

**Department of State
Division of Publications**

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Sequence Number: 04-10-23
Rule ID(s): 9870
File Date: 4/20/2023
Effective Date: 7/19/2023

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:	N/A
Contact Person:	Angie Sanders
Address:	500 James Robertson Parkway, 5 th Floor
Zip:	37243
Phone:	615 253-5707
Email:	Angela.C.Sanders@tn.gov

Revision Type (check all that apply):

- Amendment
 - New
 - Repeal
- Content based on previous emergency rule filed on _____
 Content is identical to the emergency rule

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 Please make sure that ALL new rule and repealed rule numbers are listed in the chart below.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
0520-01-02	District and School Operations
Rule Number	Rule Title
0520-01-02-.32	Assessment Materials Review

AMENDMENT/NEW

AMEND the rules of the State Board of Education Chapter 0520-01-02 District and School Operations, by creating a new Rule section 0520-01-02-.32 titled Assessment Materials Review, so that the new Rule section .32 and revised Table of Contents shall read:

**RULES
OF
THE STATE BOARD OF EDUCATION**

CHAPTER 0520-01-02

DISTRICT AND SCHOOL OPERATIONS

TABLE OF CONTENTS

0520-01-02-.01	Approval of Local Education Agencies (LEAs)	0520-01-02-.12	Waivers
0520-01-02-.02	Salary Schedules	0520-01-02-.13	Fiscal Accountability Standards
0520-01-02-.03	Repealed	0520-01-02-.14	Repealed
0520-01-02-.04	Leave for Teachers	0520-01-02-.15	Repealed
0520-01-02-.05	Adult High Schools	0520-01-02-.16	School Fees and Debts
0520-01-02-.06	Adult Education Programs	0520-01-02-.17	State Enrollment and Attendance Guidelines
0520-01-02-.07	Library Information Centers	0520-01-02-.18	Repealed
0520-01-02-.08	Interscholastic Athletics	through	
0520-01-02-.09	Alternative Education	0520-01-02-.29	Repealed
0520-01-02-.10	Homebound Instruction	0520-01-02-.30	School Safety
0520-01-02-.11	School Board Training	0520-01-02-.31	Organization and Administration of Schools
		0520-01-02-.32	Assessment Materials Review

0520-01-02-.32 ASSESSMENT MATERIALS REVIEW.

- (1) Definitions. As used in this Rule:
 - (a) "Department" means the Tennessee Department of Education.
 - (b) "LEA" means Local Education Agency and has the same meaning given in T.C.A. § 49-1-103(2).
 - (c) "Materials" means Testing Materials or Proposed Testing Materials as defined in this Rule.
 - (d) "Member" means an active sworn-in representative or senator of the Tennessee General Assembly.
 - (e) "Testing Materials" or "Proposed Testing Materials" means any copies of questions, writing prompts, or scoring rubrics and tables that have been used, or have been proposed or planned for future use as part of statewide Tennessee Comprehensive Assessment Program (TCAP) and end-of-course assessments. This does not include student answer sheets or materials completed by specific students.
- (2) A Member may make a request to the LEA or Department to inspect and review any Materials that are in the LEA or Department's possession.

- (3) When submitting a request to inspect and review Materials directly to an LEA, the request shall be made in writing to the LEA and the request shall include the name of the Material(s) requested (if known), the grade level and subject area, and the purpose for the request. An LEA who receives a request from a Member for Materials shall forward the request to the Commissioner of Education ("Commissioner") or the Commissioner's designee within five (5) business days of the LEA's receipt of the request. The Commissioner or Commissioner's designee shall respond to the Member's request and provide any Materials that are in the Department's possession pursuant to paragraphs (4) and (5) of this Rule.
- (4) When submitting a request to inspect and review Materials directly to the Department, the request shall be made in writing to the Commissioner or the Commissioner's designee and include the name of the Material(s) requested (if known), the grade level and subject area, the purpose for the request, and any additional information required by the Department. The Department shall provide any Materials that are in the Department's possession to a Member upon the Member's request to inspect and review the Materials.
- (5) Within five (5) business days of the Department's receipt of the request from the Member pursuant to paragraph (4) of this Rule or from the LEA pursuant to paragraph (3) of this Rule, the Department shall respond to the Member acknowledging receipt of the Member's request. The Department shall provide the requested Materials to the Member for the Member to review in person either at the Department's offices or, if requested by the Member, at the Member's legislative offices in Nashville.
 - (a) The Department shall provide the requested Materials to the Member for the Member to review in person within fifteen (15) business days of receipt of the request, unless another date is agreed upon by the Member and the Department.
 - (b) The Department and the Member may otherwise mutually agree to a different meeting time and location.
 - (c) All test security protocols outlined in the Tennessee Test Security Manual published by the Department shall be followed by the Member prior to, during, and after review and receipt of the Materials.
 - (d) In order to protect the validity or reliability of Materials, Members granted access to Materials must complete a non-disclosure agreement provided by the Department prior to accessing and receiving Materials.
 - (e) The Department shall provide necessary test security training to the Member prior to providing access to the Materials.
 - (f) The Department and the Member shall comply with the Data Accessibility, Transparency and Accountability Act, compiled in Title 49, Chapter 1, Part 7, the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g), and T.C.A. § 10-7-504 at all times during and after the review and receipt of Materials.
- (6) The release of Materials to a Member by the Department pursuant to this Rule shall not include:
 - (a) Items required by the Department to validate future administrations of the Tennessee Comprehensive Assessment Program (TCAP) and end-of-course assessments;

- (b) Items that are being field tested for future administrations of the Tennessee Comprehensive Assessment Program (TCAP) and end-of-course assessments;
- (c) Passages, content, or related items if the release would be in violation of copyright infringement laws; or
- (d) Items that would impact the validity, reliability, or cost of administering the Tennessee Comprehensive Assessment Program (TCAP) and end-of-course assessments. This includes, but is not limited to, the release of information that would place the Department in violation of intellectual property or privacy clauses outlined in contracts held by the Department.

Authority: T.C.A. § 49-6-6016. **Administrative History:**

* 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)
Nick Darnell	x				
Jordan Mollenhour	x				
Bob Eby	x				
Ryan Holt	x				
Warren Wells				x	
Lillian Hartgrove	x				
Nate Morrow	x				
Darrell Cobbins	x				
Larry Jensen	x				
Robert Smith, Interim Executive Director, Tennessee Higher Education Commission. Ex-Officio, Non-Voting Member.					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education on 2/10/2023, 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: 11/15/2022

Rulemaking Hearing(s) Conducted on: (add more dates). 01/06/2023

Date: 4/19/2023

Signature: 

Name of Officer: Angie Sanders

Title of Officer: General Counsel

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-01-02-.32

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.


Jonathan Skrmetti
Attorney General and Reporter

4/20/2023
Date

Department of State Use Only

Filed with the Department of State on: 4/20/2023

Effective on: 7/19/2023



Tre Hargett
Secretary of State

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Apr 20 2023, 3:49 pm

Secretary of State
Division of Publications

Public Hearing Comments

The Tennessee State Board of Education held a public rulemaking hearing on Rule 0520-01-02-.32 on January 6, 2023, at 500 James Robertson Parkway, Nashville, TN and via Webex. No public comments were submitted at the 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 does not affect small business.

Impact on Local Governments

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

This rule has no fiscal 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 new Assessment Materials Review Rule 0520-01-02-.32 is proposed in compliance with Public Chapter 1032 of 2022 (PC 1032). The rule outlines the process for a General Assembly member to request and access statewide testing materials in the possession of an LEA or the Department, including TCAP and End of Course assessments. The rule ensures that the provision of these statewide testing materials to a member of the Tennessee General Assembly complies with test security requirements, existing state and federal laws governing information releases, and maintains the validity, reliability, integrity and confidentiality of the testing materials.

- (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;

PC 1032 requires a local education agency (LEA) or the Tennessee Department of Education to provide any statewide testing materials or proposed statewide testing materials to a member of the General Assembly upon the member's request to inspect and review the materials.

PC 1032 authorized the State Board of Education to promulgate rules outlining the stipulations for a General Assembly member to request to inspect statewide assessment materials while protecting the integrity and confidentiality of testing materials.

- (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;

This rule has a direct effect on the Department of Education and State Board of Education and both urge adoption. This rule also has a direct effect on local education agencies, and members of the Tennessee General Assembly. The State Board did not receive any comments from these parties urging adoption or rejection of the rule.

- (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;

None.

- (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;

None.

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

Angie Sanders (State Board of Education)

Angela.C.Sanders@tn.gov

Nathan James (State Board of Education)

Nathan.James@tn.gov

Robin Yeh (Department of Education)

Robin.Yeh@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 (State Board of Education)

Angela.C.Sanders@tn.gov

Nathan James (State Board of Education)

Nathan.James@tn.gov

Robin Yeh (Department of Education)

Robin.Yeh@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

Angie Sanders

State Board of Education

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

None.

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THE STATE BOARD OF EDUCATION**

CHAPTER 0520-01-02

DISTRICT AND SCHOOL OPERATIONS

Style Definition: table of contents

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Formatted Table

0520-01-02-.32 ASSESSMENT MATERIALS REVIEW.

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(Rule 0520-01-02-.32, continued)

- (4) When submitting a request to inspect and review Materials directly to the Department, the request shall be made in writing to the Commissioner or the Commissioner's designee and include the name of the Material(s) requested (if known), the grade level and subject area, the purpose for the request, and any additional information required by the Department. The Department shall provide any Materials that are in the Department's possession to a Member upon the Member's request to inspect and review the Materials.
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(Rule 0520-01-02-.32, continued)

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Authority: T.C.A. § 49-6-6016. Administrative History:

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