

**RULES
OF
THE DEPARTMENT OF EDUCATION**

**CHAPTER 0520-12-04
PROHIBITED CONCEPTS IN INSTRUCTION**

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0520-12-04-.01 PURPOSE.

The purpose of these Rules is to effectuate T.C.A. § 49-6-1019.

Authority: T.C.A. §§ 49-1-201 and 49-6-1019. **Administrative History:** Emergency rules filed November 8, 2021; effective through May 7, 2022.

0520-12-04-.02 DEFINITIONS.

- (1) "Course of instruction" means a unit of academic instruction which includes a series of lessons or meetings designed to meet specific educational goals.
- (2) "Commissioner" means the Commissioner of the Tennessee Department of Education.
- (3) "Curriculum and instructional program" means a set of core instructional materials including activities and textbooks designed to help students reach the learning outcomes established in state academic standards.
- (4) "Department" means the Tennessee Department of Education.
- (5) "Department review team" means a committee of Department employees appointed by the Commissioner to review and investigate, as necessary, appeals filed with the Department pursuant to these Rules with knowledge and expertise regarding curriculum, instructional standards, and school and LEA operations and administration.
- (6) "Eligible complainant" means a current student of the LEA or public charter school in which the allegation(s) arose, a parent of a current student of the LEA or public charter school in which the allegation(s) arose, or a current employee of the LEA or public charter school in which the allegation(s) arose.
- (7) "LEA" means a Tennessee local education agency and has the same meaning given in T.C.A. § 49-1-103(2).
- (8) "Parent" means the parent or legal guardian of the student.
- (9) "Privileged" means having a special advantage or right.
- (10) "Prohibited Concepts" are those concepts specifically enumerated in T.C.A. § 49-6-1019(a) and Section .03 of these Rules that shall not be included or promoted in a course of instruction, curriculum and instructional program, or through supplemental instructional materials.

(Rule 0520-12-04-.02, continued)

- (11) "Public charter school" means a school authorized to operate under Tennessee Code Title 49, Chapter 13.
- (12) "State funds" means Basic Education Program funds.
- (13) "Supplemental instructional materials" means materials used in conjunction with the core instructional materials of a course. Supplemental instructional materials extend and support instruction and include, but are not limited to, books, periodicals, visual aids, video, sound recordings, computer software, or other digital content.

Authority: T.C.A. §§ 49-1-201 and 49-6-1019. **Administrative History:** Emergency rules filed November 8, 2021; effective through May 7, 2022.

0520-12-04-.03 PROHIBITED CONCEPTS.

- (1) The following concepts are Prohibited Concepts that shall not be included or promoted in a course of instruction, curriculum and instructional program, or in supplemental instructional materials:
 - (a) One (1) race or sex is inherently superior to another race or sex;
 - (b) An individual, by virtue of the individual's race or sex, is inherently privileged, racist, sexist, or oppressive, whether consciously or subconsciously;
 - (c) An individual should be discriminated against or receive adverse treatment because of the individual's race or sex;
 - (d) An individual's moral character is determined by the individual's race or sex;
 - (e) An individual, by virtue of the individual's race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;
 - (f) An individual should feel discomfort, guilt, anguish, or another form of psychological distress solely because of the individual's race or sex;
 - (g) A meritocracy is inherently racist or sexist, or designed by a particular race or sex to oppress members of another race or sex;
 - (h) This state or the United States is fundamentally or irredeemably racist or sexist;
 - (i) Promoting or advocating the violent overthrow of the United States government;
 - (j) Promoting division between, or resentment of, a race, sex, religion, creed, nonviolent political affiliation, social class, or class of people;
 - (k) Ascribing character traits, values, moral or ethical codes, privileges, or beliefs to a race or sex, or to an individual because of the individual's race or sex;
 - (l) The rule of law does not exist, but instead is a series of power relationships and struggles among racial or other groups;
 - (m) All Americans are not created equal and are not endowed by their Creator with certain unalienable rights, including, life, liberty, and the pursuit of happiness; or
 - (n) Governments should deny to any person within the government's jurisdiction the equal protection of the law.

(Rule 0520-12-04-.03, continued)

- (2) Notwithstanding subsection .03(1), LEAs and public charter schools are not prohibited from including or promoting concepts as part of a course of instruction, in a curriculum and instructional program, or through the use of supplemental instructional materials if those concepts involve:
- (a) The history of an ethnic group, as described in textbooks and instructional materials adopted in accordance with Tennessee Code Title 49, Chapter 6, Part 22;
 - (b) The impartial discussion of controversial aspects of history;
 - (c) The impartial instruction on the historical oppression of a particular group of people based on race, ethnicity, class, nationality, religion, or geographic region; or
 - (d) Historical documents relevant to subdivisions .03(2)(a)-(c) that are permitted under T.C.A. § 49-6-1011.

Authority: T.C.A. §§ 49-1-201 and 49-6-1019. **Administrative History:** Emergency rules filed November 8, 2021; effective through May 7, 2022.

0520-12-04-.04 LEA AND PUBLIC CHARTER SCHOOL REQUIREMENTS.

- (1) Each LEA or public charter school shall:
- (a) Ensure compliance with T.C.A. § 49-6-1019(a) by investigating suspected violations and complaints alleging violations of T.C.A. § 49-6-1019(a) in accordance with these Rules;
 - (b) Post the complaint form provided by the Department for filing a complaint alleging violations of T.C.A. § 49-6-1019 on the LEA or public charter school's website;
 - (c) Prohibit retaliation for filing a complaint, filing an appeal, or participating in an investigation at the local or Departmental level;
 - (d) Obtain written consent from a parent prior to the participation of a minor student in the investigative process, including consent to be interviewed;
 - (e) Provide instructions on how to file an appeal of the LEA or public charter school's determination with the Department in any written determination to an eligible complainant;
 - (f) Provide annual notice of T.C.A. § 49-6-1019(a) and these Rules to staff, students, and parents;
 - (g) Maintain for five (5) years and make available for inspection by the Department, records of:
 1. The number of complaints filed;
 2. The number of complaints closed;
 3. The number of complaints pending;
 4. The number of complaints substantiated; and
 5. The number of complaints not substantiated.

(Rule 0520-12-04-.04, continued)

Authority: T.C.A. §§ 49-1-201 and 49-6-1019. **Administrative History:** Emergency rules filed November 8, 2021; effective through May 7, 2022.

0520-12-04-.05 REPORTING AND INVESTIGATING PROHIBITED CONCEPTS.

- (1) LEAs or public charter schools are best positioned to choose which textbooks and instructional materials meet the needs of their students, educators, and community. Pursuant to T.C.A. § 49-6-2207, LEAs are required to utilize local textbook and instructional materials adoption committees to review textbooks proposed for district wide adoption by the school district from the list of textbooks and instructional materials adopted by the Textbook and Instructional Materials Quality Commission and approved by the Tennessee State Board of Education. Local review committees must be set up by grade and subject matter fields and composed of teachers, or supervisors and teachers, and parents with children enrolled in the LEA at the time of appointment to a committee. The local board of education may also appoint experts in the grade level or subject matter field for which textbooks and instructional materials are to be reviewed. Pursuant to T.C.A. § 49-13-107, each public charter school must include an academic plan as part of the charter school's application that is approved by the charter authorizer. T.C.A. § 49-13-104 requires public charter school academic plans to include the teaching and classroom instruction methods and the materials and curriculum that will be used by the school. General complaints about the subject matter or age appropriateness of textbooks and instructional materials that do not allege that Prohibited Concepts are being or have been included or promoted in a course of instruction, curriculum, instructional program, or in supplemental instructional materials of an LEA or public charter school, must be filed with the LEA or public charter school pursuant to the LEA or public charter school's locally adopted policy for addressing such complaints.
- (2) To file a complaint alleging that Prohibited Concepts are being or have been included or promoted in a course of instruction, curriculum and instructional program, or in supplemental instructional materials of an LEA or public charter school, a complainant must file a complaint with the LEA or public charter school in which the allegation(s) arose on the complaint form provided by the Department.
- (3) To file a complaint, the complainant must be an eligible complainant.
- (4) The complaint must be filed within forty-five (45) calendar days of the Prohibited Concept being included or promoted in a course of instruction, curriculum and instructional program, or supplemental instructional materials, or within forty-five (45) calendar days of these Rules becoming effective.
- (5) The following information, in addition to any other information requested by the LEA or public charter school, shall be included in the complaint on the form provided by the Department:
 - (a) The name and contact information of the complainant;
 - (b) A brief description of the Prohibited Concept at issue;
 - (c) A brief statement on why the concept at issue is a Prohibited Concept;
 - (d) If known, the name of the individual alleged to have included or promoted the Prohibited Concept;
 - (e) The name of any individuals who may have knowledge of the allegations;
 - (f) A list of any documentation or materials supporting the complainant's allegations, including copies of such documentation or materials where possible; and

(Rule 0520-12-04-.05, continued)

- (g) The date(s) on which the Prohibited Concept was included or promoted.
- (6) Upon receipt of a complaint, the LEA or public charter school shall determine whether it has the authority to investigate the complaint. The LEA or public charter school shall have the authority to investigate the complaint if:
- (a) The complaint alleges that a Prohibited Concept was included in a course of instruction, curriculum and instructional program, or supplemental instructional materials;
 - (b) The complaint is filed by an eligible complainant; and
 - (c) The complaint is filed within forty-five (45) calendar days of the Prohibited Concept being included or promoted in a course of instruction, curriculum, instructional program, or supplemental instructional materials, or within forty-five (45) calendar days of these Rules becoming effective.
- (7) Within fifteen (15) calendar days of receiving the complaint, the LEA or public charter shall send a letter to the complainant explaining whether it has authority to investigate the complaint and will be initiating an investigation. An investigation is “initiated” when the LEA or public charter school sends a written notification to the complainant that the allegation(s) shall be investigated.
- (8) Within sixty (60) calendar days of receiving the complaint, the LEA or public charter school shall determine whether the allegation(s) in the complaint is substantiated. The allegation(s) in the complaint shall be “substantiated” if:
- (a) The LEA or public charter school determines that the concept at issue is a Prohibited Concept; and
 - (b) The LEA or public charter school determines that the complained of individual affirmatively and intentionally included or promoted the concept at issue in a course of instruction, curriculum and instructional program, or supplemental instructional materials.
 - (c) The 60-day timeline may only be extended upon approval by the Department if exceptional circumstances exist with respect to a particular complaint and those circumstances are appropriately documented. If there is a need for an extension to the 60-day timeline, the complainant shall be notified of this extension in writing by the LEA or public charter school prior to the expiration of the original sixty (60) calendar day deadline.
- (9) The LEA or public charter school shall issue a written determination stating whether the allegation(s) in the complaint is substantiated. The written determination shall be communicated to the complainant and the individual alleged to have included or promoted the Prohibited Concept. Such determination letters shall be subject to all applicable federal, state, and local student privacy laws and policies, including the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 C.F.R. Part 99).
- (10) If an alleged violation is substantiated, the LEA or public charter school shall take appropriate remedial action to ensure that the Prohibited Concept(s) is no longer included in a course of instruction, curriculum and instructional program, or supplemental instructional materials. In order to afford the complainant or the individual alleged to have included or promoted a Prohibited Concept an opportunity to appeal the decision to the Department, remedial action shall not be taken until fifteen (15) calendar days have passed after the date the LEA or public charter school issues the written determination. Such remedial action may include:

(Rule 0520-12-04-.05, continued)

- (a) Amendment of the course of instruction, curriculum and instructional program, or supplemental instructional materials to address any purported violations of T.C.A. § 49-6-1019; or
 - (b) Disciplinary action against a teacher for violation of T.C.A. § 49-6-1019(a) in accordance with Tennessee State Board of Education rule 0520-02-03-.09.
- (11) The LEA or public charter school shall maintain, for five (5) years, an investigative file containing the complaint, the initiating letter, any interview notes, any electronic or physical evidence obtained, any other notes maintained by the investigator, and a copy of the written determination issued in the matter.

Authority: T.C.A. §§ 49-1-201 and 49-6-1019. **Administrative History:** Emergency rules filed November 8, 2021; effective through May 7, 2022.

0520-12-04-.06 EARLY RESOLUTION OF COMPLAINTS.

- (1) LEAs and public charter schools are encouraged to work collaboratively with parents, teachers, and other employees to resolve concerns and complaints as quickly as possible. At any point after a complaint has been filed, but before a final written determination has been issued by the LEA or public charter school, the LEA or public charter school, the complainant, or the individual alleged to have included or promoted the Prohibited Concept may propose early resolution of the allegations through a resolution agreement.
- (2) If a proposed resolution agreement is verbally approved by the LEA or public charter school, the complainant, and the individual alleged to have included or promoted the Prohibited Concept, the LEA or public charter school shall prepare a written resolution agreement to be submitted to the complainant and the individual alleged to have included or promoted the Prohibited Concept summarizing the allegations in the complaint and any agreed upon terms of the early resolution. Entry into an early resolution agreement shall not constitute an admission that the LEA or public charter school knowingly violated T.C.A. § 49-6-1019 or that the individual alleged to have included or promoted the Prohibited Concept, in fact, included or promoted a Prohibited Concept.
- (3) Once a written resolution agreement between the LEA or public charter school, the complainant, and the individual alleged to have included or promoted the Prohibited Concept, is signed by all parties, the complaint shall be deemed resolved. The LEA or public charter school is not required to complete its investigation or issue a final written determination.
- (4) If a complainant believes that the LEA or public charter school has failed to enforce a written resolution agreement, then entry into an early resolution written agreement does not prohibit a complainant from later filing a new complaint based on the same facts and allegations as the original complaint, provided the complainant files the new complaint within forty-five (45) days of receiving the written resolution agreement from the LEA or public charter school and the complaint is otherwise filed in accordance with Section .05 of these Rules. If the LEA or public charter school enforces a written resolution for the first thirty (30) days, and thereafter fails to enforce a written resolution, the complainant may also file a new complaint.
- (5) The 60-day timeline for an LEA or public charter school to complete an investigation and determine whether the allegation(s) in the complaint are substantiated shall not be extended for the purpose of discussing or finalizing an early resolution written agreement.

Authority: T.C.A. §§ 49-1-201 and 49-6-1019. **Administrative History:** Emergency rules filed November 8, 2021; effective through May 7, 2022.

0520-12-04-.07 APPEALS TO THE DEPARTMENT.

- (1) The complainant or the individual alleged to have included or promoted the Prohibited Concept may file an appeal of the LEA or public charter school's determination with the Department within fifteen (15) calendar days of the date that the LEA or public charter school issues a written determination.
- (2) Upon receipt of an appeal, the Department review team shall determine whether it has the authority to review the appeal. The Department review team shall have the authority to review the appeal if:
 - (a) The original complaint filed with the LEA or public charter school alleged that a Prohibited Concept was included in a course of instruction, curriculum and instructional program, or supplemental instructional material;
 - (b) The original complaint was filed with the LEA or public charter school within forty-five (45) calendar days of the Prohibited Concept being included or promoted in a course of instruction, curriculum, instructional program, or supplemental instructional materials, or within forty-five (45) calendar days of these Rules becoming effective;
 - (c) The original complaint was filed by an eligible complainant; and
 - (d) The appeal is filed by the complainant or the individual alleged to have included or promoted the Prohibited Concept with the Department within fifteen (15) calendar days of the date that the LEA or public charter school issues a written determination.
- (3) If the Department review team determines that it does not have the authority to review the appeal, the Department shall send a letter explaining the basis of the determination to the complainant, the individual alleged to have included or promoted the Prohibited Concept, and the LEA or public charter school in which the allegation(s) arose. If the Department review team determines that it does not have the authority to review an appeal, the LEA or public charter school's determination shall become a final determination.
- (4) If the Department review team determines that it has the authority to review an appeal, the Department review team shall initiate a review and investigation within fifteen (15) calendar days of receiving the appeal. An investigation is "initiated" when the Department review team sends a written notification to the complainant, the individual alleged to have included or promoted the Prohibited Concept, and the LEA or public charter school in which the allegation(s) arose that the appeal and related findings of the allegation(s) shall be investigated.
- (5) If the Department determines that it has the authority to review an appeal:
 - (a) The LEA or public charter school shall not take disciplinary action against a teacher for violation of T.C.A. § 49-6-1019 or these Rules prior to the Department sending a final written determination letter; and
 - (b) The LEA or public charter school may, but is not required to, amend its course of instruction, curriculum and instructional program, or supplemental instructional materials prior to the Department sending a final written determination letter.
- (6) As part of the review and investigation, the Department review team shall have the authority to:
 - (a) Request the investigative file from the LEA or public charter school;

(Rule 0520-12-04-.07, continued)

- (b) Interview the complainant, the individual alleged to have included or promoted the Prohibited Concept, or any other individual deemed necessary by the Department; and
 - (c) Request any new or additional relevant physical or electronic evidence from the LEA, public charter school, the complainant, the individual alleged to have included or promoted the Prohibited Concept, or any witness.
- (7) No later than fifty (50) calendar days after receiving the appeal, the Department review team shall prepare a report summarizing its findings for the Commissioner upon the close of its investigation. The report shall include a recommendation as to whether the Commissioner should uphold the finding(s) of the LEA or public charter school.
- (8) After receiving the investigative results and recommendation from the Department review team, but no later than sixty (60) calendar days after receiving the appeal, the Commissioner shall determine whether the LEA's determination should be upheld or reversed. The sixty (60) day timeline may only be extended if exceptional circumstances exist with respect to a particular appeal and those circumstances are appropriately documented. If there is a need for an extension to the sixty (60) day timeline, the Department shall notify the complainant, the individual alleged to have included or promoted the Prohibited Concept, and the LEA or public charter school in which the allegation(s) arose of this extension in writing.
- (9) The Commissioner shall issue a written determination letter to the complainant, the individual alleged to have included or promoted the Prohibited Concept, and the LEA or public charter school from which the allegation(s) arose. Such determination letters shall be subject to all applicable federal and state student privacy laws and policies, including the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 C.F.R. Part 99).
- (10) The written determination letter shall state that LEAs and public charter schools have the right to request a contested case hearing regarding the Department's written determination. The contested case hearing shall be conducted in accordance with the Tennessee Uniform Administrative Procedures Act at T.C.A. §§ 4-5-301 et. seq. and the Rules of the Tennessee Department of State Administrative Procedures Division, Chapter 1360-04-01. If the LEA or public charter school chooses to request a contested case hearing, the LEA or public charter school shall make such a request within thirty (30) calendar days of the Department issuing the written determination of the appeal.
- (11) If the LEA or public charter school determines that a Prohibited Concept was included or promoted and the Department upholds that determination on appeal, the LEA or public charter school shall determine whether disciplinary action is warranted against the individual determined to have included or promoted the Prohibited Concept.

Authority: T.C.A. §§ 49-1-201 and 49-6-1019. **Administrative History:** Emergency rules filed November 8, 2021; effective through May 7, 2022.

0520-12-04-.08 KNOWING VIOLATIONS.

- (1) An LEA or public charter school shall be deemed to have "knowingly violated" T.C.A. § 49-6-1019 if the LEA or public charter school:
- (a) Received a complaint from an eligible complainant alleging that a Prohibited Concept was included or promoted in a course of instruction, curriculum and instructional program, or supplemental instructional materials, but failed to initiate an investigation;
 - (b) Initiated an investigation, but failed to make a determination within sixty (60) days about whether the allegation(s) was substantiated;

(Rule 0520-12-04-.08, continued)

- (c) Determined that the allegation(s) was substantiated, but failed to remedy the violation;
or
 - (d) Knew or reasonably should have known that a Prohibited Concept was included or promoted in a course of instruction, curriculum and instructional program, or supplemental instructional materials, but failed to exercise reasonable diligence and care in remedying the violation. LEAs and public charter schools are expected to exercise reasonable diligence and care in proactively monitoring courses of instruction, curriculum and instructional programs, or supplemental instructional materials and remedying suspected violations where no investigation is required by these Rules.
- (2) After sixty (60) days have passed since an eligible complainant filed a complaint with an LEA or public charter school, the eligible complainant may file a notice of knowing violation with the Department on a form provided by the Department.
 - (3) No later than thirty (30) calendar days after receiving the notice of knowing violation, the Department review team shall prepare a report summarizing its findings for the Commissioner. The report shall include a recommendation as to whether the Commissioner should find that the LEA or public charter school knowingly violated T.C.A. § 49-6-1019.
 - (4) After receiving the recommendation from the Department review team, but no later than forty-five (45) calendar days after receiving the notice of knowing violation, the Commissioner shall determine whether the LEA or public charter school knowingly violated T.C.A. § 49-6-1019. The forty-five (45) day timeline may only be extended if exceptional circumstances exist with respect to a particular appeal and those circumstances are appropriately documented. If there is a need for an extension to the forty-five (45) day timeline, the Department shall notify the individual who filed the notice of knowing violation.
 - (5) If the Commissioner determines that the LEA or public charter school knowingly violated T.C.A. § 49-6-1019, the Department shall require the LEA or public charter school from which the allegations arose to enter a corrective action plan. The corrective action plan shall identify:
 - (a) The evidence required to be provided to the Department by the LEA or public charter school in order to demonstrate evidence of compliance;
 - (b) Specific acts or steps the LEA or public charter school will take to resolve the non-compliance;
 - (c) Deadlines for the completion of the required acts or steps; and
 - (d) Dates for submission of reports and documentation to the Department verifying implementation.
 - (6) If an LEA or public charter school enters a corrective action plan, the Department shall:
 - (a) Monitor the corrective action plan to ensure the LEA or public charter school complies with the terms of the plan;
 - (b) Provide written notice to the LEA or public charter school of any deficiencies in implementation and shall request immediate and appropriate action to address those deficiencies;
 - (c) When necessary, require additions to the corrective action plan to address the failure of the LEA or public charter school to fully implement commitments in the original plan; and

(Rule 0520-12-04-.08, continued)

- (d) When the Department determines that the LEA or public charter school has fully implemented the terms of the plan, conclude the monitoring of the corrective action plan by sending written notification to the LEA or public charter school.

- (7) If the Commissioner determines that the LEA or public charter school knowingly violated T.C.A. § 49-6-1019, the Department shall withhold the payment of state funds scheduled to be distributed to the LEA or public charter school until the requirements of the corrective action plan have been met. The amount of state funds to be withheld shall be as follows:

First determination of a knowing violation during the school year	2% of annual state funds scheduled to be granted to the LEA
Second determination of a knowing violation during the school year	4% of annual state funds scheduled to be granted to the LEA
Third determination of a knowing violation during the school year	6% of annual state funds scheduled to be granted to the LEA
Fourth determination of a knowing violation during the school year	8% of annual state funds scheduled to be granted to the LEA
Fifth or more determination of a knowing violation during the school year	10% of annual state funds scheduled to be granted to the LEA

Authority: T.C.A. §§ 49-1-201 and 49-6-1019. **Administrative History:** Emergency rules filed November 8, 2021; effective through May 7, 2022.