

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 03-43-16  
Rule ID(s): 4693  
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.*

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	
<b>Contact Person:</b>	Rich Haglund
<b>Address:</b>	9 <sup>th</sup> Floor, 710 James Robertson Pkwy, Nashville, TN
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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
0520-14-01	Charter Schools
Rule Number	Rule Title
0520-14-01-.03	Allocation of State and Local Funds
0520-14-01-.04	Enrollment

Chapter Number	Chapter Title
Rule Number	Rule Title

Rule 0520-14-01 is amended by inserting the following as new, appropriately numbered rules:

0520-14-01-.03 Allocation of State and Local Funds

- (1) State and local funds to charter schools shall be allocated pursuant to T.C.A. § 49-13-112.
  - (a) Allocations shall be based on one hundred percent (100%) of state and local funds received by the LEA, including current funds allocated for capital outlay purposes (excluding the proceeds of debt obligations and associated debt service);
  - (b) Student enrollments used in allocations shall be for the same period used in allocating state funds to the LEA under the basic education program; and
  - (c) Allocations to the charter school may not be reduced by the LEA for administrative, indirect or any other category of cost or charge except as specifically provided in a charter agreement. Any educational or operational services the authorizer provides for a fee may also exist in a separate contractual agreement between the charter school and the authorizer. However, approval of a separate services contract may not be a condition of approval of the charter agreement.
  - (d) Allocations must be delivered to the school at the time of receipt by the LEA. Allocations may be prepaid pursuant to agreement between the LEA and the charter school.
- (2) State and local fund allocations are determined for each LEA on the basis of prior year average daily membership (ADM). All ten (10) payments distributed by the State Department of Education are based on that figure. However, twice a year, once in February and once in June, funds are adjusted based on actual enrollment in the current year. The following specific criteria apply to allocations from the Department of Education:
  - (a) If payments to an LEA from the Department of Education are increased or reduced based on actual enrollment, and a charter school's actual enrollment is higher or lower than its prior year enrollment, or than its anticipated enrollment in the charter agreement, the payments to the charter schools shall be adjusted by determining pro-rata shares of adjusted distributions based on the current year's ADM for the LEA.
  - (b) If students attended a non-chartered public school in the prior year, and attend a public charter school in the same LEA in the current year, those students are being funded through the BEP formula, and funds for those students must be passed through to the public charter school in an amount equal to the per student state and local funds received by the LEA.
  - (c) If students are new to the LEA and enroll first in a public charter school, their enrollment would not be reflected in the BEP formula used to determine the initial distributions to the LEA. But their enrollment would be reflected in the growth funds distributed in February and June. Thus, as the LEA receives increased funding in subsequent distributions to reflect the increased ADM, the LEA must allocate the funds for those students to the public charter schools they attend. LEAs can determine the amount to allocate by determining pro-rata shares of growth money based on the current district-wide ADM, and then divide the growth money by that figure to determine the amount to allocate to the public charter schools for each student.
  - (d) If an LEA does not generate increased funding due to growth, the public charter school would receive no additional funding in the current year for the students new to the LEA.
  - (e) New charter schools or charter schools adding a new grade are funded based on anticipated enrollment in the charter agreement. Those figures are then subsequently adjusted to reflect the actual number of students enrolled.
- (3) Pursuant to T.C.A. § 49-13-124, the chartering authority may endorse the submission of the qualified zone academy bond application to the local taxing authority. The chartering authority may endorse such a bond application submitted by the charter school governing body, or the chartering authority may include the charter school's project as part of the chartering authority's bond application.

- (4) School Nutrition Programs. If charter schools provide school nutrition programs, they may provide their own programs in compliance with United States Department of Agriculture regulations and State law or they may contract with the LEA for the provision of school nutrition programs.

Authority: T.C.A. §§ 49-13-112, 49-13-126.

0520-14-01-.04 Enrollment

- (1) Enrollment of eligible students, as defined in T.C.A. § 49-13-106, shall comply with T.C.A. § 49-13-113.
- (2) Students currently enrolled in a specific charter school do not need to re-apply if they remain in that specific charter school. Students moving from one charter school to another, however—even if both schools share a sponsor or governing body—are subject to the priority and preferences outlined in T.C.A. § 49-13-113.
- (3) Charter schools operating in local education agencies (LEAs) in which students are not eligible to enroll in charter schools pursuant to T.C.A. § 49-13-106(a)(1)(E) shall apply the enrollment preferences in T.C.A. § 49-13-113(b) and (c) only.
- (4) Charter schools operating in LEAs in which students are eligible to enroll in charter schools pursuant to T.C.A. § 49-13-106(a)(1)(E) shall apply the enrollment priorities in T.C.A. § 49-13-113(d), as well as the enrollment preferences in T.C.A. § 49-13-113(b) and (c).
- (a) Charter schools in these LEAs shall conduct an initial student application period of at least thirty (30) days. During this period, all eligible students may apply.
- (b) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled exceeds the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined on the basis of a lottery. Any such lottery shall be conducted within seven (7) calendar days of the close of the initial student application period.
1. If the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A) exceeds the capacity of the school or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined by a lottery among those students only.
  2. If the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A) does not exceed the capacity of the school or the capacity of a program, class, grade level or building, but the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(D) does, then the enrollment of eligible students in the slots remaining after all students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A) have been enrolled shall be determined by a lottery among the students meeting the requirements of T.C.A. § 49-13-106(a)(1)(B)-(D).
  3. If the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(D) does not exceed the capacity of the school or the capacity of a program, class, grade level or building, but the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(E) does, then the enrollment of eligible students in the slots remaining after all students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(D) have been enrolled shall be determined by a lottery among the students meeting the requirements of T.C.A. § 49-13-106(a)(1)(E).
- (c) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled does not exceed the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students may proceed on a first come, first served basis.

- (d) If applicable, the preferences in T.C.A. § 49-13-113(b) and (c) shall be used in enrollment of students in charter schools operating in LEAs in which students are eligible to enroll in charter schools pursuant to T.C.A. § 49-13-106(a)(1)(E). Prioritizing enrollment according to the following chart shall satisfy the Department of Education review and approval process pursuant to T.C.A. § 49-13-113(d)(3).

	Siblings and children (fewer than 25 and 10%)* (49-13-113(c))	Previously enrolled in a charter (49-13-106(a)(1)(A))	Assigned to a school missing AYP, or (49-13-106(a)(1)(B)) Failing to test proficient on the TCAP/Gateway (49-13-106(a)(1)(C-D))	Eligible for free and reduced meals (49-13-106(a)(1)(E))
Enrolled in a school that converts to a charter (49-13-113(b)(2)(A)(i))	1	5	9	13
Attending a public school in the LEA (49-13-113(b)(2)(A)(ii))	2	6	10	14
Attending a non-public school in the LEA area (49-13-113(b)(2)(A)(iii))	3	7	11	15
Residing outside the LEA (49-13-113(b)(2)(A)(iv))	4	8	12	16

\* Per TCA § 49-13-113 (c), a charter school may give initial preference to the siblings of a pupil already enrolled and to children of teachers, sponsors, and board members. This preference is limited to ten percent (10%) of enrollment or twenty-five (25) students, whichever is less.

Authority: T.C.A. §§ 49-13-113, 49-13-126.

\* 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 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: 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  
 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;

In 2009 Public Chapter 555 (Act), the State legislature revised the public charter school laws to provide more specific direction regarding the distribution of funds to public charter schools from the Basic Education Program (BEP). The Act also required the board to promulgate rules regarding lotteries for enrollment of eligible students that follow priorities in addition to the preferences already outlined in T.C.A. § 49-13-113.

The Act specifies that the rules on distribution of funds must include the criteria spelled out in paragraph (1). The paragraphs regarding adjustment based on growth (or lack of growth) in the current year apply BEP fund distribution to LEAs to the situation where funds are flowing through to a public charter school. And the paragraphs regarding participation in bond offerings and food service are included to resolve questions that have arisen from both charter school operators and LEAs (chartering authorities) during the last several years.

- (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. §§ 49-2-112, 49-2-113.

- (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, current and potential public charter school operators, 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;

Tn. Atty. Gen. Op. 08-169 (2009 PC 555 specifically codifies the concept outlined in that opinion).

- (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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(615) 741-2966

Wesley Robertson  
State Department of Education  
6<sup>th</sup> Floor, 710 James Robertson Pkwy  
Nashville TN 37243  
(615) 532-9510

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

Rich Haglund  
Wesley Robertson

- (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

Rich Haglund  
State Board of Education  
9<sup>th</sup> Floor, 710 James Robertson Pkwy  
Nashville TN 37243  
(615) 741-2966

Wesley Robertson  
State Department of Education  
6<sup>th</sup> Floor, 710 James Robertson Pkwy  
Nashville TN 37243  
(615) 532-9510

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

Rule 0520-14-01 is amended by inserting the following as new, appropriately numbered rules:

0520-14-01-.03 Allocation of State and Local Funds

- (1) State and local funds to charter schools shall be allocated pursuant to T.C.A. § 49-13-112.
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  - (b) Student enrollments used in allocations shall be for the same period used in allocating state funds to the LEA under the basic education program; and
  - (c) Allocations to the charter school may not be reduced by the LEA for administrative, indirect or any other category of cost or charge except as specifically provided in a charter agreement. Any educational or operational services the authorizer provides for a fee may also exist in a separate contractual agreement between the charter school and the authorizer. However, approval of a separate services contract may not be a condition of approval of the charter agreement.
  - (d) Allocations must be delivered to the school at the time of receipt by the LEA. Allocations may be prepaid pursuant to agreement between the LEA and the charter school.
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  - (b) If students attended a non-chartered public school in the prior year, and attend a public charter school in the same LEA in the current year, those students are being funded through the BEP formula, and funds for those students must be passed through to the public charter school in an amount equal to the per student state and local funds received by the LEA.
  - (c) If students are new to the LEA and enroll first in a public charter school, their enrollment would not be reflected in the BEP formula used to determine the initial distributions to the LEA. But their enrollment would be reflected in the growth funds distributed in February and June. Thus, as the LEA receives increased funding in subsequent distributions to reflect the increased ADM, the LEA must allocate the funds for those students to the public charter schools they attend. LEAs can determine the amount to allocate by determining pro-rata shares of growth money based on the current district-wide ADM, and then divide the growth money by that figure to determine the amount to allocate to the public charter schools for each student.
  - (d) If an LEA does not generate increased funding due to growth, the public charter school would receive no additional funding in the current year for the students new to the LEA.
  - (e) New charter schools or charter schools adding a new grade are funded based on anticipated enrollment in the charter agreement. Those figures are then subsequently adjusted to reflect the actual number of students enrolled.
- (3) Pursuant to T.C.A. § 49-13-124, the chartering authority may endorse the submission of the qualified zone academy bond application to the local taxing authority. The chartering authority may endorse such a bond application submitted by the charter school governing body, or the chartering authority may include the charter school's project as part of the chartering authority's bond application.
- (4) School Nutrition Programs. If charter schools provide school nutrition programs, they may provide their own programs in compliance with United States Department of Agriculture regulations and State law or they may contract with the LEA for the provision of school nutrition programs.

Authority: T.C.A. §§ 49-13-112, 49-13-126.

0520-14-01-.04 Enrollment

- (1) Enrollment of eligible students, as defined in T.C.A. § 49-13-106, shall comply with T.C.A. § 49-13-113.
- (2) Students currently enrolled in a specific charter school do not need to re-apply if they remain in that specific charter school. Students moving from one charter school to another, however—even if both schools share a sponsor or governing body—are subject to the priority and preferences outlined in T.C.A. § 49-13-113.
- (3) Charter schools operating in local education agencies (LEAs) in which students are not eligible to enroll in charter schools pursuant to T.C.A. § 49-13-106(a)(1)(E) shall apply the enrollment preferences in T.C.A. § 49-13-113(b) and (c) only.
- (4) Charter schools operating in LEAs in which students are eligible to enroll in charter schools pursuant to T.C.A. § 49-13-106(a)(1)(E) shall apply the enrollment priorities in T.C.A. § 49-13-113(d), as well as the enrollment preferences in T.C.A. § 49-13-113(b) and (c).
  - (a) Charter schools in these LEAs shall conduct an initial student application period of at least thirty (30) days. During this period, all eligible students may apply.
  - (b) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled exceeds the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined on the basis of a lottery. Any such lottery shall be conducted within seven (7) calendar days of the close of the initial student application period.
    1. If the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A) exceeds the capacity of the school or the capacity of a program, class, grade level or building, then the enrollment of eligible students shall be determined by a lottery among those students only.
    2. If the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A) does not exceed the capacity of the school or the capacity of a program, class, grade level or building, but the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(D) does, then the enrollment of eligible students in the slots remaining after all students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A) have been enrolled shall be determined by a lottery among the students meeting the requirements of T.C.A. § 49-13-106(a)(1)(B)-(D).
    3. If the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(D) does not exceed the capacity of the school or the capacity of a program, class, grade level or building, but the number of students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(E) does, then the enrollment of eligible students in the slots remaining after all students meeting the requirements of T.C.A. § 49-13-106(a)(1)(A)-(D) have been enrolled shall be determined by a lottery among the students meeting the requirements of T.C.A. § 49-13-106(a)(1)(E).
  - (c) If, at the end of the initial student application period, the number of eligible students seeking to be enrolled does not exceed the school's capacity or the capacity of a program, class, grade level or building, then the enrollment of eligible students may proceed on a first come, first served basis.
  - (d) If applicable, the preferences in T.C.A. § 49-13-113(b) and (c) shall be used in enrollment of students in charter schools operating in LEAs in which students are eligible to enroll in charter schools pursuant to T.C.A. § 49-13-106(a)(1)(E). Prioritizing enrollment according to the following chart shall satisfy the Department of Education review and approval process pursuant to T.C.A. § 49-13-113(d)(3).

	<u>Siblings and children</u>	<u>Previously enrolled in a</u>	<u>Assigned to a school missing AYP, or (49-13-106(a)(1)(B))</u>	<u>Eligible for free and</u>
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	<u>(fewer than 25 and 10%)*</u> <small>(49-13-113(c))</small>	<u>charter</u> <small>(49-13-106(a)(1)(A))</small>	<u>Failing to test proficient on the TCAP/Gateway</u> <small>(49-13-106(a)(1)(C-D))</small>	<u>reduced meals</u> <small>(49-13-106(a)(1)(E))</small>
<u>Enrolled in a school that converts to a charter</u> <small>(49-13-113(b)(2)(A)(i))</small>	<u>1</u>	<u>5</u>	<u>9</u>	<u>13</u>
<u>Attending a public school in the LEA</u> <small>(49-13-113(b)(2)(A)(ii))</small>	<u>2</u>	<u>6</u>	<u>10</u>	<u>14</u>
<u>Attending a non-public school in the LEA area</u> <small>(49-13-113(b)(2)(A)(iii))</small>	<u>3</u>	<u>7</u>	<u>11</u>	<u>15</u>
<u>Residing outside the LEA</u> <small>(49-13-113(b)(2)(A)(iv))</small>	<u>4</u>	<u>8</u>	<u>12</u>	<u>16</u>

\* Per TCA § 49-13-113 (c), a charter school may give initial preference to the siblings of a pupil already enrolled and to children of teachers, sponsors, and board members. This preference is limited to ten percent (10%) of enrollment or twenty-five (25) students, whichever is less.

Authority: T.C.A. §§ 49-13-113, 49-13-126.