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Sequence Number: 02-01-21  
Notice ID(s): 3240-3241  
File Date: 2/1/2021

# 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.*

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	N/A
<b>Contact Person:</b>	Angie Sanders
<b>Address:</b>	500 James Robertson Parkway, 5 <sup>th</sup> Floor, Nashville, TN 37243
<b>Phone:</b>	(615) 253-5707
<b>Email:</b>	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:*

<b>ADA Contact:</b>	Angie Sanders
<b>Address:</b>	500 James Robertson Parkway, 5 <sup>th</sup> Floor, Nashville, TN 37243
<b>Phone:</b>	(615) 253-5707
<b>Email:</b>	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 <sup>st</sup> Floor		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	3/25/2021		
Hearing Time:	10:00 AM	<input checked="" type="checkbox"/> _X_ CST/CDT	<input type="checkbox"/> __ EST/EDT

**Additional Hearing Information:**

**\*\*Anyone wishing to participate electronically may access the hearing using the following information:\*\***

**URL:** <https://tngov.webex.com/tngov/j.php?MTID=m739edaae67bf11236cee7bacdc225424>

**Password:** SBERules

**Phone:** 1-415-655-0003

**Access Code:** 178 750 4016

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.**

Oral comments are invited at the hearing.  
 In addition, written comments may be submitted via email at [angela.c.sanders@tn.gov](mailto:angela.c.sanders@tn.gov) or mailed to:  
 Tennessee State Board of Education  
 Attention: Angie Sanders  
 Davy Crockett Tower, 5<sup>th</sup> Floor  
 500 James Robertson Parkway  
 Nashville, Tennessee 37243.

Written comments must be received by 4:30 PM CT on March 30, 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](mailto: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
0520-14-01	Charter Schools
Rule Number	Rule Title
0520-14-01-.05	Annual Authorizer Fee

Chapter Number	Chapter Title
0520-01-17	Continuous Learning Plans
Rule Number	Rule Title
0520-01-17-.01	Definitions
0520-01-17-.02	Purpose of the CLP
0520-01-17-.03	Utilization of the CLP for the 2021-22 School Year
0520-01-17-.04	Components of the CLP

**AMENDMENT**  
**RULES**  
**OF**  
**THE STATE BOARD OF EDUCATION**  
**CHAPTER 0520-14-01**  
**CHARTER SCHOOLS**

**0520-14-01-.05 ANNUAL AUTHORIZER FEE.**

- (1) For purposes of this rule, any authorizer as defined in T.C.A. § 49-13-104 is also referred to as the Local Education Agency (LEA) for its authorized charter schools.
- (2) Requirements applicable to local boards of education that serve as an authorizer of a charter school(s):
  - (a) Pursuant to T.C.A. § 49-13-128, if a local board of education is the authorizer of a charter school, then the local board of education shall receive an annual authorizer fee that is a percentage of the charter school's per student state and local funding as allocated under T.C.A. § 49-13-112. The annual authorizer fee shall be the lesser of three percent (3%) of the annual per-student state and local allocations or \$35,000 per school.
  - (b) The local board of education shall use the annual authorizer fee exclusively for fulfilling the following authorizing obligations:
    1. Charter school application approval process, including:
      - (i) Implementation of State Board approved quality authorizing standards; and
      - (ii) Stipends or travel for external reviewers.
    2. Interim review process required by T.C.A. § 49-13-121(k), including review of the progress of the school in achieving the goals, objectives, pupil performance standards, content standards, and other terms of the approved charter agreement.
    3. Charter school renewal process required by T.C.A. § 49-13-121, including:
      - (i) Review of the renewal application;
      - (ii) Stipends or travel for external reviewers; and
      - (iii) Development of the renewal evaluation required to be submitted to each charter school.

4. Monitoring and oversight activities, including:
  - (i) Development of a performance framework;
  - (ii) Annual monitoring visits;
  - (iii) Data meetings;
  - (iv) Any software or data management tools required by the LEA exclusively for charter schools;
  - (v) Monitoring of all legal requirements; and
  - (vi) School closure responsibilities outlined in T.C.A. § 49-13-130.
5. Personnel costs for LEA staff supporting charter schools, including:
  - (i) Salaries and benefits for full-time or part-time personnel with exclusive charter school responsibilities;
  - (ii) Salaries for LEA personnel who spend a portion of their time on direct charter school responsibilities. Any funds spent on salaries must be pro-rated to reflect the amount of time spent only on charter support work. Salaries for LEA personnel may only be paid for with authorizer fee funds if the activities and duties of the LEA personnel are beyond the scope and capacity of the LEA charter school office or personnel;
  - (iii) External consultants or other consultancy or legal fees to support LEA charter authorizing obligations; and
  - (iv) Reasonable costs associated with recruiting or hiring charter support or authorizing staff;
6. Operational expenses for LEA staff supporting charter schools.
7. Annual reporting, including:
  - (i) Review of annual charter school performance reports required under T.C.A § 49-13-120;
  - (ii) Creation of the authorizer fee report required by T.C.A § 49-13-128(f);
  - (iii) Reporting of vacant and underutilized properties owned or operated by the LEA pursuant to T.C.A § 49-13-136; and
  - (iv) Reporting of student directory information required by T.C.A § 49-13-132.

8. Ongoing charter school support services, including:
    - (i) Interventions or authorizer-led supports;
    - (ii) Maintenance of facilities or other capital outlay obligations that are not otherwise outlined in a lease agreement between the authorizer and charter school;
    - (iii) Professional development, orientation, or onboarding of charter school employees or LEA staff supporting charter schools; and
    - (iv) Contract services for specialized or targeted charter school supports.
  - (c) The local board of education shall annually provide a projected charter school office budget for the upcoming school year to the Department of Education by August 1. The Department of Education shall annually post each projected budget to its website by August 15.
- (3) Requirements applicable only to state-level authorizers:
- (a) In accordance with T.C.A. § 49-13-128:
    1. If the achievement school district (ASD) authorizes a public charter school, then the ASD shall receive an annual authorizer fee of up to three percent (3%) of the public charter school's per pupil state and local funding as allocated under § 49-13-112(a). By May 1 of each year, the Commissioner shall set the percentage of a public charter school's per pupil state and local funding that the ASD shall receive as the annual authorizer fee for the next school year.
      - i. The ASD shall use the annual authorizer fee exclusively for fulfilling authorizing obligations set forth in paragraph (2)(b) of this rule.
    2. If the Tennessee public charter school commission (Commission) authorizes a public charter school, then the Commission shall receive an annual authorizer fee of up to three percent (3%) of the public charter school's per pupil state and local funding as allocated under § 49-13-112(a). By May 1 of each year, the Commission or the Commission's designee shall set the percentage of a public charter school's per student state and local funding that the Commission shall receive as the annual authorizer fee for the next school year.
      - i. The Commission shall use the annual authorizer fee for fulfilling authorizing obligations set forth in paragraph (2)(b) of this rule. Additionally, the Commission may use the annual authorizer fee to fulfill obligations consistent with the authority of the Commission as set forth in Tennessee Code Annotated Title 49, Chapter 13.

- (4) Requirements applicable to all authorizers:
- (a) The authorizer fee shall be paid by a charter school to its authorizing LEA in accordance with the payment process issued by the Department of Education.
  - (b) The annual authorizer fee collected by an LEA shall be recorded in the general ledger using the appropriate revenue code as determined by the Tennessee Comptroller and shall be subject to all audit and reporting requirements.
  - (c) By December 1 of each year, each LEA that collects an annual authorizer fee shall report to the Department of Education the total amount of authorizer fees collected in the previous school year and the authorizing obligations fulfilled using the fee. Reports shall be submitted on a reporting form developed by the Department of Education.
  - (d) Each authorizer fee report shall be posted on the Department of Education's website and provided to the State Board of Education.
  - (e) If, for any school year, the total amount of authorizer fees collected by the LEA exceeds the amount used by the LEA to perform its authorizing obligations and responsibilities, the LEA shall distribute the amount remaining to its authorized public charter schools.
  - (f) Any excess funds collected by an LEA shall be distributed to its authorized charter schools in the school year immediately following the school year in which the excess fees were collected by the LEA and in accordance with the process established by the Department of Education.
  - (g) If the Department of Education determines funds were used by the LEA for activities other than the authorizing obligations outlined in this Rule, the Department of Education shall withhold an amount equal to the misallocated funds in the following school year from the LEA and shall distribute the misallocated funds directly to the LEA's charter schools.
  - (h) If an LEA does not receive timely payment from an authorized charter school in accordance with this rule, the LEA shall be entitled to any past due amount from the authorized charter school in accordance with the payment process issued by the Department of Education.
  - (i) Each charter school shall receive a proportionate share of any excess or misallocated funds collected by the LEA based on the actual amount of authorizer fee funds paid to the LEA by each charter school.

**Authority:** T.C.A. §§ 49-1-302, 49-13-112, 49-13-126, and 49-13-128. **Administrative History:** Original rule filed January 11, 2019; effective April 11, 2019.

**NEW**  
**RULES**  
**OF**  
**THE STATE BOARD OF EDUCATION**  
  
**CHAPTER 0520-01-17**  
**CONTINUOUS LEARNING PLANS**  
  
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**0520-01-17-.01 DEFINITIONS.**

- (1) As used in this rule:
- (a) "Authorizer" has the same meaning given in T.C.A. § 49-13-104.
  - (b) "Charter Management Organization" or "CMO" means a non-profit entity that manages or operates two (2) or more public charter schools.
  - (c) "Instructional Time" means the amount of instruction provided through synchronous or asynchronous instruction, or a combination of the two (2), as defined in this rule. To the extent practicable, instruction delivered remotely must be as commensurate in quality, rigor, and effectiveness as in-person instructional time.
  - (d) "Remote Instruction" means instruction that takes place when teachers are not providing in-person instruction to students within the traditional school setting. Remote instruction provided pursuant to an approved CLP qualifies as a virtual education program pursuant to T.C.A. Title 49, Chapter 16 and State Board rules.
  - (e) "CLP" means continuous learning plan.
  - (f) "Synchronous Instruction" means instruction provided by a Tennessee educator to a student or students at the same time but not necessarily in the same place who engage in instruction while it occurs. This may include but is not limited to in-person instruction or telephonic, Internet-based, or other appropriate methods of communication as outlined in the approved CLP and may include full-class or small-group instruction or one-on-one instruction between student and teacher.
  - (g) "Asynchronous Instruction" means instruction provided by a Tennessee educator to students who participate in instruction at a separate time from when the teacher delivered the instruction. This may include but not be limited to methods such as printed work materials, teacher-assigned individual or group projects, audio- or video-recorded lessons, or online course modules, or other appropriate methods as outlined in the approved CLP.

- (h) "Public Charter School" means a Tennessee public charter school authorized to operate under T.C.A. Title 49, Chapter 13.
- (i) "Material Revisions" include, but are not limited to, changes to the instructional schedule that affect how students receive instruction daily to meet the required minimum hours of instruction; changes that result in the Local Education Agency (LEA) or Public Charter School using Textbooks or Instructional Materials that are not on the state-approved list, unless the LEA or public charter school has been granted a waiver pursuant to T.C.A. § 49-6-2206 or T.C.A. § 49-13-111; and changes to the attendance policy or procedure that affect how daily student attendance is determined.
- (j) "Department" means the Tennessee Department of Education.

**Authority:** T.C.A. §§ 49-1-104(h), 49-1-302, 49-6-3002, 49-6-3004, 49-13-111. **Administrative**

**History:** Emergency rules filed July 2, 2020; effective through December 29, 2020. Emergency rules expired effective December 30, 2020, and the rules reverted to their previous statuses. Emergency rules filed August 26, 2020; effective through February 22, 2021. Emergency rules filed November 19, 2020; effective through May 18, 2021.

#### **0520-01-17-.02 PURPOSE OF THE CLP.**

- (1) An LEA or Public Charter School that continues instruction during a disruption to school operations in compliance with the LEA's or Public Charter School's approved CLP shall be credited with an instructional day for all days in which the Public Charter School, LEA, or individual schools within the LEA, operated under the approved CLP.
- (2) An LEA or Public Charter School that continues instruction during a disruption to school operations in compliance with the LEA's or Public Charter School's approved CLP shall continue to receive Basic Education Program (BEP) funding as outlined in T.C.A. §§ 49-3-301, *et. seq.* for any school days that the approved CLP was implemented.

**Authority:** T.C.A. §§ 49-1-104(h), 49-1-302, 49-6-3002, 49-6-3004, 49-13-111. **Administrative**

**History:**

#### **0520-01-17-.03 UTILIZATION OF THE CLP FOR THE 2021-22 SCHOOL YEAR.**

- (1) For the 2021-22 school year, an LEA or Public Charter School may only begin the implementation of an approved CLP when the following conditions are met:
  - (a) The governor or the governor's designee has declared a state of emergency or a disaster declaration via an executive order or proclamation or by the activation of the Tennessee Emergency Management Plan pursuant to Tennessee Code Annotated Title 58; and
  - (b) The disaster or declared state of emergency disrupts the traditional operations of the public charter school or one (1) or more schools within the LEA; and



- (c) The LEA or Public Charter School provides notice to the Department of intent to implement the approved CLP including justification for implementation; and
  - (d) The Department of Education grants permission for the LEA or Public Charter School to implement its approved CLP. The Department of Education may request additional information or revisions to the CLP from the Public Charter School or LEA prior to granting permission for the LEA or Public Charter School to implement its approved CLP.
- (2) If an LEA or Public Charter School's CLP received final approval from the Department of Education for implementation during the 2020-21 school year pursuant to State Board rules and State Board Continuous Learning Plan Policy 3.210, such approval shall be effective through the end of the 2021-22 school year.
  - (3) LEAs and Public Charter Schools shall conduct a review of their approved CLP prior to the beginning of the 2021-22 school year to determine if revisions are necessary. If an LEA or Public Charter School makes Material Revisions to their approved CLP, the LEA or Public Charter School shall submit the Material Revisions to the Department utilizing the Material Revision request form created by the Department. Material Revisions to the LEA or Public Charter School's approved CLP shall not become effective until approved by the Department. The Department may request additional information from the LEA or Public Charter School prior to approving or denying the CLP or any Material Revisions to the CLP.
  - (4) The evaluation and approval process shall ensure CLPs adhere to the requirements of this rule, State Board Continuous Learning Plan Policy 3.210, and all applicable federal and state laws and rules, unless waived.

**Authority:** T.C.A. §§ 49-1-104(h), 49-1-302, 49-6-3002, 49-6-3004, 49-13-111. **Administrative**

**0520-01-17-.04 COMPONENTS OF THE CLP.**

- (1) The Department shall maintain a template for CLPs. The CLP template and any rubric utilized by the Department for evaluation of CLPs shall be posted on the Department's website.
- (2) The Department shall post information regarding the CLP evaluation and approval process on the Department's website.
- (3) Each LEA and Public Charter School shall post its approved CLP on its website and make a copy available to parents/legal guardians and students upon request. All approved CLPs shall also be posted on the Department's website.
- (4) The CLP shall address, at minimum, the following components:
  - (a) Attendance policy and procedures for students participating in remote instruction, if different from the LEA or Public Charter School's regular attendance policy and procedure. The LEA or Public Charter School's attendance policy and procedure must include, but is not limited to:
    - 1. Procedures for determining when a student is present which shall include plans for

seeking and receiving daily visual, verbal, and/or written confirmation of student participation in Instructional Time

2. Procedures for determining an excused versus unexcused absence, the internal attendance tracking system to be used, and how the LEA or Public Charter School will communicate attendance policies and/or procedures to parents and/or legal guardians.
  3. LEAs and Public Charter Schools shall address in their attendance policy and procedure potential interventions for addressing student absences during Remote Instruction, including how the LEA or Public Charter School will implement or revise its progressive truancy intervention plan required by T.C.A. § 49-6-3009.
  4. The reporting of attendance to the Department of Education must be via the LEA or Public Charter School's student information system utilizing the attendance code set by the Department of Education.
- (b) How all students will be provided standards-based instruction by a licensed Tennessee educator, including, but not limited to, students with disabilities, English Learners, and at-risk students.
1. How the LEA or Public Charter School will provide students with disabilities access to instruction in a manner consistent with each student's individualized education program (IEP) or 504 plan. Remote Instruction supports shall be considered and included, as appropriate for the student, when an IEP or 504 plan is initially developed or at any subsequent review or revision of an IEP or 504 plan;
  2. How the LEA or Public Charter School will provide students who are English Learners access to instruction in a manner consistent with each student's individualized learning plan and with State Board English as a Second Language Program Policy 3.207; and
  3. Address the needs of other at-risk student populations as defined in State Board High School Policy 2.103.
- (c) How the LEA or Public Charter School will meet the requirements of T.C.A. § 49-6-3004 and T.C.A. § 49-6-201(b)(2) during a disruption to school operations, including how the LEA or Public Charter School will provide students in Kindergarten access to at least four (4) hours of Instructional Time each school day, and how the LEA or Public Charter School will provide students in grades one (1) through twelve (12) access to at least six and one half (6 ½) hours of Instructional Time each school day.
1. The Instructional Time requirements set forth in this chapter do not apply to students being served under a homebound program, incarcerated students, and students in a residential mental health facility or court-ordered day-treatment program. Instructional Time requirements for students being served under a homebound program, incarcerated students, and students in a residential mental health facility or court-ordered day-treatment program shall comply with state law and state board rules governing these students.

- (d) All CLPs shall align student grading expectations to the State Board's Uniform Grading Policy 3.301 for students in grades 9-12 and to the LEA's or Public Charter School's locally adopted grading policy for students in grades K-8, and, if applicable, for students in grades 9-12.
- (e) All LEAs and Public Charter Schools shall comply with all relevant state and federal laws, rules, and policies.
- (f) Remote Instruction classes shall comply with class size standards applicable to virtual education programs pursuant to T.C.A. § 49-1-104(h) and class size and case load requirements for special education as defined in State Board Policy 3.206.
- (g) If the LEA's CLP requires a waiver of any state statute or rule, the LEA shall submit a waiver request to the Commissioner pursuant to T.C.A. § 49-1-201. If a Public Charter School's CLP requires a waiver of any state statute or rule, the public charter school shall submit a waiver request to the Commissioner or its authorizer pursuant to T.C.A. §49-13-111. Waivers approved for the 2020-21 school year do not automatically apply to any subsequent school year, unless specifically stated in the approval.

**Authority:** T.C.A. §§ 49-1-104(h), 49-1-302, 49-6-3002, 49-6-3004, 49-13-111. **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: 2/1/2021

Signature: \_\_\_\_\_

*Angela C. Sanders*

Name of Officer: Angela C. Sanders

Title of Officer: General Counsel

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Filed with the Department of State on: 2/1/2021

*Tre Hargett*

\_\_\_\_\_  
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Secretary of State

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