submit documentation explaining the fiscal impact of the charter school as requested by the Commission staff. The local board of education is requested to provide this documentation within ~~five (5)~~ seven (7) calendar days of receiving notification from the Commission that a sponsor is appealing the local board of education's denial of a charter application ~~or as soon as possible thereafter, but in no event more than seven (7) calendar days~~. The burden will be on the local board of education to prove that substantial negative fiscal impact does exist. The Commission may also obtain information independently from the information provided by the local board of education.

(5) The Commission staff shall assemble a charter application review committee comprised of teams of internal and external evaluators with relevant and diverse educational, organizational, financial, and legal expertise, as well as an understanding of the essential principles of public charter school autonomy and accountability.

(a) In reviewing the amended application, the application review committee shall:

1. Use the sample scoring criteria provided by the Commissioner of Education and available on the Tennessee Department of Education's website to evaluate the charter application; and
2. Review applications on appeal in accordance with the State Board of Education's quality public charter school authorizing standards.

(6) The Commission staff shall interview the governing board of each sponsor that has filed an appeal. The focus of the interview will be assessing the governing board and school leadership's capacity to operate a high-quality charter school that is consistent with the charter application and in a fiscally responsible manner that advances the mission of the charter school. The Commission staff shall assemble an interview panel that may include Commission staff, a Commission member, review committee members, and any other internal or external individuals whose knowledge and expertise would assist the Commission in its decision.

(a) The officers of the governing board and the school leader (if named) shall attend the interview, and the total participants from the sponsor shall be limited to eight (8). The interviews will not be open to the public.

(b) ~~All interview attendees (both on behalf of the charter school and Commission) shall attend the interview in person. However, Commission staff may allow certain attendees to participate remotely in extraordinary circumstances.~~ Commission staff shall schedule a date for the interview to be conducted electronically.

(7) Within seventy-five (75) calendar days after receipt of the notice of appeal, the Commission, or the Commission's designee, shall hold a public hearing. The public hearing shall be attended by the Commission or its designated representative and shall occur in the LEA in which the proposed charter school submitted the charter school application. The hearing must be open to representatives from the local board of education and the sponsor. Notice of the hearing must be provided to the local board of education, the sponsor, and the general public. At least one (1) week before the hearing, notice of the hearing must be:

- (a) Published in a newspaper of general circulation in the county where the LEA is located; and
- (b) Posted on the Commission's website.

(8) Following the public hearing, the interview, and the de novo review of the record including the amended application, the Executive Director of the Commission shall provide written findings and recommendations to the Commission. The Commission shall consider the findings and recommendations of the Executive Director when rendering a decision on the appeal, but the Commission is not bound by the recommendation.

(9) Subsequently, but within seventy-five (75) calendar days after the Commission received the notice of appeal, the Commission shall meet to render a decision and shall forward its findings to the local board of education.

(a) A representative of the sponsor and local school board may speak at the meeting where the Commission will consider the findings and recommendations of the Executive Director. Alternatively, a representative of the sponsor and local school board may submit a written comment to be read into the record by a member of the Commission staff during the meeting where the Commission will consider the

findings and recommendations of the Executive Director. Written comments shall not be more than one (1) page typed in length and shall be received by the Executive Director at least forty-eight (48) hours prior to the scheduled board meeting. The Commission shall accept only one (1) written comment from each party.

(b) If the Commission finds that the application meets or exceeds the metrics outlined in the Department of Education's application-scoring rubric and that approval of the application is in the best interests of the students, LEA, or community, then the Commission may approve the public charter school's application and become the charter school's authorizer and LEA.

(c) If a local board of education's decision to deny a public charter school application is based on substantial negative fiscal impact, the Commission shall not approve for operation any public charter school that the Commission determines will have a substantial negative fiscal impact on an LEA, such that authorization of the public charter school would be contrary to the best interests of the students, LEA, or community. The Commission's decision is final and not subject to appeal.

(d) If the Commission becomes the chartering authority pursuant to T.C.A. § 49-13-108(b)(5)(D), the LEA and the charter school may submit a charter agreement signed by the LEA and the charter school to the Commission stating that the charter school shall be overseen and monitored by the LEA. In such case, if the charter agreement is received by the Commission within thirty (30) calendar days after the Commission becomes the charter authorizer, then the authorization of the charter school shall be officially transferred to the LEA.

Authority: T.C.A. §§ 49-13-105 and 49-13-108. **Administrative History:** Original rules filed October 29, 2020; effective January 27, 2021.

1185-01-01-.02 Charter School Renewal Application Appeals.

(1) Pursuant to T.C.A. § 49-13-121(f), the governing body of a public charter school may appeal a decision by the local board of education to deny a renewal application to the Commission no later than ten (10) calendar days after the date of the local board of education's decision to deny the renewal application. The governing body of the charter school shall submit a notice of appeal by email to the Commission. The notice of appeal must be received by the Commission no later than 11:59 p.m. Central Standard Time on the tenth (10th) day after the local board of education's decision. In order to be considered a complete appeal, this notice of appeal shall contain the following information:

(a) Copies of the renewal application, which shall include, but not be limited to, the information set forth in T.C.A. § 49-13-121. Corrections to the renewal application shall not be accepted;

(b) Summary of the renewal application timeline including the date that the renewal application was originally submitted to the local board of education, the date the renewal application was denied by the local board of education, and any other dates relevant to the local board of education's consideration of the renewal application; and

(c) Brief statement, no longer than three (3) pages, including but not limited to an explanation for why the local board of education's denial of the charter school renewal application was contrary to the best interests of the students, LEA, or community.

(2) Commission staff shall not accept an incomplete appeal or any additional documentation from the charter school governing body beyond the contents of the notice of appeal unless requested by the Commission staff. If the governing body indicates in the notice of appeal that one (1) of the requirements listed in subparagraphs (a)–(c) above cannot be submitted, the governing body shall include an explanation in the notice of appeal. Commission staff may conditionally accept the appeal and collect additional information to determine whether the appeal may be accepted despite the governing body's inability to submit one (1) of the requirements listed in subparagraphs (a)–(c) above.

(a) Additionally, the Commission staff may request additional documentation from the charter school governing body, the local board of education, and the Tennessee Department of Education. In such case, each is requested to comply with the document request within ~~five (5)~~ seven (7) calendar days of the request or as soon as possible thereafter, ~~but in no event more than seven (7) calendar days after the request.~~

(3) The Commission shall conduct a de novo on the record review of the local board of education's renewal decision.

(4) The Commission staff shall assemble a renewal review committee comprised of teams of internal and external evaluators with relevant and diverse educational, organizational, financial, and legal expertise, as well as an understanding of the essential principles of public charter school autonomy and accountability.

(a) In reviewing the renewal application and renewal record, the renewal review committee shall use a scoring rubric to evaluate the charter school's renewal application and renewal record.

(5) The Commission staff shall interview the governing board of each charter school operator that has filed an appeal. The focus of the interview will be on evaluating the charter school's performance over the current term and the governing body and school leadership's capacity to effectively oversee the charter school during the next charter term. The Commission staff shall assemble an interview panel that may include Commission staff, a Commission member, review committee members, and any other internal or external individuals whose knowledge and expertise would assist the Commission in its decision.

(a) The officers of the governing board and the school leader shall attend the interview, and the total participants from the charter school operator shall be limited to eight (8). The interviews will not be open to the public.

(b) ~~All interview attendees (both on behalf of the charter school and Commission) shall attend the interview in person. However, Commission staff may allow certain attendees to participate remotely in extraordinary circumstances.~~ Commission staff shall schedule a date for the interview to be conducted electronically.

(6) Within sixty (60) calendar days after receipt of the notice of appeal and after reasonable public notice, the Commission shall hold a public hearing, attended by the Commission or its designated representative, in the school district in which the charter school has been operating.

(7) Following the public hearing, the interview, and the de novo review of the renewal record including the renewal application, the Executive Director of the Commission shall provide written findings and recommendations to the Commission. The Commission shall consider the findings and recommendations of the Executive Director when rendering a decision on the appeal, but the Commission is not bound by the recommendation.

(8) Subsequently, but within the sixty (60) calendar days after receipt of the notice of appeal, the Commission shall meet to render a decision and shall forward its findings to the local board of education.

(a) A representative of the governing board and local school board may speak at the meeting where the Commission will consider the findings and recommendations of the Executive Director. Alternatively, a representative of the governing board and local school board may submit a written comment to be read into the record by a member of the Commission staff during the meeting where the Commission will consider the findings and recommendations of the Executive Director. Written comments shall not be more than one (1) page typed in length and shall be received by the Executive Director at least forty-eight (48) hours prior to the scheduled board meeting. The Commission shall accept only one (1) written comment from each party.

(b) If the Commission finds that the local board of education's decision was contrary to the best interests of the students, LEA, or community and approves the renewal application, the Commission shall be the authorizer, unless the LEA agrees to oversee and manage the charter school pursuant to T.C.A. § 49-13-108.

(c) A decision by the Commission to deny renewal of a charter agreement is final and not subject to appeal.

(d) If the governing body of a charter school authorized by the Commission submits its renewal application to the Commission pursuant to T.C.A. § 49-13-121 then the decision of the Commission on the renewal application is final and may not be appealed again to the Commission.

Authority: T.C.A. §§ 49-13-105 and 49-13-121. **Administrative History:** Original rules filed October 29, 2020; effective January 27, 2021.

1185-01-01-.03 Charter School Revocation Appeals.

(1) Pursuant to T.C.A. § 49-13-122(g), the governing body of a public charter school may appeal a decision by the local board of education to revoke the charter agreement to the Commission no later than ten (10) calendar days after the date of the local board of education's decision to revoke, except that a revocation based on violations in T.C.A. § 49-13-122(a) are not appealable. The governing body of the charter school shall submit a notice of appeal by email to the Commission. The notice of appeal must be received by the Commission no later than 11:59 p.m. Central Standard Time on the tenth (10th) day after the local board of education's decision. In order to be considered a complete appeal, this notice of appeal shall contain the following information:

(a) A copy of the statement issued by the local board of education stating its reasons for revocation as required by T.C.A. § 49-13-122(d); and

(b) Brief statement, no longer than three (3) pages, including but not limited to an explanation for why the local board of education's decision to revoke the charter agreement was contrary to T.C.A. § 49-13-122.

(2) Commission staff shall not accept an incomplete appeal or any additional documentation from the charter school governing body beyond the contents of the notice of appeal unless requested by the Commission staff. If the governing body indicates in the notice of appeal that one (1) of the requirements listed in subparagraphs (a)–(b) above cannot be submitted, the governing body shall include an explanation in the notice of appeal. Commission staff may conditionally accept the appeal and collect additional information to determine whether the appeal may be accepted despite the governing body's inability to submit one (1) of the requirements listed in subparagraphs (a)–(b) above.

(3) The Commission staff may request additional documentation from the charter school governing body, the local board of education, and the Tennessee Department of Education. In such case, each is requested to comply with the document request within ~~five (5)~~ **seven (7)** calendar days of the request ~~or as soon as possible thereafter, but in no event more than ten (10) calendar days after the request.~~

(4) The Commission shall conduct a de novo on the record review of the local board of education's revocation decision.

(5) Within sixty (60) calendar days after receipt of the notice of appeal and after reasonable public notice, the Commission shall hold an open meeting, attended by the Commission or its designated representative, the governing board of the charter school, and the local board of education or the local board of education's designated representative in the LEA in which the charter school has been operating.

(6) Subsequently, but within sixty (60) calendar days after receipt of the notice of appeal, the Commission shall meet to render a decision and shall forward its findings to the local board of education.

(a) A representative of the governing board and local school board may speak at the board meeting where the Commission will consider the findings and recommendations of the Executive Director. Alternatively, a representative of the governing board and local school board may submit a written comment to be read into the record by a member of the Commission staff during the meeting where the Commission will consider the findings and recommendations of the Executive Director. Written comments shall not be more than one (1) page typed in length and shall be received by the Executive Director at least forty-eight (48) hours prior to the scheduled board meeting. The Commission shall accept only one (1) written comment from each party.

(b) If the Commission finds that the local board of education's decision was contrary to T.C.A. § 49-13-122 and overturns the local board of education's decision to revoke the charter agreement, the Commission shall remand the decision to the local board of education and the local board of education shall remain the authorizer. The decision of the Commission is final and not subject to appeal.

Authority: T.C.A. §§ 49-13-105 and 49-13-122. **Administrative History:** Original rules filed October 29, 2020; effective January 27, 2021.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

These rules do not affect small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

These rules do not have a financial impact on local government.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules, governing charter school appeals (i.e. new start, renewal, and revocation), provide clarity around the requirements for the submission of documents. The language changes from a 5-7 calendar days submission window to being a “within 7 calendar days” requirement.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Tennessee Public Charter School Commission is granted rulemaking authority under T.C.A. § 49-13-105.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Charter schools and local districts will be affected by this rule should an appeal be filed. The Commission urges adoption of this rule to provide greater clarity to the appellate process.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

Not applicable.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency’s annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Not applicable.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Chase Ingle
Director of External Affairs
Tennessee Public Charter School Commission

Ashley N. Thomas, esq.
General Counsel
Tennessee Public Charter School Commission

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Chase Ingle
Director of External Affairs
Tennessee Public Charter School Commission

Ashley N. Thomas, esq.
General Counsel
Tennessee Public Charter School Commission

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.