

Department of State

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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:
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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
0520-04-01	Employees of the State Special Schools
Rule Number	Rule Title

Chapter Number	Chapter Title
0520-04-04	Appeal Procedures for Employees of the State Special Schools Relative to Adverse Job Actions
Rule Number	Rule Title

Chapter Number	Chapter Title
Rule Number	Rule Title

Repeal

0520-04-01 Employees of the State Special Schools is repealed in its entirety.

Authority: T.C.A. §§49-1-302, 49-10-701, 49-10-801, and 49-10-901.
New Rules

Chapter 0520-4-1
Employees of the State Special Schools

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0520-4-1-.01 Tenured Teachers.

- (1) Tenure Rights. Teachers in the state special schools shall obtain tenure in the same manner and shall have the same rights of due process regarding employment actions as teachers in other public schools, pursuant to T.C.A. Title 49, Chapter 5.
- (2) Definitions. Because the State Board of Education has authority over the state special schools, the following definitions also apply to teachers in the state special schools:
 - (a) "Teacher" shall not include the chief administrative officer of such school.
 - (b) "Board" shall mean the State Board of Education.
- (3) Suspension Pending Investigation. The superintendent may suspend any teacher pending investigation of the charges and subject to the final approval of the State Board of Education, or the Commissioner of Education acting under delegated authority from the board. In the event that the suspension is not sustained by the board or the commissioner, the employee will be entitled to full salary during the period of suspension.
- (4) Hearings. Any teacher who has received notice of charges supporting dismissal or suspension pursuant to T.C.A. Title 49, Chapter 5, may, within thirty (30) days after receipt of notice reflecting action of the Commissioner of Education, demand a hearing before the State Board of Education. Such hearing shall be conducted as a contested case under the Tennessee Uniform Administrative Procedures Act, T.C.A. §4-5-301, et seq.

Authority: T.C.A. §§49-1-302, 49-10-701, 49-10-801, and 49-10-901.

0520-04-01-.02 Employee Grievances - Definitions.

Employees of the state special schools, as state employees, have the same rights and procedural protections afforded other state employees, pursuant to Rules of the State Department of Human Resources 1120-11. Except as otherwise noted below, Rule 1120-11 shall govern grievances by employees of the state special schools. The following specific definitions apply to employee grievances in the state special schools:

- (1) "Appellant" means an employee who is affected by an adverse job action and seeks a remedy as set out in the procedures below.
- (2) "Board" shall mean the State Board of Education.
- (3) "Commissioner" means the Commissioner of Education.

- (4) "Demotion" means a reduction in job classification coupled with a reduction in pay exceeding one (1) step on the former pay schedule.
- (5) "Department" means the State Department of Education.
- (6) "Employee" means any person in the employment of the state special schools who has completed the mandatory probationary period, including licensed/certificated employees, but does not include interim, emergency, temporary, and part-time employees. For the purposes of this rule, "employee" shall not include licensed/certificated employees suspended or served with charges that will result in a hearing pursuant to the Rules, Regulations, and Minimum Standards of the State Board of Education, Chapter 0520-4-1-.01.
- (7) "Executive Director" means Executive Director of the State Board of Education.
- (8) "Interim, emergency, temporary, and part-time employees" are defined as follows:
 - (a) "Interim employee" is a person appointed to a position for a period not to exceed one (1) year.
 - (b) "Emergency employee" is a person appointed to a position for a period not to exceed one hundred and twenty (120) days, when necessity makes it impractical or impossible to fill the position through standard appointment procedures.
 - (c) "Temporary employee" is a person appointed to a position for a specified period, usually less than six (6) months.
 - (d) "Part-time employee" is a person appointed to work a schedule which generally entails working less than one thousand six hundred (1600) hours for a twelve (12) month school year and one thousand three hundred (1300) hours for a ten (10) month school year.
- (9) "Superintendent" means the person, of whatever title, acting as the chief administrative officer of each state special school.

Authority: T.C.A. §§49-1-302, 49-10-701, 49-10-801, and 49-10-901.

0520-04-01-.03 Grievances - Responsibility.

- (1) The State Board of Education will be responsible for providing and maintaining the basic standards and guidelines for the rules.
- (2) The Commissioner of Education, acting under delegated authority from the State Board of Education, will be responsible for the proper effectuation of these rules throughout the state special schools. Modification of these procedures may be made in order to satisfy unusual circumstances within the state special schools if such modification is approved by the board.
- (3) The commissioner will be responsible for ensuring that all employees and supervisory personnel are aware of the provisions of these rules.

Authority: T.C.A. §§49-1-302, 49-10-701, 49-10-801, and 49-10-901.

0520-04-01-.04 Grievances - Basic Standards.

- (1) An appeal must be filed with the Commissioner of Education within thirty (30) calendar days after receiving notification of the superintendent's decision on the adverse job action. Otherwise, the appeal will be considered untimely and invalid.

- (2) A standard appeal in the form of a signed letter from the appellant shall be submitted to the Commissioner of Education. The letter shall state, with particularity, the grounds for the appeal.
- (3) Appellants, if they so desire, may be assisted or represented by another employee of the same school at each step of the appeals procedure.
- (4) Legal counsel or other outside counsel may only represent an appellant before a hearing conducted under the provisions of the Uniform Administrative Procedures Act, which is the final step of this procedure. The appellant and the State Department of Education may have counsel present at discussions prior to the final step, but only to advise and observe and not to participate as advocate.
- (5) Appellants may present appeals during business hours or other mutually agreeable hours as work situations may require. An appeal heard during an appellant's, witness', assistant's, or representative's scheduled off-duty hours will be considered overtime work, provided the person is still actively employed by the state special schools. Appellant, employees who appear with the appellant, State Department of Education employees, and employees who are subpoenaed as witnesses will not be required to use leave for such periods.
- (6) Appeals relative to suspension without pay must first be taken to the lowest step in the appeals procedure with authority to overturn, reduce, or alter the action.
- (7) Appeals relative to dismissal may be taken directly to the commissioner or his designated representative for this purpose.
- (8) Appeals concerning alleged discrimination, prohibited by T.C.A. § 4-21-401, and in connection with race, creed, color, religion, sex, national origin, age, or handicap, may be appealed informally to the superintendent. The grounds for such appeals may also be grounds for filing charges with the Tennessee Human Rights' Commission at any time. If the employee is not satisfied with the superintendent's decision, the appeal may be taken directly to the commissioner or his designated representative. If the appellant is unsatisfied with the decision of the commissioner or that of his designated representative, the appellant may appeal directly to the Tennessee Human Rights Commission which is empowered by T.C.A. § 4-21-202 to investigate such matters.
- (9) Appeals decisions, with specific reasons for the decision, must be communicated in writing directly to the appellant in a timely manner as outlined below. Certified mail, return receipt requested, is mandatory if a decision is mailed.
- (10) Appeals must be expressed in reasonable terms. Each appeal submitted should contain: (a) the basis for appeal; (b) the settlement or corrective action desired by the appellant; and, (c) sufficient supporting information to begin an investigation.
- (11) Appeals of Career Ladder evaluations must be pursued according to the provisions set out in T.C.A. § 49-5-5009. No Career Ladder appeal may be pursued under the provisions of these rules.

Authority: T.C.A. §§49-1-302, 49-10-701, 49-10-801, and 49-10-901.

0520-04-04-.05 Grievances - Procedures.

- (1) Procedure shall not entail more than three (3) steps to finality as follows:
 - (a) Step 1 - Appellant's superintendent (formal)
 1. Verbal discussion with superintendent within fifteen (15) workdays of cause;
 2. Superintendent's investigation and fact finding; and,
 3. Decision clearly communicated to appellant by the superintendent within five (5) workdays of the discussion.
 - (b) Step 2 - Appeal to the Commissioner of Education or his designee (formal)

1. Appellant prepares a letter requesting a hearing. The letter must be signed and is to state, with particularity, the basis of the appeal.
 2. The commissioner or his designee conducts a hearing on the matter within fifteen (15) working days of the receipt of the appeal. The hearing will include a discussion of the facts, allegations of the parties, and proposals for relief.
 3. Investigation, fact finding, and written decisions will be communicated to the appellant within ten (10) working days after the hearing.
- (c) Step 3 - Appeal to the State Board of Education (UAPA)
1. Within thirty (30) working days of receipt of an adverse ruling from the Commissioner of Education or his designee, appellant may appeal the decision to the State Board of Education through the executive director.
 2. The chairman shall set the matter for a contested case hearing either in the presence of the board or by an administrative law judge or hearing officer sitting alone, pursuant to T.C.A. § 4-5-301(c). The board's decision shall be concurred in by a majority of those present and voting at the meeting when the board issues its order.
 3. Hearings conducted at Step 3 will conform to the model rules of the Secretary of State for contested cases and the State Board of Education hereby adopts Rule 1360-4-1 in statutory compliance.
 4. The Executive Director of the State Board of Education shall notify the appellant, in writing within fifteen (15) working days of the board meeting, of the action of the board.
 5. The hearing conducted pursuant to the provisions of the Uniform Administrative Procedures Act and outlined in Step 3 shall be the final step for all appeals for regular employees.

Authority: T.C.A. §§49-1-302, 49-10-701, 49-10-801, and 49-10-901.

Repeal

0520-04-04 Appeal Procedures for Employees of the State Special Schools Relative to Adverse Job Actions is repealed in its entirety.

* 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				
Brittini 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: 7-7-09

Signature: Gary L. Nixon

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 7-8-09

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

7-21-09
 Date

Department of State Use Only

Filed with the Department of State on: 7/24/09

Effective on: 12/29/09

Tre Hargett by [Signature]

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;

Because employees of the State special schools are State employees, specific rules have been promulgated outlining the due process available to them to grieve or appeal employment actions.

However, because the rules are in addition to statutes applicable to tenured teachers in other public schools throughout the state, and to rules passed by the State Department of Human Resources, leaders, teachers and other employees at the State special schools have struggled to understand their rights and responsibilities.

To attempt to alleviate confusion, two rule chapters, 0520-04-01 and 0520-04-4 have been revised as follows:

1. The two chapters have been combined into one chapter.
2. The rules have been divided into sections applicable to tenured teachers in the State special schools, and then to all other employees.
3. The rule states that statutes applicable to tenured teachers in all public schools apply similarly to tenured teachers in the State special schools.
4. The rule notes that, unless otherwise distinguished in these rules, the grievance procedures outlined in the rules of the Department of Human Resources will apply to State special schools employees who are not tenured teachers.

In addition to deleting many parts of the rule chapters that duplicated statutes or rules of the Department of Human Resources, these rules were revised to fit the organization of the special schools within the Department of Education's Division of Special Education, acting under authority delegated by the State Board and the Commissioner of Education.

- (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. §§49-1-302, 49-10-701, 49-10-801, and 49-10-901.

- (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;

State special schools faculty and staff, attorneys representing them, State Board of Education, State Department of Education.

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

- (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

Bill Wilson
State Department of Education

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

Rich Haglund
State Board of Education

Bill Wilson
State Department 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.