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Sequence Number: 07-14-24
 Rule ID(s): 10126
 File Date: 7/23/2024
 Effective Date: 10/21/2024

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: State Board of Education
Division: N/A
Contact Person: P. Danielle Nellis
Address: 500 James Robertson Parkway, 8th Floor
Zip: 37243
Phone: 615-483-0268
Email: Danielle.Nellis@tn.gov

Revision Type (check all that apply):

- Amendment Content based on previous emergency rule filed on _____
 New Content is identical to the emergency rule
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0520-09-01	Hearing Procedures and Public Meetings
Rule Number	Rule Title
0520-09-01-.01	Rules of Procedure for Hearing Contested Cases
0520-09-01-.02	Requests to Comment at Public Meetings

AMENDMENT/NEW

AMEND the rules of the State Board of Education Chapter 0520-09-01 is revised by changing the title of the Chapter from "Rules of Procedure for Hearing Contested Cases before the State Board of Education" to "Hearing Procedures and Public Meetings", and by adding a Table of Contents, and by adding a title to Rule section 0520-09-01-.01 to "Rules of Procedure for Hearing Contested Cases" and by creating a new Rule section 0520-09-01-.02 titled Requests to Comment at Public Meetings", so that as amended, the revised Chapter shall read:

RULES OF THE STATE BOARD OF EDUCATION CHAPTER 0520-09-01 HEARING PROCEDURES AND PUBLIC MEETINGS

TABLE OF CONTENTS

0520-09-01-.01	Rules of Procedure for Hearing Contested Cases
0520-09-01-.02	Requests to Comment at Public Meetings

0520-09-01-.01 RULES OF PROCEDURE FOR HEARING CONTESTED CASES.

- (1) For rules of procedure for hearing contested cases see Rules of the Secretary of State, Chapter 1360-04-01.

Authority: T.C.A. § 4-5-219. **Administrative History:** Original Chapter filed November 22, 1978; effective January 8, 1979.

0520-09-01-.02 REQUESTS TO COMMENT AT PUBLIC MEETINGS.

- (1) The purpose of this Rule is to set forth requirements for persons to provide a public comment at a State Board of Education ("State Board") meeting either in-person, or virtually if virtual participation is permitted in accordance with T.C.A. § 8-44-108. The State Board shall allow persons the opportunity to provide public comment at any State Board meeting that includes actionable items on the meeting agenda. Comments shall be permitted if the following requirements are met, subject to any additional restrictions set forth in this Rule:
 - (a) The comment is regarding a matter germane to the items on the agenda for the meeting, as determined by the Chair, and;
 - (b) The person submits a request to the Executive Director of the State Board in writing via email or regular mail at least forty-eight (48) hours prior to the scheduled start-time of the meeting. The request shall include the person's name, e-mail (if available), address, phone number, the organization, agency or individual he/she will be representing (if applicable), and identify if the person requesting to comment is requesting an accommodation under the Americans with Disabilities Act ("ADA") in order to participate and the reason for the accommodation. The request shall also identify the meeting agenda item to which the comment is germane.
- (2) Additional Restrictions.
 - (a) Only one (1) representative for any person, organization, or agency shall be permitted to provide a public comment. Additional members of an organization or agency may be

permitted to provide a public comment if all requirements of paragraph (1) are met and if granted express permission by the Chair.

- (b) The number of public comments at a State Board meeting shall be limited to ten (10). In the event that more than ten (10) persons have submitted a request to provide a public comment in compliance with all requirements set forth in paragraphs (1) and (2) of this Rule, the first ten (10) persons who submitted a request to the Executive Director shall be permitted to provide a comment at the meeting. However, the Chair shall have discretion to expand the number of public comments permitted at the meeting beyond ten (10), based on the circumstances.
- (c) At least twenty-four (24) hours prior to the meeting, the Executive Director shall notify person(s) whether or not they will be permitted to provide a public comment at the meeting. In the event a person who is permitted to comment requested an ADA accommodation as set forth in paragraph (1)(b) of this Rule, State Board staff will contact the person to discuss accommodations ahead of the meeting.
 - 1. The limitation of ten (10) public comments per meeting as outlined in paragraph (2)(b) of this Rule does not apply to a person, organization, or agency (or their representative) who is requesting to provide a comment pertaining to an agenda item concerning approval or denial of an application submitted by the person, organization, or agency, or the taking of any action regarding the person, organization, or agency. This includes, but is not limited to, teacher license discipline actions, educator preparation provider approvals, approval or denial of an application that is required to be approved by the State Board, school district textbook and instructional materials waivers, and charter school authorizer evaluations.
- (3) The Executive Director shall notify all State Board members of persons who will be permitted to provide a public comment in accordance with this Rule, and the meeting agenda item that the comment pertains to.
- (4) Persons who are permitted to provide a public comment in accordance with this Rule shall be recognized by the Chair to provide a public comment at the State Board meeting for no more than three (3) minutes; however, the Chair shall have discretion to extend the time to greater than three (3) minutes or to reduce the time to less than three (3) minutes based on the circumstances.
- (5) All persons recognized by the Chair to provide a public comment shall confine their remarks to the topic pertaining to the meeting agenda item indicated in the notice provided to the Executive Director and indicated in the recognition by the Chair. Failure to adhere to this requirement may result in the Chair rescinding the person's recognition.
- (6) Persons recognized to provide a public comment shall not directly question individual members of the State Board or the Chair without express permission of the Chair, nor shall State Board members or the State Board staff address questions directly to the commenter without permission of the Chair.
- (7) Disruptive behavior shall not be permitted in the meeting room of the State Board or in virtual meetings. The Chair may request building security or electronic meeting moderators to remove persons in violation of this requirement. Disruptive behavior includes, but is not limited to, continuing to comment after allotted time has expired or when not recognized by the Chair, violating the Rules of Order as outlined in this Rule, and any type of physical action or verbal utterance that disrupts the meeting in violation of T.C.A. § 39-17-306.
- (8) In accordance with T.C.A. § 8-44-102, this Rule does not authorize public comments at disciplinary hearings held by the State Board upon appeal from a contested case proceeding in accordance with State Board Rule 0520-02-03-.09 and the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301, et seq.

- (9) Nothing in this Rule is intended to limit the ability of any person to submit public comments in writing to State Board members ahead of a public meeting.

Authority: T.C.A. §§ 49-1-301, 49-1-302, 4-5-102, 8-44-108, 8-44-112, 39-17-306. **Administrative History:**

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Jordan Mollenhour	x				
Bob Eby	x				
Ryan Holt				x	
Warren Wells	x				
Lillian Hartgrove	x				
Marsha Johnson	x				
Darrell Cobbins				x	
Larry Jensen				x	
Krissi McInturff	x				
Laurel Cox	x				
Victoria Harpool, designee for Steven Gentile, Executive Director, Tennessee Higher Education Commission Non-Voting Ex-Officio					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education on 5/31/2024 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/23/2024

Rulemaking Hearing(s) Conducted on: (add more dates). 04/16/2024

Date: 07/16/2024

Signature: 

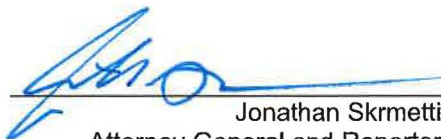
Name of Officer: P. Danielle Nellis

Title of Officer: Deputy General Counsel

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-09-01

All rulemaking hearing 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.


Jonathan Skrmetti
Attorney General and Reporter

July 22, 2024
Date

Department of State Use Only

Filed with the Department of State on: 7/23/2024

Effective on: 10/21/2024



Tre Hargett
Secretary of State

RECEIVED

Jul 23 2024, 1:02 pm

Secretary of State
Division of Publications

Public Hearing Comments

The Tennessee State Board of Education held a public rulemaking hearing on Chapter 0520-09-01 on April 16, 2024, at 500 James Robertson Parkway, Nashville, TN and via Webex. One public comment was submitted as outlined below:

Comment: Remove the 48-hour notice requirement to provide a public comment.

Response: This change was not made to the rule. T.C.A. § 8-44-112 allows boards to place “reasonable restrictions on the period for public comment...the governing body may require a person to give notice in advance of the desire to offer comments at a meeting.” Such requirement allows the Board to know ahead of time how many commenters will be speaking at the meeting, ensure speakers are recognized at the appropriate item, and to ensure that the Board has sufficient notice of any necessary ADA accommodations that a speaker may need and sufficient time to arrange for such accommodations.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule does not affect small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

This rule has no fiscal impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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;

These revisions to State Board Rules Chapter 0520-09-01 rename the chapter and establish a new rule governing requests to speak at public meetings. The title of the chapter is amended from "Rules of Procedure for Hearing Contested Cases Before the State Board of Education" to "Hearing Procedures and Public Meetings." A table of contents has also been added.

Revisions to rule section .01 add a title for the rule where one previously did not exist. The new title reads "Rules of Procedure for Hearing Contested Cases." As this rule has not been amended since 1979, the citation to the Secretary of State rules that the Board has adopted is updated to the current citation and updated statutory citations are added to the authority section.

A new rule section .02 is created to outline requirements for the public to request to provide a comment at a State Board meeting. Currently the requirements for requests to speak at State Board meetings are outlined in State Board Meetings Policy 1.400. However, in compliance with recent court decisions, these procedures are now required to be outlined in a rule. The new rule includes the following requirements:

- Setting a limitation of 10 speakers per State Board meeting, with certain exceptions. Exceptions include any person, organization, or agency who is the subject of an action being taken by the Board such as teacher license discipline actions, educator preparation provider approvals, approval or denial of an application required to be approved by the board, etc.;
- Allowing the Chair to expand the 10 comment limit based on the circumstances;
- Clarifying that the Rule does not limit the ability for members of the public to submit written comments to State Board members ahead of a meeting;
- Clarifying the process for requesting an ADA accommodation;
- Providing examples of "disruptive" with regard to the prohibition on disruptive behavior; and
- Minor clarifying edits.

- (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 authorizes the State Board of Education to make rules and policies governing public education in Tennessee.

T.C.A. § 8-44-112 outlines requirements for governing bodies to reserve a period of public comment for each meeting that has actionable items on the agenda and allows for governing bodies to place reasonable restrictions on the period for public comment.

T.C.A. § 4-5-102 defines a "Rule" as "any agency regulation, standard, statement, or document of general applicability that is not a policy as defined in subdivision (10) that: (A) Describes the procedure or practice requirements of an agency; or (B) Implements, prescribes, or interprets an enactment of the general assembly or congress or a regulation adopted by a federal agency."

- (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;

These rules have a direct effect on the State Board and the State Board urges adoption. These rules also have a direct effect on members of the public who may be interested in commenting on State Board meeting action items. The State Board did not hear from any members of the public urging adoption or rejection of the rules. One public comment urged a revision to the rule as outlined in the public comments section of this form.

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

None.

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

P. Danielle Nellis (State Board of Education)
Danielle.Nellis@tn.gov

Nathan James (State Board of Education)
Nathan.James@tn.gov

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

P. Danielle Nellis (State Board of Education)
Danielle.Nellis@tn.gov

Nathan James (State Board of Education)
Nathan.James@tn.gov

- (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

P. Danielle Nellis
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500 James Robertson Parkway, 8th Floor
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Nathan James
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500 James Robertson Parkway, 8th Floor
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

RULES
OF
~~TENNESSEE DEPARTMENT OF EDUCATION~~
THE STATE BOARD OF EDUCATION
(~~HEARING RULES~~)

~~CHAPTER 0520-9-1~~
~~RULES OF PROCEDURE FOR HEARING CONTESTED CASES~~
~~BEFORE THE STATE BOARD OF EDUCATION~~

CHAPTER 0520-09-01
HEARING PROCEDURES AND PUBLIC MEETINGS

TABLE OF CONTENTS

0520-09-01-.01 Rules of Procedure for Hearing Contested Cases
0520-09-01-.02 Requests to Comment at Public Meetings

0520-09-01-.01 RULES OF PROCEDURE FOR HEARING CONTESTED CASES.

(1) For Rules of Procedure for Hearing Contested Cases see Rules of the Secretary of State, Chapter 1360-04-01-1-7.

Authority: T.C.A. ~~§Section 4-509~~ 4-5-219. **Administrative History:** Original Chapter filed November 22, 1978; effective January 8, 1979.

0520-09-01-.02 REQUESTS TO COMMENT AT PUBLIC MEETINGS.

(1) The purpose of this Rule is to set forth requirements for persons to provide a public comment at a State Board of Education ("State Board") meeting either in-person, or virtually if virtual participation is permitted in accordance with T.C.A. § 8-44-108. The State Board shall allow persons the opportunity to provide public comment at any State Board meeting that includes actionable items on the meeting agenda. Comments shall be permitted if the following requirements are met, subject to any additional restrictions set forth in this Rule:

(a) The comment is regarding a matter germane to the items on the agenda for the meeting, as determined by the Chair, and;

(b) The person submits a request to the Executive Director of the State Board in writing via email or regular mail at least forty-eight (48) hours prior to the scheduled start-time of the meeting. The request shall include the person's name, e-mail (if available), address, phone number, the organization, agency or individual he/she will be representing (if applicable), and identify if the person requesting to comment is requesting an accommodation under the Americans with Disabilities Act ("ADA") in order to participate and the reason for the accommodation. The request shall also identify the meeting agenda item to which the comment is germane.

(2) Additional Restrictions.

(a) Only one (1) representative for any person, organization, or agency shall be permitted to provide a public comment. Additional members of an organization or agency may be permitted to provide a public comment if all requirements of paragraph (1) are met and if granted express permission by the Chair.

- (b) The number of public comments at a State Board meeting shall be limited to ten (10). In the event that more than ten (10) persons have submitted a request to provide a public comment in compliance with all requirements set forth in paragraphs (1) and (2) of this Rule, the first ten (10) persons who submitted a request to the Executive Director shall be permitted to provide a comment at the meeting. However, the Chair shall have discretion to expand the number of public comments permitted at the meeting beyond ten (10), based on the circumstances.
- (c) At least twenty-four (24) hours prior to the meeting, the Executive Director shall notify person(s) whether or not they will be permitted to provide a public comment at the meeting. In the event a person who is permitted to comment requested an ADA accommodation as set forth in paragraph (1)(b) of this Rule, State Board staff will contact the person to discuss accommodations ahead of the meeting.
1. The limitation of ten (10) public comments per meeting as outlined in paragraph (2)(b) of this Rule does not apply to a person, organization, or agency (or their representative) who is requesting to provide a comment pertaining to an agenda item concerning approval or denial of an application submitted by the person, organization, or agency, or the taking of any action regarding the person, organization, or agency. This includes, but is not limited to, teacher license discipline actions, educator preparation provider approvals, approval or denial of an application that is required to be approved by the State Board, school district textbook and instructional materials waivers, and charter school authorizer evaluations.
- (3) The Executive Director shall notify all State Board members of persons who will be permitted to provide a public comment in accordance with this Rule, and the meeting agenda item that the comment pertains to.
- (4) Persons who are permitted to provide a public comment in accordance with this Rule shall be recognized by the Chair to provide a public comment at the State Board meeting for no more than three (3) minutes; however, the Chair shall have discretion to extend the time to greater than three (3) minutes or to reduce the time to less than three (3) minutes based on the circumstances.
- (5) All persons recognized by the Chair to provide a public comment shall confine their remarks to the topic pertaining to the meeting agenda item indicated in the notice provided to the Executive Director and indicated in the recognition by the Chair. Failure to adhere to this requirement may result in the Chair rescinding the person's recognition.
- (6) Persons recognized to provide a public comment shall not directly question individual members of the State Board or the Chair without express permission of the Chair, nor shall State Board members or the State Board staff address questions directly to the commenter without permission of the Chair.
- (7) Disruptive behavior shall not be permitted in the meeting room of the State Board or in virtual meetings. The Chair may request building security or electronic meeting moderators to remove persons in violation of this requirement. Disruptive behavior includes, but is not limited to, continuing to comment after allotted time has expired or when not recognized by the Chair, violating the Rules of Order as outlined in this Rule, and any type of physical action or verbal utterance that disrupts the meeting in violation of T.C.A. § 39-17-306.
- (8) In accordance with T.C.A. § 8-44-102, this Rule does not authorize public comments at disciplinary hearings held by the State Board upon appeal from a contested case

proceeding in accordance with State Board Rule 0520-02-03-.09 and the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301, et seq.

(9) Nothing in this Rule is intended to limit the ability of any person to submit public comments in writing to State Board members ahead of a public meeting.

Authority: T.C.A. §§ 49-1-301, 49-1-302, 4-5-102, 8-44-108, 8-44-112, 39-17-306. **Administrative History:**