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Number: 02-19-24  
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# 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, 8th Floor, Nashville, TN 37243
<b>Phone:</b>	(615) 253-5707
<b>Email:</b>	<a href="mailto:Angela.C.Sanders@tn.gov">Angela.C.Sanders@tn.gov</a>

*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, 8th Floor, Nashville, TN 37243
<b>Phone:</b>	(615) 253-5707
<b>Email:</b>	<a href="mailto:Angela.C.Sanders@tn.gov">Angela.C.Sanders@tn.gov</a>

**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 :	04/16/2024			
Hearing Time:	11:00 am	X	CST/CDT	EST/EDT

**Additional Hearing Information:**

<p><b>**Anyone seeking to participate electronically may access the hearing using the following information:**</b></p> <p><b>URL:</b> <a href="https://tn.webex.com/tn/j.php?MTID=meea9d86e5b665cbfdf13f27844ecc0f8">https://tn.webex.com/tn/j.php?MTID=meea9d86e5b665cbfdf13f27844ecc0f8</a></p> <p><b>Meeting number:</b> 2315 570 0802</p> <p><b>Password:</b> SBERules</p> <p><b>Phone:</b> 615-747-4911</p> <p><b>Access Code:</b> 2315 570 0802</p> <p>Please check the State Board's website at <a href="https://www.tn.gov/sbe/meetings.html">https://www.tn.gov/sbe/meetings.html</a> for any additional information regarding this rulemaking hearing.</p> <p>Oral comments are invited at the hearing.</p> <p>In addition, written comments may be submitted via email at <a href="mailto:angela.c.sanders@tn.gov">angela.c.sanders@tn.gov</a> or mailed to:</p>
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Tennessee State Board of Education  
Attention: Angie Sanders  
Davy Crockett Tower, 8th Floor  
500 James Robertson Parkway  
Nashville, Tennessee 37243

Written comments must be received by **9:00 AM CT on April 19, 2024** in order to ensure consideration.

**\*\*\*Email comments are preferred as regular mail is running very slow and may not arrive in time\*\*\***

For further information, please contact Angie Sanders 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.

**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
0520-01-19	English as a Second Language Programs
Rule Number	Rule Title
0520-01-19-.01	Individualized Education Program (IEP) Requirements
0520-01-19-.03	Identification, Screening, and Service Delivery
0520-01-19-.04	Parental Notification and Rights
0520-01-19-.05	Staffing Ratios
0520-01-19-.06	Exit Process

Chapter Number	Chapter Title
0520-15-01	Public Records Requests
Rule Number	Rule Title
0520-15-01-.01	Public Records Requests Generally
0520-15-01-.02	Definitions
0520-15-01-.03	Making Public Records Requests
0520-15-01-.04	Responding to Public Records Requests
0520-15-01-.05	Records Custodian
0520-15-01-.06	Redaction
0520-15-01-.07	Inspection of Records
0520-15-01-.08	Copies of Records
0520-15-01-.09	Fees and Charges
0520-15-01-.10	Aggregation of Frequent and Multiple Requests

## **AMENDMENT**

### **RULES OF THE STATE BOARD OF EDUCATION**

#### **CHAPTER 0520-01-19 ENGLISH AS A SECOND LANGUAGE PROGRAMS**

##### **0520-01-19-.01 DEFINITIONS.**

- (1) As used in this chapter:
- (a) “Characteristics of Dyslexia” means reading challenges that are identified when a student is:
    - 1. Identified by the composite score created by the universal reading screener and/or the Early Warning System (in grades 9-12 only); and
    - 2. Demonstrates deficiencies in fifty percent (50%) or more of the grade appropriate subtests of skills which support the goal of reading proficiently as identified by the Department’s Minimum Universal Reading Screening Matrix.
  - (b) “Co-Teaching Instruction” means the collaborative planning, organization, delivery, and assessment of instruction by a general education teacher and a teacher who holds an ESL endorsement that integrates content and language standards using an approved Direct ESL Service model to ensure ELs at all language proficiency levels have the opportunity to productively engage in grade level curriculum and develop both content and language skills.
  - (c) “Direct ESL Services” means English as a Second Language (ESL) services designed for speakers of other languages and provided pursuant to an ILP by a teacher with an ESL endorsement to teach EL students.
  - (d) “English Learner” or “EL” means an NELB Student who qualifies for ESL services via a Department of Education-adopted English Language Proficiency screener.
  - (e) “Fluent English Proficient” (FEP) means an EL student who meets the proficiency requirements of the Department of Education-adopted English language proficiency screener upon initial enrollment or a student who initially qualified as an EL Student and has met the approved exit criteria for Direct or Indirect ESL Services.
  - (f) “Home Language Survey” (HLS) means a survey delivered to parents or guardians within thirty (30) days of a student’s initial enrollment in public school to identify NELB Students who may be eligible for Direct or Indirect ESL Services.
  - (g) “ILP Team” means a team at the LEA or school level that creates the ILP for an EL student. At a minimum, the ILP Team shall include an EL student’s current and/or former general education teacher and current and/or former ESL teacher. ILP Team members may also include parents or guardians, school counselors, and other staff best suited to assess the language goals and needs of each EL student.
  - (h) “Indirect ESL Services” means ESL services that provide linguistically and academically appropriate accommodations and scaffolding pursuant to an ILP that are:
    - 1. Provided as a result of parent(s) or guardian(s) waiving Direct ESL Services;

2. Provided by a general education teacher in the general education classroom; and
  3. Designed to ensure EL Students have access to daily grade level instruction in English.
- (i) "Individualized Learning Plan" or "ILP" means a document developed pursuant to this Chapter that prescribes the academic goals, supports, and/or accommodations that an EL student needs to access classroom instruction.
  - (j) "Individualized Learning Plan - Dyslexia" or "ILP-D" means a document developed by the LEA for students with Characteristics of Dyslexia in accordance with T.C.A. § 49-1-229 and the State Board Dyslexia Individualized Learning Plan Rule Chapter 0520-01-22, that prescribes the academic goals, supports, and/or accommodations that a student may need to access classroom instruction.
  - (k) "Pull-Out Instruction" means a teacher who holds an ESL endorsement delivers intensive language support to EL students in small groups or one-on-one settings outside of the general education classroom using an approved Direct ESL Service model.
  - (l) "RAEL" means a Recently Arrived English Learner as defined in the state's plan required by the Every Student Succeeds Act.
  - (m) "Transitional EL" means an EL student who has met the exit criteria for Direct ESL Services.
  - (n) "LEA" means a Tennessee Local Education Agency and has the same meaning given in T.C.A. § 49-1-103(2).
  - (o) "Long-Term English Learners" means English Learners in year seven (7) of the ESL program who have not met the program's exit criteria pursuant to this Chapter.
  - (p) "Minimum Universal Reading Screening Matrix" means a state-designed tool that identifies the subtests required at each grade level for all state-approved universal reading screeners and determines the grade appropriate subtests necessary for the screening process for Characteristics of Dyslexia.
  - (q) "Non-English Language Background (NELB) Student" means a student whose parent(s) or guardian(s) list a language other than English in response to any question on the home language survey. An NELB Student may or may not qualify for ESL services.

**Authority:** T.C.A. §§ 49-1-302, 49-3-104, and 49-3-105; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703.

**Administrative History:** New rule filed April 7, 2021; effective July 6, 2021. Amendments filed March 10, 2023; effective June 8, 2023.

### **0520-01-19-.03 IDENTIFICATION, SCREENING, AND SERVICE DELIVERY**

- (1) EL student identification is a two (2)-step process that must be completed in the sequence detailed below within thirty (30) days of initial enrollment.
- (2) Step One (1): Each LEA and public charter school shall administer a Home Language Survey (HLS) to identify NELB Students. An HLS should be completed only once in a student's educational career. If the student has previously attended another LEA, the receiving school or LEA shall attempt to obtain the original HLS from the sending LEA. If the receiving LEA cannot obtain the original HLS after reasonable attempts to do so, it may re-administer the HLS, but shall mark it as a secondary HLS. If the original is found, it shall replace the secondary HLS in the student's file.

- (a) The HLS shall not require parents or guardians to answer questions about student immunization or student or familial immigration status.
  - (b) The HLS shall include, but not be limited to, questions that require the parent(s) or guardian(s) to address the following three (3) topics:
    - 1. The first language the student learned to speak;
    - 2. The language the student speaks most often at home; and
    - 3. The language that is most often spoken to the student at home.
  - (c) If the parent(s) or guardian(s) list a language other than English for any question above, the student shall be classified as an NELB Student. Parents or guardians shall be interviewed to clarify any discrepancies in the HLS.
- (3) Step Two (2): LEAs shall screen all NELB Students with a Department of Education-adopted English language proficiency screener identified in State Board Policy 3.207 to determine whether the student qualifies for ESL Services, unless an NELB Student has documentation from a previous state or LEA that he or she met the definition of Fluent English Proficient (FEP) on the Department-adopted screener. The determination must be completed within thirty (30) days of initial enrollment.
- (a) NELB students shall be screened utilizing the screener identified in State Board Policy 3.207. The scores that identify a student as an EL student are further defined in State Board Policy 3.207.
  - (b) Students identified as EL students shall receive Direct ESL Services pursuant to paragraphs (6) and (8) of this Rule unless a parent and/or guardian chooses to waive Direct ESL Services.
- (4) Each LEA and public charter school shall:
- (a) For every EL student who receives Direct ESL Services or Indirect ESL Services, develop and implement an ILP for each EL student that includes:
    - 1. Assessment data from the Department-adopted English language proficiency assessment;
    - 2. Relevant demographic data including but not limited to years of ESL service, Long Term English Learner status, and additional services the student receives such as special education or Response to Instruction and Intervention (RTI<sup>2</sup>);
    - 3. Data from other assessments such as achievement assessments, relevant benchmark data, universal screener data, and Tennessee comprehensive assessment program (TCAP) data. Career-readiness data for EL students in grades nine through twelve (9-12) may be included as available;
    - 4. For EL students in grades Kindergarten through three (K-3), Direct ESL Services and language focused supports will be defined in the ILP that provide access to classroom instruction aligned to grade-level academic standards;
    - 5. For EL students in grades four through twelve (4-12), Direct ESL Services and language, academic, and career-readiness supports that provide access to classroom instruction aligned to grade-level academic standards;
    - 6. Strategies, scaffolds, and accommodations used in the delivery of Indirect ESL Services, as decided appropriate by the student's ILP Team, that provide

access to instruction;

7. Short-term goals that help the student proceed to the next proficiency level in the four (4) domains of language: reading, writing, speaking, and listening;
  8. Growth trajectories for English language proficiency based on individual student data, as available; and
  9. For Transitional EL students, appropriate ILPs must outline services in accordance with transitional EL status and needs. In addition, the ILP must include the required components listed in paragraphs two (2), three (3), and seven (7).
- (b) Ensure that, at least annually, the student's ILP Team reviews and revises, as necessary, each student's ILP;
  - (c) Comply with the parent and legal guardian participation and notification requirements of this Chapter and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); and
  - (d) Adopt and implement an oversight plan that outlines the development, implementation, and monitoring of ILPs for EL students in accordance with this Chapter and the Tennessee Investment in Student Achievement (TISA) guide. At a minimum, ILP oversight plans shall include procedures regarding:
    1. The development of ILPs for all ELs within the LEA or public charter school;
    2. The monitoring of ILPs quarterly;
    3. The provision of intensified support for ELs not meeting growth expectations identified in the ILP;
    4. Annual review and revision of ILPs by the ILP Team;
    5. Parental communication and involvement in the ILP process;
    6. The seamless coordination of services and supports for ELs with disabilities and/or Characteristics of Dyslexia;
    7. Training for teachers providing Direct or Indirect ESL Services regarding ILP requirements, development, and implementation; and
    8. The sufficient staffing and resources required to support the development and implementation of all ILPs across the LEA or public charter school.
- (5) LEAs shall monitor authorized public charter schools to ensure compliance with this Chapter.
  - (6) Teachers shall monitor the academic and English language proficiency growth of EL students through benchmarking, progress-monitoring, formative assessments, and/or summative assessments at least quarterly. If an EL student is not meeting the growth expectations identified in his or her ILP, the student shall receive differentiated support so that he or she may advance more rapidly toward English language proficiency. Supports shall be implemented promptly after the ILP Team has determined the student is not on the expected growth trajectory.
  - (7) Provision of Direct ESL Services.
    - (a) EL students in elementary school identified for ESL services via a Department of Education-adopted English language proficiency screener described in State Board Policy 3.207 shall receive a minimum of one (1) hour of Direct ESL Service per school day from a teacher who holds an ESL endorsement, until the student achieves a

sufficient score on the Department-adopted English language proficiency assessment listed in State Board Policy 3.207 to be exited from Direct ESL Service or achieves a sufficient score on a summative assessment to have Direct or Indirect ESL Services modified by the ILP Team pursuant to paragraph (8) of this rule.

- (b) EL students in middle and high school identified for ESL services via a Department of Education-adopted English language proficiency assessment described in State Board Policy 3.207 shall receive a minimum of one (1) hour of Direct ESL Service per school day or the equivalent of one (1) full-class period of at least 45 minutes in duration per school day, from a teacher who holds a license with an ESL endorsement, until the student achieves a sufficient score on a summative assessment pursuant to State Board Policy 3.207 to be exited from Direct ESL Service or achieves a sufficient score on a summative assessment to have Direct or Indirect ESL Services modified by the ILP Team pursuant to paragraph nine (9) of this rule.
  - (c) Parents or guardians of EL students shall be annually informed of the right to waive placement of their child(ren) in ESL programs, and each LEA shall provide the parent(s) or guardian(s) the option to waive Direct ESL Services before services are provided, or at any time during the course of the school year.
  - (d) If the parent(s) or guardian(s) waives Direct ESL Services for the student, the general education classroom teacher shall be responsible for providing Indirect ESL Services in the form of linguistically appropriate scaffolding and accommodations within the general education setting as described in the student's ILP.
- (8) LEAs shall ensure that all teachers who provide Direct or Indirect ESL Services are annually trained in delivering ESL instruction. At a minimum, this training shall include, but not be limited to:
  - (a) The Tennessee English language development (ELD) standards;
  - (b) Appropriate ESL instructional methods to use with grade-level academic content standards in English language arts, mathematics, science and social studies;
  - (c) English language acquisition training for general education teachers to understand the process of acquiring a second or subsequent language;
  - (d) Strategies for collaboration between teachers serving EL students so that ILPs are developed and implemented by all educators; and
  - (e) The requirements regarding ILP development and implementation.
- (9) EL students shall be assessed annually using the Department-adopted English language proficiency assessment identified in State Board Policy 3.207 to determine if the Direct ESL Services provided may be modified by the ILP Team.
  - (a) If applicable, LEAs may tailor the services provided to students, including providing less than one (1) hour of Direct Service per day or less than the equivalent of one (1) full-class period of at least 45 minutes in duration per school day pursuant to paragraph (6) of this rule and requirements specified in State Board Policy 3.207.
- (10) An ESL Program may be provided through various service models. These service models shall be delivered through scheduled core instruction, pull-out instruction, or co-teaching instruction in ESL classrooms, general education classrooms, in newcomer centers or programs for recently arrived ELs (RAELs), or virtual classrooms. Direct ESL Services shall be provided utilizing one (1) or more of the following Department-approved service models:
  - (a) Sheltered English Instruction;
  - (b) Structured English Immersion;

- (c) Specially Designed Academic Instruction in English (SDAIE);
  - (d) Content-Based Instruction (CBI);
  - (e) Heritage Language Instruction;
  - (f) Another model approved by the Department.
- (11) All service models shall:
- (a) Be evidence-based and effective;
  - (b) Provide effective language instruction educational programs that meet the needs of ELs and demonstrate success in increasing English language proficiency and student academic achievement; and
  - (c) Be aligned to the Tennessee ELD standards.
- (12) LEAs shall ensure that all EL students suspected of having a disability are located, identified, and evaluated for special education and related services in a timely manner, in accordance with the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and T.C.A. §§ 49-10-101, et seq.
- (a) When conducting special education and/or Section 504 evaluations, LEAs shall consider the English language proficiency of EL students in determining the appropriate assessments and other evaluation materials to be used. EL students shall not be identified as students with disabilities solely because of their limited English language proficiency.
  - (b) LEAs shall provide EL students with disabilities with both the language assistance and disability-related services to which they are entitled under state and federal law.
  - (c) Neither Response to Instruction and Intervention (RTI<sup>2</sup>) nor special education services shall be used in place of Direct ESL Services.
- (13) LEAs shall ensure that EL students suspected of having Characteristics of Dyslexia are screened and served in accordance with T.C.A. § 49-1-229 and the State Board Dyslexia Individualized Learning Plan Rule Chapter 0520-01-22.
- (a) When conducting screenings for Characteristics of Dyslexia, LEAs shall consider the English language proficiency of EL students in determining the appropriate assessments and other evaluation materials to be used. EL students shall not be identified as having Characteristics of Dyslexia solely because of their limited English language proficiency.
  - (b) In addition to an ILP developed pursuant to this Chapter, an LEA shall provide to an EL student identified as having Characteristics of Dyslexia an Individualized Learning Plan - Dyslexia (ILP-D) in accordance with the State Board Dyslexia Individualized Learning Plan Rule Chapter 0520-01-22. The EL's ILP and ILP-D shall be coordinated to ensure the seamless provision of coherent and complete services and supports.
- (14) Two (2) high school ESL courses shall be counted toward the four (4) English credits required for graduation. At least one (1) of the ESL courses counted toward graduation credit shall be counted toward credit in an English course with an end-of-course assessment. Additional high school ESL courses shall be counted as elective humanities credits.

**Authority:** T.C.A. §§ 49-1-302, 49-3-104, and 49-3-105; Chapter 966 of the Public Acts of 2022; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021. Amendments filed December 14, 2021; effective March 14, 2022. Amendments filed March 10, 2023;



#### **0520-01-19-.04 PARENTAL NOTIFICATION AND RIGHTS.**

- (1) LEAs shall communicate information related to identification, screening, and service delivery to the parent(s) or guardian(s) of EL students in the language and method that the parent(s) or guardian(s) can understand, to the extent practicable. Parent(s) or guardian(s) shall be informed of the ESL program type to be used, length of time expected for completion of ESL services, how the EL student was assessed for entrance to services, and options related to program types, if available.
- (2) Notification to parents or guardians of EL students shall include:
  - (a) Their right to waive placement of their student in ESL programs;
  - (b) Their right to waive Direct ESL Service at any time; and
  - (c) The scaffolding and accommodations to be provided in the general education setting via Indirect ESL Services if the parent(s) or guardian(s) waive Direct ESL Services.

**Authority:** T.C.A. § 49-1-302; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021.

#### **0520-01-19-.05 STAFFING RATIOS.**

- (1) LEAs shall:
  - (a) Provide adequate ESL staff to implement the chosen service model effectively, as documented by the progress in English language proficiency and academic content of their EL students.
  - (b) Adequately staff their ESL programs to meet state and federal requirements. This includes, but is not limited to, having sufficient staff to ensure meaningful communication to parents or guardians of EL students with limited English proficiency, to identify EL students, and to monitor transitional EL students.
- (2) To meet the two (2) criteria of effective and compliant ESL programs, LEAs shall implement ESL programs based on the following staffing ratio standards:
  - (a) ESL class sizes shall not exceed state-mandated grade-level class size requirements; and
  - (b) The LEA-wide ESL program staffing ratio shall be based on an average of no more than thirty-five (35) identified EL students per full-time equivalent ESL teacher unless an alternate staffing ratio is approved by the Department of Education.
- (3) An alternative staffing ratio may only be approved when the LEA can show adequate academic growth and proficiency with the EL student population and can prove that EL students are receiving the required hours of service. LEAs seeking approval for a waiver for an alternate LEA-wide staffing ratio shall provide the following information upon application and, if approved, annually to the Department of Education:
  - (a) The number of EL students served;
  - (b) The proficiency levels of EL students;
  - (c) The academic growth of EL students;

- (d) Evidence that no school in the LEA is an Additional Targeted Support and Intervention (ATSI) school based on the EL student accountability subgroup;
- (e) The most recent analysis for the EL student subgroup for achievement assessments in reading/language arts, mathematics, and science;
- (f) The proposed staffing ratio that will be used in place of the recommended thirty-five (35) to one (1) ratio; and
- (g) The justification for the alternate staffing ratio.

**Authority:** T.C.A. §§ 49-1-302, 49-1-104; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021.

#### **0520-01-19-.06 EXIT PROCESS.**

- (1) EL students who attain the cut score on the Department-adopted English language proficiency assessment identified in State Board Policy 3.207 shall be exited from Direct or Indirect ESL Services. Students who exit Direct or Indirect ESL Services shall be considered Transitional EL students for four (4) school years.
- (2) Exited EL students in the first (1st) and second (2nd) years of transition are referred to as T1 and T2 respectively. Exited EL students in the third (3rd) and fourth (4th) years of transition are referred to as T3 and T4 respectively. However, T3 and T4 students shall be included in the LEA's EL student subgroup with T1 and T2 students for accountability purposes.
- (3) Transitional EL students shall be served in the general education classroom. T1 and T2 students shall be monitored for two (2) years.
  - (a) If a Transitional EL student demonstrates difficulty in the general education classroom or fails to meet ILP benchmarks, academic interventions should be provided by a general classroom teacher or a teacher with an ESL endorsement.
- (4) Each LEA shall have a written reclassification procedure to be used for exited EL Students who require reentry into the ESL program that includes parent consent. The LEA shall apply its reclassification procedure if academic or non-academic interventions are unsuccessful.
- (5) EL students who take alternate assessments for TCAP, as determined by their individualized education program (IEP) team, shall be considered for exit from ESL services through the criteria listed for the alternate English language proficiency assessment identified in State Board Policy 3.207.
- (6) If a student was exited from ESL services by another state, the exit shall stand as valid.

**Authority:** T.C.A. § 49-1-302; 42 U.S.C. § 2000d; and 20 U.S.C. § 1703. **Administrative History:** New rule filed April 7, 2021; effective July 6, 2021. Amendments filed March 10, 2023; effective June 8, 2023.

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-15-01  
PUBLIC RECORDS REQUESTS**

**TABLE OF CONTENTS**

0520-15-01-.01 Public Records Requests Generally	0520-15-01-.09 Fees and Charges
0520-15-01-.02 Definitions	0520-15-01-.10 Aggregation of Frequent and Multiple Requests
0520-15-01-.03 Making Public Records Requests	
0520-15-01-.04 Responding to Public Records Requests	
0520-15-01-.05 Records Custodian	
0520-15-01-.06 Redaction	
0520-15-01-.07 Inspection of Records	
0520-15-01-.08 Copies of Records	

**0520-15-01-.01 PUBLIC RECORDS REQUESTS GENERALLY.**

- (1) In accordance with the Tennessee Public Records Act (TPRA), T.C.A. § 10-7-503 et seq., the State Board's public records shall, at all times during business hours, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state or federal law. Accordingly, the public records of the State Board are presumed to be open for inspection unless an exemption is otherwise provided by law.
- (2) Personnel of the State Board shall provide access and assistance to Tennessee citizens requesting access to public records, in accordance with the provisions of the TPRA and this Chapter. No provision of this Chapter shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the State Board, shall be protected as provided by current law. Concerns about the provisions or enforcement of this Chapter should be addressed to the State Board's Public Records Request Coordinator (PRRC) or to the Tennessee Office of Open Records Counsel (OORC).
- (3) The TPRA grants Tennessee citizens the right to access public records that exist at the time of the request. Nothing in the TPRA or this Chapter shall be construed as requiring a Records Custodian or the PRRC to sort through files to compile information into a new record or to create or recreate a record that does not exist.
- (4) In accordance with the TPRA and this Chapter, State Board personnel will respond promptly to public record requests upon proof of Tennessee citizenship by presentation of a validly issued Tennessee driver's license or Tennessee-issued photo identification that includes the Requestor's address. If the Requestor does not possess photo identification, then other forms of identification evidencing the Requestor's identity and Tennessee citizenship may be accepted.

**Authority:** T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

**0520-15-01-.02 DEFINITIONS.**

- (1) "Public Records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity. Public records do not include

the device or equipment, including, but not limited to, a cell phone, computer, or other electronic or mechanical device or equipment, that may have been used to create or store a public record.

- (2) "Public Records Request Coordinator" or "PRRC" means the individual, or individuals, identified in this Chapter who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA. The PRRC may also be a records custodian.
- (3) "Records Custodian" means the office, official or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.
- (4) "Redacted Record" means a public record otherwise open for public inspection from which protected or confidential information is removed or obscured prior to release or inspection.
- (5) "Requestor" means a Tennessee citizen requesting access to a public record, whether for inspection or duplication.

**Authority:** T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

#### **0520-15-01-.03 MAKING PUBLIC RECORDS REQUESTS.**

- (1) All public record requests shall be made to the PRRC in order to ensure public record requests made pursuant to the TPRA are routed to the appropriate Records Custodian and fulfilled in a timely manner. The designated PRRC for the State Board is the General Counsel, or in the absence of the General Counsel, the Deputy General Counsel or an Associate Counsel, provided, however, that the responsibilities of the PRRC may be delegated to one (1) or more State Board employees under the supervision of the PRRC.
  - (a) The PRRC may be contacted at:  
Tennessee State Board of Education  
Attn: Public Records Request Coordinator  
Davy Crockett Tower, 8th Floor  
500 James Robertson Parkway  
Nashville, TN 37243  
615-741-2966 (phone)  
615-741-0371 (fax)  
SBEPublic.Records@tn.gov
- (2) Requests only for inspection shall be made orally to the PRRC via phone or in-person at the PRRC's contact information noted in paragraph (1)(a) above, or in writing to the PRRC at the PRRC's contact information noted in paragraph (1)(a) above. If a request for inspection is made orally, the PRRC shall request a U.S. mail address or email address from the Requestor in order to provide any written communication required under the TPRA. Requests for copies shall be made in writing via fax, email, mail, or hand delivery to the PRRC at the contact information noted in paragraph (1)(a) above.

**Authority:** T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019. Amendments filed December 23, 2019; effective March 22, 2020.

#### **0520-15-01-.04 RESPONDING TO PUBLIC RECORDS REQUESTS.**

- (1) The PRRC shall review public record requests received by the State Board and make an initial determination of the following:
  - (a) If the Requestor has provided evidence of Tennessee citizenship;

- (b) If the records requested are described with sufficient specificity to identify them; and
  - (c) If the State Board is the custodian of the records requested.
- (2) The PRRC shall acknowledge receipt of the request and take any of the following action(s), as appropriate:
- (a) Advise the Requestor of this Rule and:
    - 1. Any determinations regarding proof of Tennessee citizenship;
    - 2. Applicable fees (and labor threshold and waivers if applicable); or
    - 3. Aggregation of multiple or frequent requests.
  - (b) Deny the request in writing if an appropriate ground applies, including the basis for the denial, using the Public Records Request Response Form developed by State Board staff. Appropriate grounds for denial include, but are not limited to, the following:
    - 1. Requestor is not, or has not presented evidence of being, a Tennessee citizen;
    - 2. Request lacks specificity or needs clarification;
    - 3. An exemption makes the requested record not subject to disclosure under state or federal law;
    - 4. The State Board is not the custodian of the requested records;
    - 5. The requested records do not exist.
  - (c) If appropriate, contact the Requestor to see if the request can be narrowed or clarified.
  - (d) Forward the records request to the appropriate Records Custodian in the State Board with notice of the date the request was received and the deadline for when a response to the request is due.
  - (e) If the requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the Requestor in writing of the correct entity and PRRC for that entity, if known.

**Authority:** T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

#### **0520-15-01-.05 RECORDS CUSTODIAN.**

- (1) Upon receiving a public records request forwarded by the PRRC, the Records Custodian shall make requested records available as promptly as practicable in accordance with T.C.A. § 10-7-503, if the requested records are not exempt from disclosure.
- (2) If it is not practicable for the Records Custodian to promptly provide requested records because additional time is necessary to determine whether the requested records exist, to gain access to records, to determine whether the records are open, to redact records, or for other similar reasons, then the Records Custodian shall notify the PRRC who shall, within seven (7) business days from the PRRC's receipt of the request, send the Requestor a completed Public Records Request Response Form developed by State Board staff stating the time reasonably necessary to produce the record or information.

- (3) If the Records Custodian determines that a public record request should be denied, the Records Custodian shall notify the PRRC, and provide the ground(s) for denial. If the PRRC agrees the request should be denied, the PRRC shall deny the request in writing using the Public Records Request Response Form developed by State Board staff. Grounds for denial include, but are not limited to, the following:
  - (a) Requestor is not, or has not presented evidence of being, a Tennessee citizen;
  - (b) Request lacks specificity or needs clarification;
  - (c) An exemption makes the record not subject to disclosure under state or federal law;
  - (d) The State Board is not the custodian of the requested records;
  - (e) The requested records do not exist.
- (4) If the requested records relate to another governmental entity and the PRRC is aware of the correct governmental entity, the PRRC shall advise the Requestor of the correct governmental entity and PRRC for that entity, if known.
- (5) If the Records Custodian reasonably determines production of records should be segmented because the records request is for a large volume of records or additional time is necessary to prepare the records for access, the Records Custodian or PRRC shall notify the Requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the Records Custodian or PRRC should contact the Requestor to see if the request can be narrowed.
- (6) If the Records Custodian discovers records responsive to a records request were omitted from the production, the Records Custodian or PRRC shall promptly contact the Requestor concerning the omission and produce the records as quickly as practicable.

**Authority:** T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

#### **0520-15-01-.06 REDACTION.**

- (1) If a record contains confidential information or information that is not open for public inspection, the Records Custodian shall prepare a redacted copy prior to providing access. If questions arise concerning redaction, the Records Custodian shall coordinate with the PRRC regarding review and redaction of records. The Records Custodian and the PRRC may also consult with the OORC or the Office of the Attorney General and Reporter.
- (2) Whenever a Redacted Record is provided, the Records Custodian or PRRC shall provide the Requestor with the basis for redaction. The basis given for redaction shall not disclose confidential information. A Records Custodian is not required to produce a privilege log.

**Authority:** T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

#### **0520-15-01-.07 INSPECTION OF RECORDS.**

- (1) There is no charge to view public records that are subject to inspection under the TPRA, however, any information made confidential by state or federal law shall be redacted prior to making the record available for inspection.

- (2) Inspection of records shall take place at the offices of the State Board of Education. The location for inspection of records within the offices of the State Board shall be specified by the Records Custodian or PRRC.
- (3) A Records Custodian or PRRC may require an appointment for inspection of records that cannot be promptly made available for inspection. A Records Custodian or PRRC may also require inspection of records at an alternate location under reasonable circumstances.

**Authority:** T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

#### **0520-15-01-.08 COPIES OF RECORDS.**

- (1) Copies will be available for pickup at the State Board's offices during regular business hours.
- (2) Upon payment for costs of postage, copies will be delivered to the Requestor's home address by the U.S. Postal Service.
- (3) A Requestor will not be allowed to make copies of records with personal equipment. However, a Requestor may use a personal camera to take a photograph of a record.
- (4) If the State Board maintains the requested record(s) in an electronic format, copies of the requested record(s) may be provided to the Requestor in an electronic format as follows:
  - (a) The records may be downloaded to a flash drive (or equivalent storage device) provided by the State Board. The Requestor shall be charged for the flash drive (or equivalent storage device) at the current cost to the State Board. Downloading to a flash drive (or equivalent storage device) provided by the Requestor shall not be permitted.
  - (b) If the requested record exists in an electronic format that may be transmitted by email, the records may be sent via email.
- (5) The Records Custodian shall respond to a request for copies in the most economic and efficient manner practicable.

**Authority:** T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019. Amendments filed December 23, 2019; effective March 22, 2020.

#### **0520-15-01-.09 FEES AND CHARGES.**

- (1) Prior to producing copies of records, the Records Custodian shall provide the Requestor with an estimate of the charges (itemized by per page costs, labor, and other) to be assessed, and may require pre-payment of such charges before producing requested records. If the time required to identify, locate, redact (if applicable), and download or transmit records maintained electronically via methods set forth in Section .08 of this Chapter exceeds the labor threshold identified in paragraph (3) below, the production of the records shall be subject to the same labor charge identified in paragraph (3) below.
- (2) When fees for copies and labor do not exceed \$10.00, the fees shall be waived. Requests for waivers for fees above \$10.00 must be presented to the PRRC, who is authorized to determine if such waiver is in the best interest of the State Board and for the public good.
- (3) Fees and charges for copies are as follows, but no more than the safe harbor amount authorized by the OORC Schedule of Reasonable Charges, unless a higher charge can be documented:
  - (a) \$0.15 cents per page for letter and legal-sized black and white copies;

- (b) \$0.50 cents per page for letter and legal-sized color copies.
- (c) Labor will be charged when time exceeds two (2) hours and shall be calculated according to the OORC Schedule of Reasonable Charges.
- (d) If an outside vendor is used, the actual costs assessed by the vendor.
- (e) Other charges shall be in accordance with the OORC Schedule of Reasonable Charges.
- (4) Payment is to be made in cash, money order, or personal check payable to the Tennessee State Board of Education.
- (5) Payment in advance will be required when costs are estimated to exceed \$100.00.

**Authority:** T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

#### **0520-15-01-.10 AGGREGATION OF FREQUENT AND MULTIPLE REQUESTS.**

- (1) The State Board will aggregate record requests for the purpose of calculating charges for copies of public records in accordance with the Reasonable Charges for Frequent and Multiple Request Policy promulgated by the OORC when more than four (4) requests are received within a calendar month, either from a single individual or a group of individuals deemed working in concert.
- (2) If it is determined that records requests submitted to the State Board will be aggregated:
  - (a) Records requests will be aggregated at the agency level.
  - (b) The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC or the Records Custodian must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

**Authority:** T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.



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: 02/23/2024

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



Name of Officer: Angela C. Sanders

Title of Officer: General Counsel

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Tre Hargett  
Secretary of State

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