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Sequence Number: 01-13-20
Rule ID(s): 9300
File Date: 1/31/20
Effective Date: 4/30/20

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

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: State Board of Education
Division:
Contact Person: Angie Sanders
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500 James Robertson Parkway Nashville, TN
Zip: 37243
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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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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
0520-14-01	Charter Schools
Rule Number	Rule Title
0520-14-01-.06	Amendments to the Charter Agreement

Chapter 0520-14-01 Charter Schools is adding Rule 0520-14-01-.06 Amendments to the Charter Agreement and Appeals Process to the Table of Contents and to the Chapter so that as added is shall read as follows:

**RULES
OF
THE STATE BOARD OF EDUCATION**

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

TABLE OF CONTENTS

0520-14-01-.01	Approval of a Charter School	0520-14-01-.04	Enrollment
0520-14-01-.02	New Start, Renewal, Revocation Appeals	0520-14-01-.05	Annual Authorizer Fee
0520-14-01-.03	Allocation of State and Local Funds	0520-14-01-.06	Amendments to the Charter Agreement and Appeals Process

0520-14-01-.06 AMENDMENTS TO THE CHARTER AGREEMENT AND APPEALS PROCESS.

- (1) Charter Amendments.
- (a) An authorizer's approval of a public charter school ("charter school") application shall be in the form of a written charter agreement, signed by the sponsor and the authorizer which shall be binding upon the governing body of the charter school. The charter agreement for a charter school shall be in writing and contain all material components of the approved application. The governing body of the charter school may petition the authorizer to amend the original charter agreement.
 - (b) An amendment to the original charter agreement shall be required for any material modification to the provisions of a charter school's charter agreement.
 - (c) A material modification to a charter agreement is defined as a substantive change to the terms of the charter agreement regarding a charter school's governance, financial, operational, or academic structure. Material modifications include, but are not limited to:
 - 1. Change in governance structure (including, but not limited to, a change in the non-profit entity governing the school), or addition of or changes to the charter management organization;
 - 2. The addition or removal of a grade level or levels;
 - 3. Changes in student enrollment which fall outside of the minimum or maximum enrollment thresholds set forth in the charter school's charter agreement;
 - 4. The addition or removal of a plan to provide transportation to students attending the charter school;
 - 5. Changes to the charter school's location, if outside the geographic area set forth in the charter agreement;
 - 6. Changes to the charter school's academic focus set forth in the charter agreement; and
 - 7. Changes identified in the charter agreement as material modifications or amendments.
 - (d) The governing body of the charter school applying for a material modification to the charter agreement shall complete and submit to its authorizer the amendment petition application (the

“amendment application”) created and published by the Department of Education and approved by the State Board.

- (e) The governing body of a charter school seeking to apply for a material modification to the charter agreement shall file an amendment petition letter of intent with the authorizer by one of two deadlines stated below:
 - 1. Fall Deadline. The governing body of the charter school may file an amendment petition letter of intent with the authorizer by September 1 of the school year preceding the school year in which the proposed amendment will take effect for any material modification outlined in paragraph (c). If the due date falls on a Saturday, Sunday or state-observed holiday, the letter of intent shall be due on the next business day.
 - 2. Spring Deadline. The governing body of the charter school may file an amendment petition letter of intent with the authorizer by January 15 of the year in which the proposed amendment will take effect for any material modification outlined in paragraph (c) except items contained in paragraphs (c)(2) or (c)(3). If the due date falls on a Saturday, Sunday or state-observed holiday, the letter of intent shall be due on the next business day.
- (f) The governing body of a charter school shall file an amendment application with the authorizer thirty (30) calendar days after submitting a letter of intent.
 - 1. Fall Deadline. The governing body of a charter school that submits its letter of intent in accordance with in paragraph (e)(1) shall file an amendment application with the authorizer by October 1. If the due date falls on a Saturday, Sunday or state-observed holiday, the amendment application shall be due on the next business day.
 - 2. Spring Deadline. The governing body of a charter school that submits its letter of intent in accordance with paragraph (e)(2) shall file an amendment application with the authorizer by February 14. If the due date falls on a Saturday, Sunday or state-observed holiday, the amendment application shall be due on the next business day.
- (g) The authorizer shall review and score all complete and timely amendment applications using a scoring rubric created and published by the Department of Education and approved by the State Board.
- (h) The authorizer shall rule by resolution, at a regular or special called meeting, on the approval or denial of an amendment application within sixty (60) calendar days of the application due date. Amendment applications may be submitted prior to the due date; however, all complete and timely amendment applications shall be reviewed and acted upon within sixty (60) calendar days following the due date.
- (i) Should the authorizer fail to either approve or deny a complete and timely amendment application within the sixty (60) calendar day time limit, the amendment application shall be deemed approved.
- (j) If an amendment application is deemed approved, such amendment shall not alter the original term of the charter agreement. The charter school shall still be required to submit a renewal application pursuant to T.C.A. § 49-13-121 to continue to operate beyond the current charter term.
- (k) If an amendment application is denied, the grounds upon which the authorizer based the decision to deny must be stated in writing, specifying the reasons for the denial.
- (l) An emergency amendment petition application (“emergency amendment application”) and rubric shall be created and published by the Department of Education and approved by the State Board.
- (m) If the governing body of a charter school determines that, due to unanticipated extraordinary circumstances, good cause exists for the emergency amendment application to be submitted, it

shall make a finding by resolution at a regular or special called meeting of the governing body. An emergency amendment application may be submitted to the authorizer at any time.

1. In order for an emergency amendment application to be complete, the governing body of the charter school shall include with the emergency amendment application detailed written findings explaining the unanticipated extraordinary circumstances giving rise to the emergency amendment application. An emergency amendment application shall not be used to add a grade level or levels or to increase student enrollment outside of the maximum enrollment thresholds set forth in the charter agreement.
2. The authorizer shall rule by resolution, at a regular or special-called meeting, on the approval or denial of an emergency amendment application within sixty (60) calendar days of the date the emergency amendment application was submitted to the authorizer.
3. Should the authorizer fail to either approve or deny a complete emergency amendment application within the sixty (60) calendar day time limit, the emergency amendment application shall be deemed approved.
4. If an emergency amendment application is denied, the grounds upon which the authorizer based the decision to deny must be stated in writing, specifying the reasons for the denial.

(2) **Appealing an Amendment Decision.**

- (a) The governing body of a charter school may appeal a decision by an authorizer other than the State Board to deny an amendment to the charter agreement to the State Board within ten (10) calendar days of an authorizer's vote to deny the amendment application, consistent with T.C.A. § 49-13-110(d). The governing body of a charter school shall submit a notice of appeal by email to the State Board. The notice of appeal must be received by the State Board no later than 4:30 p.m. Central Time on the tenth (10th) calendar day after an authorizer's vote to deny the amendment application or emergency amendment petition. In order to be considered a complete appeal, the notice of appeal shall contain the following information:
 1. A copy of the original charter agreement that contains all material components of the approved application;
 2. A copy of the amendment application or emergency amendment application submitted to the authorizer;
 3. A summary of the amendment application or emergency amendment application timeline including the date the amendment application or emergency amendment application was originally submitted to the authorizer and the date the amendment application or emergency amendment application was denied by the authorizer;
 4. A copy of the letter informing the governing body of the authorizer's reasons for denying the amendment application or emergency amendment application; and
 5. A brief statement, no longer than three (3) pages, including but not limited to, an explanation of why the authorizer's denial of the charter school amendment application or emergency amendment application was contrary to the best interests of the students, LEA, or community.
- (b) State Board staff shall not accept an incomplete appeal or any additional documentation from the governing body of the charter school beyond the contents of the notice of appeal, unless requested by the State Board staff.
- (c) State Board staff may request additional documentation from the governing body, the authorizer, and the Tennessee Department of Education.

- (d) Within sixty (60) calendar days after receipt of the notice of appeal and after reasonable public notice, the State Board shall hold a public hearing. The public hearing shall be attended by the State Board or its designated representative and shall occur in the school district in which the charter school is operating.
- (e) Following the public hearing, the review of the amendment application or emergency amendment application and any additional information collected by the State Board, the Executive Director of the State Board shall provide written findings and recommendations to the State Board. The State Board shall consider the findings and recommendations of the Executive Director when rendering a decision on the appeal, but the State Board is not bound by the recommendation.
- (f) Subsequently, but within the sixty (60) calendar days after receipt of the notice of appeal, the State Board shall meet to render a decision. If the State Board finds that the denial of the amendment application or emergency amendment application is contrary to the best interests of the students, LEA, or community, the State Board shall remand the decision to the authorizer with written instructions for approval of the amendment application or emergency amendment application. The State Board shall not become the authorizer, and the charter school shall remain under the supervision of the authorizer to whom the amendment application or emergency amendment application was submitted. The decision of the State Board is final and no other appeals shall be made.

Authority: T.C.A. § 49-13-110(b) and Acts 2019, ch. 219. **Administrative History:** Emergency rule filed June 27, 2019; effective through December 24, 2019.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Darrell Cobbins	X				
Bob Eby	X				
Mike Edwards	X				
Gordon Ferguson	X				
Elissa Kim	X				
Wendy Tucker	X				
Lillian Hartgrove	X				
Nicholas Darnell				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education (board/commission/ other authority) on 09/18/2019 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/05/2019 (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). 07/29/2019 (mm/dd/yy)



Date: 1/17/20

Signature: Angie Sanders

Name of Officer: Angie Sanders

Title of Officer: General Counsel

Subscribed and sworn to before me on: 1/17/2020

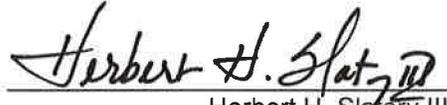
Notary Public Signature: [Signature]

My commission expires on: 3-8-21

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-14-01-.06

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Herbert H. Slatery III
Attorney General and Reporter
1/23/2020
Date

Department of State Use Only

Filed with the Department of State on: 1/31/20

Effective on: 4/30/20


Tre Hargett
Secretary of State

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PUBLICATIONS

Public Hearing Comments

The State Board of Education held a rulemaking hearing at 1:00 pm CST on July 29, 2019. No public comments were submitted as part of the rulemaking hearing.

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.

This rule has no impact on small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule has no impact on local governments.

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;

This rule establishes the timelines and appeal process for charter schools to submit an amendment petition to the charter school's authorizer and for a charter school to appeal a decision by the charter school authorizer to deny an amendment petition to the State Board of Education.

- (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;

T.C.A. § 49-13-110(b), as amended by Public Chapter 219, 111th General Assembly requires the State Board of Education to establish the "[t]imelines for approval and the appeal process" for a charter school governing body who wishes to appeal the denial of a petition to amend the charter agreement. This language contained in Public Chapter 219 went into effect on April 26, 2019.

T.C.A. § 4-5-208 authorizes state agencies to promulgate an emergency rule if the agency finds that it is required by an enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of normal rulemaking procedures for the promulgation of permanent rules.

T.C.A. § 4-5-102, as amended by Public Chapter 929 of the 110th General Assembly requires that any government agency "regulation, standard, statement, or document of general applicability" that "affect private rights, privileges, or procedures available to the public" must be contained in a rule and not a policy.

- (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;

Existing charter school operators and charter school authorizers in the state of Tennessee are directly affected by this rule. The State Board of Education urges adoption of this rule, along with other authorizers of charter schools.

- (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;

N/A

- (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;

N/A

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

Angie Sanders
Angela.C.Sanders@tn.gov

Nathan James
Nathan.James@tn.gov

Tess Stovall
Tess.Stovall@tn.gov

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

Angie Sanders
Angela.C.Sanders@tn.gov

Nathan James
Nathan.James@tn.gov

Tess Stovall
Tess.Stovall@tn.gov

(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.

N/A