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Sequence Number: 04-15-09
Rule ID(s): 4184
File Date: 04/30/2009
Effective Date: 08/28/2009

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-205 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 thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. 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.

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. Please enter only ONE Rule Number/RuleTitle 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 0520-01-09
Special Education Programs and Services

Amendments

Rule 0520-01-03-.03 Administration of Schools, Requirement B Paragraphs (13) and (14) are amended by deleting the present language in its entirety and replacing it with the following:

(13) School Fees.

- (a) 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.
- (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.
- (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 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.
- (14) Withholding of Student Grades for Debts Owed to the School.
- (a) Local education agencies are authorized to withhold all grade cards, diplomas, certificates of progress or transcripts of a student who has taken property which belongs to a local education agency, or has incurred a debt to a school, until such student makes restitution in full. Unpaid school fees, as defined above, may not be considered debts owed to the school.
 - (b) No student shall be sanctioned under the provisions of this rule when the student is deemed to be without fault for the debt owed to the local education agency or the school.
 - (c) Nothing in this subparagraph authorizes any local education agency to limit the rights of parents to have access to their children's educational records pursuant to the Family Educational Rights and Privacy Act.
 - (d) Local education agencies shall afford the student and/or the student's parent the opportunity to appear and be heard if such student and/or the parent disputes the debt, the amount of the debt, or the application of sanctions.

Authority: T.C.A. §§49-1-302, 49-1-302(a)(2) and (13), 49-6-101, 49-6-201, 49-6-3001(c) and (c)(1), 49-6-3003, 49-6-3005(a) and (a)(4), 49-6-3104, 49-6-3105, 49-6-6201, and Sections 30, 78 through 80, and 88 of Chapter 535 of the Public Acts of 1992.

* 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				
Brittni England	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 01/30/2009, 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 thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Date: 3-2-09

Signature: Gary L. Nixon

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 3-2-09

Notary Public Signature: Allison Williams

My commission expires on: November 7, 2012

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.
 Robert E. Cooper, Jr.
 Attorney General and Reporter

4-25-09
 Date

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Filed with the Department of State on: April 30, 2009

Effective on: August 28, 2009

Tre Hargett
Tre Hargett
Secretary of State

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PUBLICATIONS

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 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;

School fees are governed by state law and rule, and local board of education policy. Only those fees authorized by the local board of education may be requested, and payment of "school fees" may not be a condition to attending the public school or using its equipment. (TCA § 49-2-110(c)). In other words, no student may be required to pay fees for workbooks, lab fees, field trips during the school day, etc.

Statutes (TCA § 49-2-114) and State Board of Education Rules define school fees. State Board Rule 0520-1-3-.03(14), available online at: <http://state.tn.us/sos/rules/0520/0520-01/0520-01-03.pdf>. This rule notes, for example, that schools may request, but no students may be required to pay a fee "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."

Confusion has arisen, however, because TCA 49-2-114 required the Board to promulgate rules for waiving school fees for students eligible for free and reduced price lunch. In some instances, this statute and the accompanying rules appear to have been interpreted to mean that school fees may *only* be waived for students based on familial income.

The rules have been revised to clarify that even though schools may request school fees no one may be required to pay those fees, regardless of income. This is in line with the state constitution and attorney general opinions. Some districts already address this adequately in notices to parents. One district writes parents as follows:

Dear families of Williamson County students:

Student fees for certain supplies needed for instruction in our schools have been approved by the Williamson County Board of Education. This funding provides items that are necessary to make your students' learning experiences the best that they can be.

You do need to know, however, that the Tennessee Law regarding school fees states the following: "The school shall not require any student to pay a fee to the school for any purpose, except as authorized by the board of education, and no fees shall be required of any student as a condition to attending the public school, or using its equipment while receiving educational training."

We appreciate the additional monetary support from all of our families. We hope that you will see the benefit in being partners with the schools in this effort.

(July 15, 2008 letter from director Rebecca Sharber to parents)

- (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;

TCA §§49-2-110(c), 49-2-114; State Board Rule 0520-01-03.

- (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, teachers, parents and students.

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

Op. No. 03-027 (<http://www.tn.gov/attorneygeneral/op/2003/OP/OP27.pdf>)
Op. No. 03-116 (<http://www.tn.gov/attorneygeneral/op/2003/OP/OP116.pdf>)

- (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;

Rich Haglund
State Board of Education

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

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State Board of Education

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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