

Department of State
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Sequence Number: 03-41-10
 Rule ID(s): 4691
 File Date: 03/25/2010
 Effective Date: 08/29/2010

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Rich Haglund
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0520-01-03	Minimum Requirements for the Approval of Public Schools
Rule Number	Rule Title
0520-01-03-.03	Administration of Schools, Requirement B

Chapter Number	Chapter Title
Rule Number	Rule Title

Rule 0520-01-03-.03 Administration of Schools, Requirement B Paragraph (13) is amended by deleting the present language in its entirety and replacing it with the following:

(13) School Fees.

- (a) No fees or tuitions shall be required of any student as a condition of attending public schools or using its equipment while receiving educational training. All school fees must be authorized by the local board of education. Local board policy will determine activities during the school day and supplies that are required for participation in courses offered for credit or grade for which the board authorizes the requesting of fees.
- (b) The following school fees may be requested from but not required of any student, regardless of financial status (including eligibility for free or reduced price lunch):
 - 1. Fees for activities that occur during regular school hours (the required one hundred eighty (180) instructional days), including field trips, any portion of which fall within the school day; or for activities outside regular school hours if required for credit or grade;
 - 2. Fees for activities and supplies required to participate in all courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies; and
 - 3. Refundable security deposits collected by a school for use of school property for courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies.
- (c) LEAs shall establish a process by which to waive the following school fees for students eligible for free or reduced price school lunches:
 - 1. Fees or tuition applicable to courses taken for credit or grade during the summer by a student; except that non-resident students regularly enrolled in another school system may be required to pay fees or tuition for such summer courses; and
 - 2. Fees required for graduation ceremonies.
- (d) Fee waiver process for students eligible for free or reduced price lunch. At the beginning of the school year, at the time of enrollment, and/or at the time of requesting school fees, all students and their parents or legal guardians shall be given clear and prominent written notice of authorized fees that may be requested, and notice of the fee waiver process.
 - 1. The parent or legal guardian of a student shall be given the opportunity to pay all or any portion of the school fee if they desire. However, if the parent chooses not to pay a fee, the child may not be prevented from participating in the activity or course for which the fee is being requested.
 - 2. Local education agencies shall provide written notice to parents or legal guardians of approval or denial of requests for fee waivers. Any denial shall contain the specific grounds for denial and shall afford the parent or legal guardian the opportunity for a personal meeting with the appropriate school personnel to discuss the validity of the denial.
 - 3. Local education agencies shall keep copies of any forms, notices and/or instructions used by schools in the waiver of fees and shall keep records of any denials, appeals of denials, and resolution of such appeals.
- (e) LEAs are authorized to require payment of the following fees by all affected students:
 - 1. Fines imposed on all students for late-returned library books; parking or other traffic fines imposed for abuse of parking privileges on school property; or reasonable charges for lost or destroyed textbooks, library books, workbooks or any other property of the school;

2. Debts incurred pursuant to Rule 0520-1-3-.03(14), Withholding of Student Grades for Debts Owed to the School;
3. Refundable security deposits collected by a school for use of school property for participation in extracurricular activities;
4. Costs for extracurricular activities occurring outside the regular school day including sports, optional trips, clubs or social events; and
5. Non-resident tuition charged of all students attending a school system other than the one serving their place of residence.

Authority: T.C.A. §§ 49-1-302, 49-2-110, 49-2-114.



* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Jim Ayers	X				
Flavius Barker				X	
Vernita Justice	X				
Carolyn Pearre	X				
Richard Ray	X				
Jean Anne Rogers	X				
Fielding Rolston	X				
Theresa Sloyan	X				
Melvin Wright	X				
Katie McMillan				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 1/28/10, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 2-22-10

Signature: Gary L. Nixon

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 2/23/10

Notary Public Signature: Phyllis E Childress

My commission expires on: _____

All proposed 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.

Robert E. Cooper, Jr.
 Attorney General and Reporter

3-10-10
 Date

Department of State Use Only

Filed with the Department of State on: 3/25/10

Effective on: 8/29/10

Tre Hargett
 Secretary of State

Regulatory Flexibility Addendum

Pursuant to § T.C.A. 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

As local education agencies (LEAs) began implementing the revised rules on school fees in August 2009, it became apparent that the previous and current rules, in the context of State statutes, are confusing regarding fees for summer school or graduation ceremonies.

The State constitution and statutes clearly prohibit requiring payment of fees by any student, regardless of income, "as a condition of attending the public school, or using its equipment while receiving educational training." T.C.A. § 49-2-110(c).

T.C.A. § 49-2-114 requires a waiver of more specifically defined school fees for students eligible for free or reduced price school lunches. Some of these fees would not seem to be covered by the general prohibition outlined in § 49-2-110(c). Fees for "activities occurring during regular school hours" or fees for "activities and supplies required to participate in all courses offered for credit or grade," for example, fall clearly within the general prohibition stated in § 49-2-110(c), since they are part of the system of free public education required by the State constitution.

However, fees for summer school or for graduation ceremonies are arguably not something students have a right to, regardless of income. T.C.A. § 49-6-3003(b)(1) specifically allows LEAs to charge fees for "voluntary programs which occur outside the required one hundred eighty (180) instructional days, unless the state funds the entire cost of such instruction." Courts have found that though students have a right to a diploma upon completion of high school, they do not have a property interest in participating in the graduation ceremony.

In an attempt to provide clearer guidance to LEAs while complying with the State constitution and statutes, the rules have been revised to have three sections on school fees, instead of just two. The first section outlines those fees that may not be required of any student, regardless of income. The second outlines those fees that may be required of some students, but must be waived upon request from students eligible for free or reduced price lunch. The definition of what school fees do not include has not changed.

- (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;

T.C.A. §§ 49-2-110, 49-2-114.

- (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;

Local education agencies, elementary and secondary students and parents.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to 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;

Minimal.

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

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State Board of Education
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(615) 741-2966

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Rich Haglund
Gary Nixon

- (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

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State Board of Education
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- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

Rule 0520-01-03-.03 Administration of Schools, Requirement B Paragraph (13) is amended by deleting the present language in its entirety and replacing it with the following:

(13) School Fees.

(a) No fees or tuitions shall be required of any student as a condition of attending public schools or using its equipment while receiving educational training. All school fees must be authorized by the local board of education. Local board policy will determine activities during the school day and supplies that are required for participation in courses offered for credit or grade for which the board authorizes the requesting of fees.

(b) The following school fees may be requested from but not required of any student, regardless of financial status (including eligibility for free or reduced price lunch):

1. Fees for activities that occur during regular school hours (the required one hundred eighty (180) instructional days), including field trips, any portion of which fall within the school day; or for activities outside regular school hours if required for credit or grade;
2. Fees for activities and supplies required to participate in all courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies; and
3. Refundable security deposits collected by a school for use of school property for courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies.

(c) LEAs shall establish a process by which to waive the following school fees for students eligible for free or reduced price school lunches:

1. Fees or tuition applicable to courses taken for credit or grade during the summer by a student; except that non-resident students regularly enrolled in another school system may be required to pay fees or tuition for such summer courses; and
2. Fees required for graduation ceremonies.

(d) Fee waiver process for students eligible for free or reduced price lunch. At the beginning of the school year, at the time of enrollment, and/or at the time of requesting school fees, all students and their parents or legal guardians shall be given clear and prominent written notice of authorized fees that may be requested, and notice of the fee waiver process.

1. The parent or legal guardian of a student shall be given the opportunity to pay all or any portion of the school fee if they desire. However, if the parent chooses not to pay a fee, the child may not be prevented from participating in the activity or course for which the fee is being requested.
2. Local education agencies shall provide written notice to parents or legal guardians of approval or denial of requests for fee waivers. Any denial shall contain the specific grounds for denial and shall afford the parent or legal guardian the opportunity for a personal meeting with the appropriate school personnel to discuss the validity of the denial.
3. Local education agencies shall keep copies of any forms, notices and/or instructions used by schools in the waiver of fees and shall keep records of any denials, appeals of denials, and resolution of such appeals.

(e) LEAs are authorized to require payment of the following fees by all affected students:

1. Fines imposed on all students for late-returned library books; parking or other traffic fines imposed for abuse of parking privileges on school property; or reasonable charges for lost or destroyed textbooks, library books, workbooks or any other property of the school;

Deleted: School systems may request but not require payment of school fees. No fees may be required of any student, regardless of financial status (including eligibility for free or reduced price lunch), as a condition of attending public schools or using its equipment while receiving educational training. Before fees may be requested, they must be authorized by the board of education.

Deleted: (b) Local board policy will determine activities during the school day and supplies that are required for participation in courses offered for credit or grade for which the board authorizes the requesting of fees. The board shall adopt a policy consistent with this rule by which to waive such fees for any student, including students eligible for free or reduced price school lunches.¶
¶
1. At the beginning of the school year, at the time of enrollment, and/or at the time of requesting school fees, all students and their parents or legal guardians shall be given clear and prominent written notice of the fee waiver process.¶
¶
2. The parent or legal guardian of a student shall be given the opportunity to pay all or any portion of the school fee if they desire. However, if the parent chooses not to pay a fee, the child may not be prevented from participating in the activity or course for which the fee is being requested.¶

2. Debts incurred pursuant to Rule 0520-1-3-.03(14), Withholding of Student Grades for Debts Owed to the School;
3. Refundable security deposits collected by a school for use of school property for participation in extracurricular activities;
4. Costs for extracurricular activities occurring outside the regular school day including sports, optional trips, clubs or social events; and
5. Non-resident tuition charged of all students attending a school system other than the one serving their place of residence.

Authority: T.C.A. §§ 49-1-302, 49-2-110, 49-2-114.

Deleted: (c) School fees are defined as:¶

¶
1. Fees for activities that occur during regular school hours, including field trips, any portion of which fall within the school day;¶

¶
2. Fees for activities and supplies required to participate in all courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies;¶

¶
3. Fees or tuition applicable to courses taken for credit or grade during the summer by a student; except that non-resident students regularly enrolled in another school system may be required to pay fees or tuition for such summer courses;¶

¶
4. Fees required for graduation ceremonies;¶

¶
5. Fees for a copy of the student's record; and¶

¶
6. Refundable security deposits collected by a school for use of school property for courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies.¶

¶
(d) School fees do not include:¶

¶
1. Fines imposed on all students for late-returned library books; parking or other traffic fines imposed for abuse of parking privileges on school property; or reasonable charges for lost or destroyed textbooks, library books, workbooks or any other property of the school;¶

¶
2. Debts incurred pursuant to Rule 0520-1-3-.03(13), Withholding of Student Grades for Debts Owed to the School;¶

¶
3. Refundable security deposits collected by a school for use of school property for participation in extracurricular activities; ¶

¶
4. Costs for extracurricular activities occurring outside the regular school day including sports, optional trips, clubs or social events; and¶

¶
5. Non-resident tuition charged of all students attending a school system other than the one serving their place of residence.¶

¶
(e) Local education agencies shall provide written notice to parents or legal guardians of approval or denial of requests for fee waivers. Any denial shall contain the specific grounds for denial and shall afford the parent or legal guardian the opportunity for a personal meeting with the appropriate school personnel to discuss the validity of the denial.¶

¶
(f) Local education agencies... [1]

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3. Fees or tuition applicable to courses taken for credit or grade during the summer by a student; except that non-resident students regularly enrolled in another school system may be required to pay fees or tuition for such summer courses;
4. Fees required for graduation ceremonies;
5. Fees for a copy of the student's record; and
6. Refundable security deposits collected by a school for use of school property for courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies.

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1. Fines imposed on all students for late-returned library books; parking or other traffic fines imposed for abuse of parking privileges on school property; or reasonable charges for lost or destroyed textbooks, library books, workbooks or any other property of the school;
2. Debts incurred pursuant to Rule 0520-1-3-.03(13), Withholding of Student Grades for Debts Owed to the School;
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personal meeting with the appropriate school personnel to discuss the validity of the denial.

- (f) Local education agencies shall keep copies of any forms, notices and/or instructions used by schools in the waiver of fees and shall keep records of any denials, appeals of denials, and resolution of such appeals.