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Sequence Number: 11-14-20  
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 File Date: 11/13/2020

# 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>	Tennessee Commission on Education Recovery and Innovation
<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 :	01/13/2021		
Hearing Time:	11:00 AM	<input checked="" type="checkbox"/> _X_ CST/CDT	<input type="checkbox"/> __ EST/EDT

**Additional Hearing Information:**

<p><b>*** Anyone wishing to participate electronically may access the hearing using the following information:**</b>  <b>URL:</b> <a href="https://tngov.webex.com/tngov/j.php?MTID=m158df06186bcd12ab9ddcb6199cd7e26">https://tngov.webex.com/tngov/j.php?MTID=m158df06186bcd12ab9ddcb6199cd7e26</a>  <b>Password:</b> SBERules  <b>Phone:</b> 1-415-655-0003  <b>Access Code:</b> 178 711 0989</p> <p>Please check the State Board of Education'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. <b>If prohibitions on in-person gatherings due to COVID-19</b></p>
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**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 Education Recovery and Innovation Commission  
c/o 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 January 18, 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.)

<b>Chapter Number</b>	<b>Chapter Title</b>
0520-16-01	Public Records Requests
<b>Rule Number</b>	<b>Rule Title</b>
0520-16-01-.01	Public Records Requests Generally
0520-16-01-.02	Definitions
0520-16-01-.03	Making Public Records Requests
0520-16-01-.04	Responding to Public Records Requests
0520-16-01-.05	Records Custodian
0520-16-01-.06	Redaction
0520-16-01-.07	Inspection of Records
0520-16-01-.08	Copies of Records
0520-16-01-.09	Fees and Charges
0520-16-01-.10	Aggregation of Frequent and Multiple Requests

## NEW

Chapter 0520 Rules of the State Board of Education is amended by creating a new rule division 0520-16 titled Tennessee Commission on Education Recovery and Innovation and adding the following as a new chapter 0520-16-01 titled Public Records Requests which shall read as follows.

### RULES OF THE TENNESSEE COMMISSION ON EDUCATION RECOVERY AND INNOVATION

#### CHAPTER 0520-16-01 PUBLIC RECORDS REQUESTS

#### TABLE OF CONTENTS

0520-16-01-.01 Public Records Requests Generally	0520-16-01-.09 Fees and Charges
0520-16-01-.02 Definitions	0520-16-01-.10 Aggregation of Frequent and Multiple Requests
0520-16-01-.03 Making Public Records Requests	
0520-16-01-.04 Responding to Public Records Requests	
0520-16-01-.05 Records Custodian	
0520-16-01-.06 Redaction	
0520-16-01-.07 Inspection of Records	
0520-16-01-.08 Copies of Records	

#### **0520-16-01-.01 PUBLIC RECORDS REQUESTS GENERALLY.**

- (1) In accordance with the Tennessee Public Records Act (TPRA), T.C.A. § 10-7-503, all state, county, and municipal 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 law. Accordingly, the public records of the Tennessee Commission on Education Recovery and Innovation (Commission) are presumed to be open for inspection unless an exemption is otherwise provided by law.
- (2) Pursuant to T.C.A. § 49-1-107(f), the State Board of Education (State Board) staff shall assist the Commission in providing access and assistance in a timely and efficient manner to persons requesting access to public records. No provisions of this rule 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 Commission shall be protected as provided by current law. Concerns about the provisions or enforcement of this rule should be addressed to the Commission's Public Records Request Coordinator or to the Tennessee Office of Open Records Counsel (OORC).
- (3) 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 identification.

**Authority:** T.C.A. §§ 10-7-503, 49-1-107(f). **Administrative History:**

#### **0520-16-01-.02 DEFINITIONS.**

- (1) Public records: 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 agency. 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 or state record.

- (2) Public records request coordinator (PRRC): The individual, or individuals, identified in this rule 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 public records request coordinator may also be a records custodian.
- (3) Records custodian: 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: 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: A Tennessee citizen requesting access to a public record, whether for inspection or duplication.

**Authority:** T.C.A. § 10-7-503. **Administrative History:**

#### **0520-16-01-.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.
  - (a) Requests for inspection shall be made orally or in writing addressed as follows:

Tennessee Commission on Education Recovery and Innovation  
Attn: General Counsel  
Davy Crockett Tower, 5th Floor  
500 James Robertson Pkwy  
Nashville, TN 37243  
615-741-2966 (phone)  
615-741-0371 (fax)  
Angela.C.Sanders@tn.gov

- (2) Requests for copies or requests for inspection and copies shall be made in writing via fax, email, mail, or hand delivery using the contact information in section (1)(a) above.

**Authority:** T.C.A. § 10-7-503. **Administrative History:**

#### **0520-16-01-.04 RESPONDING TO PUBLIC RECORDS REQUESTS.**

- (1) The PRRC shall review public record requests 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 Commission 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 the elections made by the Commission regarding:
    - 1. Proof of Tennessee Citizenship;
    - 2. Fees (and labor threshold and waivers if applicable);
    - 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 the OORC. 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;
    - 3. Exemption makes the record not subject to disclosure under the TPRA;
    - 4. The Commission is not the custodian of the requested records;
    - 5. The records do not exist.
  - (c) If appropriate, contact the requestor to see if request can be narrowed.
  - (d) Forward the records request to the appropriate records custodian and advise the requestor of such action.
  - (e) If the records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct entity and PRRC for that entity, if known.
- (3) The designated PRRC(s) for the Commission is the General Counsel of the State Board of Education and, in the absence of the General Counsel, the State Board's Director of Legislative and External Affairs. Contact information is available on the Commission's website.

**Authority:** T.C.A. § 10-7-503. **Administrative History:**

**0520-16-01-.05 RECORDS CUSTODIAN.**

- (1) Upon receiving a public records request, the records custodian shall make requested open public records available as promptly as practicable in accordance with T.C.A. § 10-7-503.
- (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 records custodian's receipt of the request, send the requestor a completed Public Records Request Response Form developed by the OORC 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, he or she shall notify the PRRC, who shall deny the request in writing using the Public Records Request Response Form developed by the OORC and provide the ground(s) for denial in writing, including, but not limited to the following:
  - (a) Requestor is not, or has not presented evidence of being, a Tennessee citizen;
  - (b) Request lacks specificity;
  - (c) Exemption makes the record not subject to disclosure under them TPRA;
  - (d) The Commission is not the custodian of the requested records; or
  - (e) The records do not exist.
- (4) If the 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 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 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, the records custodian 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:**

#### **0520-16-01-.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. The records custodian shall coordinate with General Counsel of the State Board for review and redaction of records. The records custodian and the PRRC may also consult with the OORC.
- (2) Whenever a redacted record is provided, the records custodian 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:**

**0520-16-01-.07 INSPECTION OF RECORDS.**

- (1) There is no charge for inspection of open public records.
- (2) 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 or may require inspection of records at an alternate location under reasonable circumstances.

**Authority:** T.C.A. § 10-7-503. **Administrative History:**

**0520-16-01-.08 COPIES OF RECORDS.**

- (1) Copies will be available for pickup at State Board's office during regular business hours.
- (2) Upon payment for costs of postage, copies will be delivered to the requestor's home address by 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. If copies are to be downloaded to a storage device, the requestor shall supply their own storage device or the records custodian may charge the actual out-of-pocket costs for storage devices on which electronic copies are provided.
- (4) The records custodian shall respond to a public record request for copies in the most economic and efficient manner practicable.

**Authority:** T.C.A. § 10-7-503. **Administrative History:**

**0520-16-01-.09 FEES AND CHARGES.**

- (1) Prior to producing copies of records, the records custodian shall provide requestors 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.
- (2) When fees for copies and labor do not exceed \$10.00, the fees may 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 four (4) hours.

- (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 Commission and presented to the State Board General Counsel.
- (5) Payment in advance will be required when costs are estimated to exceed \$100.00.

**Authority:** T.C.A. § 10-7-503. **Administrative History:**

**0520-16-01-.10 AGGREGATION OF FREQUENT AND MULTIPLE REQUESTS.**

- (1) The Commission will aggregate record requests for the purpose of calculating charges for copies or duplicates 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 Commission 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:**



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: 11/13/2020

Signature: 

Name of Officer: Angela C. Sanders

Title of Officer: General Counsel

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Filed with the Department of State on: 11/13/2020



Tre Hargett  
Secretary of State

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