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Sequence Number: 04-13-23
 Rule ID(s): 9872
 File Date: 4/24/2023
 Effective Date: 7/23/2023

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
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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 Please make sure that ALL new rule and repealed rule numbers are listed in the chart below.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
0520-01-12	Education of Incarcerated Students
Rule Number	Rule Title
0520-01-12-.03	Notifications and Transfer of Records
0520-01-12-.05	Calculation of Funds

AMENDMENT

AMEND the rules of the State Board of Education Chapter 0520-01-12 Education of Incarcerated Students, by amending Rule 0520-01-12-.03 Notifications and Transfers of Records and amending Rule 0520-01-12-.05 Calculation of Funds so that the revised rule shall read:

RULES OF THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-12 EDUCATION OF INCARCERATED STUDENTS

0520-01-12-.03 NOTIFICATIONS AND TRANSFER OF RECORDS.

- (1) Once a student has been held in a Center outside of their home LEA for seventy-two (72) hours, the Center shall notify in writing the home LEA, the receiving LEA, and the Department and provide the name of the student incarcerated, the location of incarceration, and the date the student was incarcerated.
- (2) Students held in a Center outside of their home LEA shall remain enrolled in the home LEA for the purpose of generating funding through the state's K-12 education funding formula pursuant to guidelines developed by the Department.
- (3) Once a student has been held in a Center outside of his or her home LEA for five (5) instructional days, the receiving LEA shall request the student's transcripts from the home LEA.
- (4) The home LEA shall ensure the student's educational records are received by the receiving LEA no later than the student's tenth (10th) instructional day at the Center.
- (5) No later than the student's fifteenth (15th) instructional day in the Center, the receiving LEA shall work with the home LEA to develop an ESP for the student.
- (6) No later than the student's twentieth (20th) instructional day in the Center, the receiving LEA shall ensure that the student begins receiving educational services in accordance with the ESP.
- (7) When a student receiving general educational services is transferred out of the Center, the Center shall notify the Department and provide the number of instructional days the student was held.
- (8) The Department shall transfer an amount equal to the per pupil state and local funds received by the home LEA from the home LEA to the receiving LEA for the length of instructional days a student was held.
- (9) Upon a student's return to his or her home LEA, the receiving LEA shall return all educational records back to the home LEA.
- (10) If a student held in a Center is enrolled in a charter school, the authorizing LEA shall be the home LEA. The charter school shall work with the home LEA to ensure all requirements regarding the transfer of records and funding are met.

Authority: T.C.A. § 49-6-3023. **Administrative History:** Original rule filed January 10, 2018; effective April 10, 2018.

0520-01-12-.05 CALCULATION OF FUNDS.

- (1) The Department shall calculate the daily rate of funds to be transferred from the home LEA to the receiving LEA to be used for the student's education. The funds shall be allocated on a prorated daily basis for the length of the student's incarceration. The funds shall be calculated as follows:
 - (a) Per pupil state and local funds generated through the state's K-12 education funding formula and additional local funds received by the LEA in the prior fiscal year divided by the average daily membership (ADM) from the prior fiscal year to equal the per pupil state and local funding.
 - (b) The per pupil state and local funding is then divided by the one hundred eighty (180) days to equal the total daily rate.

Authority: T.C.A. § 49-6-3023. **Administrative History:** Original rule filed January 10, 2018; effective April 10, 2018.

* 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 (PNV)		
Larry Jensen			x (PNV)		
Victoria Harpool, designee, 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 3/23/2023, 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: 12/08/2022
 Rulemaking Hearing(s) Conducted on: (add more dates). 1/30/2023

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): 0520-01-12-.03 and -.05

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

April 24, 2023
 Date

Department of State Use Only

Filed with the Department of State on: 4/24/2023

Effective on: 7/23/2023



Tre Hargett
Secretary of State

RECEIVED

Apr 24 2023, 3:43 pm

Secretary of State
Division of Publications

Public Hearing Comments

The Tennessee State Board of Education held a public rulemaking hearing on Rule 0520-01-12-.03 and -05 on January 30, 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 beyond the authorizing legislation.

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;

In the 2022 legislative session, Governor Lee and the Tennessee General Assembly passed the Tennessee Investment in Student Achievement (TISA) Act which will transition the state to a student-based K-12 funding approach starting in the 2023-24 school year.

Due to the passage of TISA, revisions to the Education of Incarcerated Students rule sections 0520-01-12-.03 and -.05 were necessary to remove specific references to the Basic Education Program (BEP) from the rules and align language with TISA.

- (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;

The Tennessee Investment in Student Achievement (TISA) Act, Chapter 966 of the Public Acts of 2022.

- (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;

The State Board of Education and Department of Education are both directly affected by this rule and urge adoption. In addition, these rules also have a direct effect on local education agencies. The State Board did not receive any public comments from these parties urging adoption or rejection of these rules.

- (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)

SS-7039 (November 2022)

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
500 James Robertson Parkway, 8th Floor
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Robin Yeh
Department of Education
710 James Robertson Parkway, 9th Floor
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(615) 445-9543
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-12
EDUCATION OF INCARCERATED STUDENTS**

0520-01-12-.03 NOTIFICATIONS AND TRANSFER OF RECORDS.

- (1) Once a student has been held in a Center outside of their home LEA for seventy-two (72) hours, the Center shall notify in writing the home LEA, the receiving LEA, and the Department and provide the name of the student incarcerated, the location of incarceration, and the date the student was incarcerated.
- (2) Students held in a Center outside of their home LEA shall remain enrolled in the home LEA for the purpose of generating funding through the state's K-12 education funding formula~~BEP funding~~ pursuant to guidelines developed by the Department.
- (3) Once a student has been held in a Center outside of his or her home LEA for five (5) instructional days, the receiving LEA shall request the student's transcripts from the home LEA.
- (4) The home LEA shall ensure the student's educational records are received by the receiving LEA no later than the student's tenth (10th) instructional day at the Center.
- (5) No later than the student's fifteenth (15th) instructional day in the Center, the receiving LEA shall work with the home LEA to develop an ESP for the student.
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- (7) When a student receiving general educational services is transferred out of the Center, the Center shall notify the Department and provide the number of instructional days the student was held.
- (8) The Department shall transfer an amount equal to the per pupil state and local funds received by the home LEA~~generated and required through the Basic Education Program (BEP)~~ from the home LEA to the receiving LEA for the length of instructional days a student was held.
- (9) Upon a student's return to his or her home LEA, the receiving LEA shall return all educational records back to the home LEA.
- (10) If a student held in a Center is enrolled in a charter school, the authorizing LEA shall be the home LEA. The charter school shall work with the home LEA to ensure all requirements regarding the transfer of records and funding are met.

Authority: T.C.A. § 49-6-3023. **Administrative History:** Original rule filed January 10, 2018; effective April 10, 2018.

0520-01-12-.05 CALCULATION OF FUNDS.

- ~~(1) The Department shall calculate the funds to be transferred from the home LEA to the receiving LEA.~~
- ~~(2) These funds shall be an amount equal to the per pupil state and local funds generated and required through the BEP received by the home LEA on a prorated daily basis for the length of the student's incarceration. These funds shall be used for the student's education.~~
- (1) The Department shall calculate the daily rate of funds to be transferred from the home LEA to the receiving LEA to be used for the student's education. The funds shall be allocated on a prorated daily basis for the length of the student's incarceration. The funds shall be calculated as follows:
 - (a) Per pupil state and local funds generated through the state's K-12 education funding formula and additional local funds received by the LEA in the prior fiscal year divided by the average daily membership (ADM) from the prior fiscal year to equal the per pupil state and local funding;
 - (b) The per pupil state and local funding is then divided by the one hundred eighty (180) days to equal the total daily rate.

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