

**Department of State
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: _____

Notice ID(s): _____

File Date: _____

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	State Board of Education
Division:	N/A
Contact Person:	Angie Sanders
Address:	500 James Robertson Parkway, 5 th Floor, Nashville, TN 37243
Phone:	(615) 253-5707
Email:	Angela.C.Sanders@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Angie Sanders
Address:	500 James Robertson Parkway, 5 th Floor, Nashville, TN 37243
Phone:	(615) 253-5707
Email:	Angela.C.Sanders@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway		
Address 2:	Davy Crockett Building, Conference Room 1C, 1 st Floor		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	9/17/2021		
Hearing Time:	10:00 AM	<input checked="" type="checkbox"/> X <input type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

****Anyone wishing to participate electronically may access the hearing using the following information:****

URL: <https://bit.ly/3zzlo3a>

Password: SBERules

Phone: 1-415-655-0001

Access Code: 180 891 2573

Please check the State Board's website at <https://www.tn.gov/sbe/meetings.html> for any additional information regarding this rulemaking hearing. **If prohibitions on in-person gatherings due to COVID-19 prevent this hearing from occurring in-person, such information will be posted on the State Board's website and all attendees will utilize the above information to participate electronically.**

Oral comments are invited at the hearing.
 In addition, written comments may be submitted via email at angela.c.sanders@tn.gov or mailed to:
 Tennessee State Board of Education
 Attention: Angie Sanders
 Davy Crockett Tower, 5th Floor
 500 James Robertson Parkway
 Nashville, Tennessee 37243.

Written comments must be received by 4:30 PM CT on September 22, 2021 in order to ensure consideration. For further information, please contact Angie Sanders by e-mail at angela.c.sanders@tn.gov.

If attending the hearing in-person, please bring identification so that you may be checked into the building by security. Conference room 1C is located on the first floor.

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0520-01-13	School and Student Health Services
Rule Number	Rule Title
0520-01-13-.01	School Health Policies

Chapter Number	Chapter Title
0520-01-03	Academic and Instructional Requirements
Rule Number	Rule Title
0520-01-03-.05	Virtual Education

AMENDMENT

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-13
SCHOOL AND STUDENT HEALTH SERVICES**

0520-01-13-.01 SCHOOL HEALTH POLICIES.

- (1) Each local board of education shall develop and adopt standards and policies for school health services. The school health services program shall include, at a minimum, the following:
- (a) A policy providing for a physical examination of every child entering school for the first time and every student participating in interscholastic athletics, performed by a doctor of medicine, osteopathic physician, physician assistant, certified nurse practitioner, or a properly trained public health nurse.
 - (b) Procedures for verifying proof of immunization for all students, except those who are exempt by statute as provided in T.C.A. § 49-6-5001.
 - (c) A policy for excluding students with communicable diseases and for readmitting them following recovery in accordance with the Department of Health's Communicable and Environmental Diseases Rule 1200-14-01.
 - (d) For the 2021-22 school year, an LEA or public charter school may adopt a policy allowing for students who are temporarily quarantined due to a positive COVID-19 test result or possible exposure to COVID-19 to participate in remote instruction offered by the LEA or Public Charter School on a temporary basis during the period of quarantine only ("COVID-19 Quarantine Period"). Remote instruction means instruction that takes place when a student is not participating in in-person instruction provided by a teacher within the traditional school setting ("Remote Instruction").
 - 1. Students who participate in Remote Instruction during a temporary COVID-19 Quarantine Period may be counted as present if the LEA or public charter school monitors and reports attendance in accordance with the policy adopted by the LEA or public charter school, provided that such policies must require monitoring and taking daily student attendance which shall include daily periodic visual, verbal, and/or written confirmation of student participation in six and one-half (6 ½) hours of instructional time per day for grades one (1) through twelve (12) and four (4) hours of instructional time per day for Kindergarten, using multiple methods of confirming student attendance. Multiple methods of confirming student attendance two or more of the following:
 - (i) Students participating in a phone call with a teacher, with parent or legal guardian support as appropriate for the age of the student;
 - (ii) Students participating in synchronous virtual instruction;

- (iii) Students completing work in a learning management system;
 - (iv) Students submitting work via hard-copy or virtual formats; or
 - (v) Other method the LEA or public charter school identifies as appropriate.
- 2. LEAs and public charter schools shall report student attendance to the Department via the LEA's or public charter school's student information system utilizing the attendance code set by the Department for students participating in Remote Instruction.
- 3. LEAs and public charter schools shall ensure that Remote Instruction is provided by teachers who are properly endorsed and licensed to teach in Tennessee in compliance with state law, State Board Rules Chapter 0520-02-03, and State Board Policy 5.502. LEAs and public charter schools shall also ensure that Remote Instruction is provided utilizing State Board approved textbooks and instructional materials, unless a waiver has been granted to the LEA or public charter school for the use of unapproved materials pursuant to state laws.
- 4. LEAs and public charter schools may only permit students to participate in Remote Instruction pursuant to this rule during a temporary COVID-19 Quarantine Period in accordance with State Board Rule 0520-01-03-.05 or in alignment with requirements for temporary Remote Instruction specified in the LEA's or public charter school's policy required by this rule.
- 5. LEAs or public charter schools may only allow students to participate in Remote Instruction on a permanent basis through the LEA's public virtual school or the LEA's or public charter school's virtual education program pursuant to State Board Rule 0520-01-03-.05.
- 6. Nothing in this rule prohibits an LEA or public charter school from allowing a student who tests positive for COVID-19 and meets the requirements of state law and State Board Rule 0520-01-02-.10 on homebound instruction to receive such instruction remotely as part of the LEA or public charter school's virtual education program for homebound students as provided in State Board Rule 0520-01-03-.05.
- (e) A Drug Free Schools Policy that addresses drug and alcohol related medical emergencies, guidelines for reporting drug and alcohol related incidents and referral of students.
 - 1. Local boards of education may implement a drug testing program, however before a drug testing program is implemented the local board of education shall establish policies procedures and guidelines on drug testing. Local boards of education may adopt the State Board's Model Drug Testing Policy 4.201.
- (f) Procedures for reporting suspected cases of child abuse and neglect as required by T.C.A. § 37-1-403.
- (2) Each LEA or consortium of LEAs that receives coordinated school health funding pursuant to T.C.A. § 49-1-1002 shall adopt a coordinated school health policy in accordance with the State Board's Coordinated School Health Program Policy 4.204.

Authority: T.C.A. §§ 49-1-302,49-6-5001, and Public Chapter 652 of 2020. **Administrative History:** Original rules filed May 3, 2018; effective August 1, 2018. Repeal and new rule filed January 7, 2021; effective April 7, 2021.

AMENDMENT
RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-03
ACADEMIC AND INSTRUCTIONAL REQUIREMENTS

TABLE OF CONTENTS

0520-01-03-.01	Purpose	0520-01-03-.08	Repealed
0520-01-03-.02	Uniform Grading	0520-01-03-.09	Special Education Programs and Services
0520-01-03-.03	Academic Program Requirements	0520-01-03-.10	Repealed
0520-01-03-.04	Repealed	0520-01-03-.11	
0520-01-03-.05	Virtual Education	through	
0520-01-03-.06	Graduation Requirements	0520-01-03-.13	Repealed
0520-01-03-.07	Civics	0520-01-03-.14	Summer Learning Program Requirements
		0520-01-03-.15	Universal Student Screeners

0520-01-03-.05 VIRTUAL EDUCATION.

(1) Public Virtual Schools

- (a) A “public virtual school” is a public school that uses technology to deliver a significant portion of instruction to its students via the internet in a virtual or remote setting. Public virtual schools may be established in accordance with T.C.A. §§ 49-16-201 – 49-16-216 and the rules and regulations of the State Board. The LEA establishing the public virtual school is directly responsible for the performance of the public virtual school and ensuring the school remains in compliance with all applicable state and federal laws and rules and regulations of the State Board regardless of whether the LEA directly operates the school or contracts with an entity for the management or operation of the school.
- (b) Public virtual schools shall:
1. Be established and approved by an LEA.
 2. Use technology to deliver a significant portion of instruction to its students via the internet in a virtual or remote setting.
 3. Review and provide access to a sequential curriculum that meets or exceeds the academic standards adopted by the State Board utilizing state-approved textbooks and instructional materials, unless a waiver has been granted to the LEA in accordance with T.C.A. § 49-6-2206 and State Board rules chapter 0520-01-18.
 4. Meet the equivalent of the one hundred and eighty (180) days of instruction per academic year and six and one-half (6½) hours of instructional time per day pursuant to T.C.A. § 49-6-3004, provided, however, that a student at the student’s own pace may demonstrate mastery or completion of a course or subject area and be given credit for the course or subject area.
 5. Administer all state tests required of public school students to students enrolled in a virtual school in a proctored environment consistent with state test administration guidelines.

6. Be evaluated annually by the LEA.
 - (i) The evaluation must assess the following utilizing a standardized template provided by the Department of Education:
 - (I) Academic, fiscal, and operational performance; and
 - (II) The extent to which the school demonstrates increases in student achievement.
 - (ii) The results of such evaluation shall be publicly reported through the following methods:
 - (I) Posting of the results of the evaluation, utilizing a standardized template provided by the Department of Education on both the virtual school's and the LEA's website;
 - (II) Direct distribution of the evaluation, utilizing a standardized template provided by the Department of Education, to all enrolled families. Such distribution may be accomplished via e-mail, U.S. mail, or other method determined by the LEA.
7. Ensure that students with special needs, including students with disabilities and limited English proficiency, are not excluded from enrolling and participating in virtual schools; and receive all services required by the student's Individualized Education Program (IEP), Section 504 Plan, or Individual Learning Plan (ILP).
8. Ensure that each virtual school course has an assigned teacher of record who is properly endorsed and licensed to teach in Tennessee in compliance with state law, State Board Rules Chapter 0520-02-03, and State Board policy 5.502. For purposes of virtual schools, teacher of record means the teacher who:
 - (i) provides instruction for the course based on the Tennessee Academic Standards;
 - (ii) ensures student progress toward the Tennessee Academic Standards;
 - (iii) monitors the physical safety and well-being of students;
 - (iv) takes attendance and reports course grades for students; and
 - (v) if the teacher is employed by the LEA, claims instructional time for instructionally available students.
9. Ensure that all teachers employed by the LEA serving as teacher of record within the virtual school are evaluated annually pursuant to T.C.A § 49-1-302 and State Board Rules Chapter 0520-02-01.
10. Ensure students have access to instructional materials, technology such as a computer and printer that may be necessary for participation in the virtual school, and an internet connection used for school work.

11. Meet class size standards established by T.C.A. § 49-1-104. A public virtual school may increase the enrollment in virtual classes by up to twenty-five percent (25%) over the class size maximum established by T.C.A. § 49-1-104 if the school demonstrates student achievement growth at a level of "at expectations" or greater, as represented by the Tennessee Value-Added Assessment System (TVAAS) in the prior year where TVAAS data is available.
 - (i) Public virtual schools shall continue to comply with class size and case load requirements for special education as defined in State Board Policy 3.206. Public virtual schools shall review individual teacher's student caseloads, and shall to consult with the teacher when determining class size and student caseloads, to ensure that teachers can meet the needs of students, including students with disabilities, as determined by the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), Section 504 of the Rehabilitation Act (29 U.S.C. § 701 et seq.), and any student's IEP.
 - (ii) Public virtual schools shall maintain accurate records and monitor compliance with class size requirements.
- (c) Public virtual schools shall comply with all compulsory attendance requirements and shall monitor and report daily attendance as required in T.C.A. § 49-6-3007, including:
 1. Monitoring and taking daily student attendance which shall include seeking and receiving daily visual, verbal, and/or written confirmation of student participation in six and one-half (6 ½) hours of instructional time per day for grades one (1) through twelve (12) and four (4) hours of instructional time per day for Kindergarten, using multiple methods of confirming student attendance. Multiple methods of confirming student attendance include two or more of the following:
 - (i) Students participating in a phone call with a teacher, with parent or legal guardian support as appropriate for the age of the student;
 - (ii) Students participating in synchronous virtual instruction;
 - (iii) Students completing work in a learning management system;
 - (iv) Students submitting work via hard-copy or virtual formats; or
 - (v) Other method the LEA or public charter school identifies as appropriate to track individual student participation in instructional activities.
 2. Each LEA and public charter school shall develop and implement procedures for determining an excused versus unexcused absence, the internal attendance tracking system to be used, and how the LEA will communicate attendance policies and/or procedures to parents and/or legal guardians and students.
 3. The reporting of attendance to the Department must be via the LEA's student information system utilizing the attendance code set by the Department of Education.
- (d) The LEA establishing the public virtual school is required to implement the LEA's progressive truancy intervention plan, as required by T.C.A. § 49-6-3009 and State Board Rule 0520-01-02-

.17, for students enrolled in the virtual school and report truancy to the juvenile court having jurisdiction over that student in compliance with state law.

- (e) On or before August 1 of each year, the public virtual school shall notify all LEAs of the enrollment of students residing within another LEA's jurisdiction. LEAs shall be notified within two (2) weeks when changes occur relative to students residing within the LEA's jurisdiction.
- (f) Once a non-resident student has been accepted by and enrolled in a public virtual school, it shall be the responsibility of the LEA that has established the public virtual school to maintain enrollment of that student until such a time as the student is withdrawn by the parent or guardian or withdrawn from the virtual school in accordance with the LEA's virtual school policy. If the student is withdrawn, the public virtual school shall send transcripts and other student records to the receiving school in a timely manner.
- (g) Public virtual schools and the LEA establishing a public virtual school shall maintain accurate records regarding the operation and compliance of the public virtual school and shall be subject to periodic inspection by the Department of Education as specified in Rule 0520-01-02-.01 and T.C.A. § 49-1-201. The LEA and the public virtual school shall comply with requests for information from the Department in a timely manner.

(2) Virtual Education Programs.

- (a) Virtual education programs may be established in accordance with T.C.A. §§ 49-16-101 – 49-16-105 and this rule. A “virtual education program” means a course or series of courses offered through the use of technology by an LEA or public charter school to provide students a broader range of educational opportunities. Providing students a broader range of educational opportunities includes any of the following:
 - 1. Academic remediation or enrichment, or providing students access to a wider range of courses.
 - 2. Continuity of educational service for students who are homebound pursuant to 0520-01-02-.10 or 0520-01-09-.07.
 - 3. Continuity of educational service for students who are quarantined pursuant to 0520-01-13-.01.
 - 4. Continuity of educational service for students enrolled in an alternative school pursuant to 0520-01-02-.09.
- (b) Virtual education programs must be comprised of individual courses accessed by students in an entirely virtual setting; however, teachers of virtual education program courses may meet with students in-person for non-instructional time such as office hours.
- (c) Remote instruction via a virtual education program shall not constitute the majority of a student's total instructional time per school semester unless the student meets one of the following criteria:
 - 1. The student is temporarily receiving all of their instruction via a virtual education program pursuant to paragraph (2)(a)(2) or (2)(a)(4) of this rule;
 - 2. The student is taking course coursework virtually so they may participate in a work-based learning program or internship that takes place during regular school hours;

3. The student is accessing Advanced Placement (AP) courses or similar advanced coursework virtually; or
 4. The student is taking virtual coursework for purposes of credit recovery.
- (d) A student may participate in a virtual education program without enrolling a virtual school; provided, however, that the student must be enrolled at the school where the student receives the majority of his/her instruction each school year.
- (e) Student participation in a virtual education program shall be at the discretion of the LEA or public charter school where the student is enrolled.
- (f) Each LEA and public charter school offering a virtual education program shall maintain attendance policies and procedures for determining when a student is present in a course offered via the virtual education program, including plans for seeking and receiving daily periodic visual, verbal, and/or written confirmation of student participation in the courses offered within a virtual education program using multiple methods of confirming student attendance. Examples of methods of confirming attendance include two or more of the following:
1. Students participating in a phone call with a teacher, with parent or legal guardian support as appropriate for the age of the student;
 2. Students participating in synchronous virtual instruction;
 3. Students completing work in a learning management system;
 4. Students submitting work via hard-copy or virtual formats; or
 5. Other method the LEA or public charter school identifies as appropriate.
- (g) Each LEA and public charter school shall develop procedures for determining an excused versus unexcused absence, the internal attendance tracking system to be used, and how the LEA or public charter school will communicate attendance policies and/or procedures to parents and/or legal guardians and students.
- (h) The reporting of attendance to the Department must be via the LEA or public charter school's student information system utilizing the attendance code set by the Department of Education.
- (i) Classes offered via a virtual education program shall comply with the class size requirements set forth in T.C.A. § 49-1-104(h) and class size and case load requirements for special education as defined in State Board Policy 3.206. Instruction provided virtually by a non-virtual public school, including a public charter school, pursuant to the LEA's or public charter school's approved continuous learning plan in accordance with State Board Rules Chapter 0520-01-17 shall be considered a virtual education program for purposes of compliance with T.C.A. § 49-1-104(h).
- (j) Accountability
1. The results of student assessments for courses taken as part of a virtual education program and other accountability measures will be attributed to the school where the student is enrolled.

2. Promotion, certificates, and diplomas for a student taking courses as part of a virtual education program shall be determined and issued by the school where the student is currently enrolled.
- (k) Each LEA or public charter school offering a virtual education program shall:
1. Ensure there is a teacher of record for each virtual education program course who is properly endorsed and licensed to teach in Tennessee in compliance with state law, State Board Rules Chapter 0520-02-03, and State Board policy 5.502. For purposes of virtual education programs, teacher of record means the teacher who:
 - (i) provides instruction for the course based on the Tennessee Academic Standards;
 - (ii) ensures student progress toward the Tennessee Academic Standards;
 - (iii) monitors the physical safety and well-being of students enrolled in the course;
 - (iv) takes attendance and reports student course grades to the school where the student receives the majority of instruction; and
 - (v) if the teacher is employed by the LEA, claims instructional time for instructionally available students.
 2. Ensure that all teachers employed by the LEA serving as teacher of record for coursework within the virtual education program are evaluated annually pursuant to T.C.A § 49-1-302 and State Board Rules Chapter 0520-02-01.
 3. Ensure teachers provide instruction utilizing state approved textbooks and instructional materials unless a waiver has been granted pursuant to T.C.A. § 49-6-2206 or § 49-13-111.
 4. Ensure participating students have access to instructional materials, technology such as a computer and printer that may be necessary for participation in the virtual program, and an internet connection.
 5. Ensure that students with special needs, including students with disabilities and limited English proficiency, are not excluded from enrolling and participating in virtual education programs and receive all services required by the student's Individualized Education Program (IEP), Section 504 Plan, or Individual Learning Plan (ILP) .
 6. Establish a virtual education program policy that contains the following:
 - (i) Student eligibility and participation requirements, including interventions for students struggling to maintain eligibility requirements, and a process for removing students from virtual education program courses who fail to maintain eligibility requirements and placing them into a comparable in-person course.
 - (ii) An articulated enrollment agreement for students from another LEA or public charter school to access virtual education program courses, if the LEA or public charter school chooses to allow such arrangements.

Authority: T.C.A. §§ 49-16-101 et. seq, 49-16-201 et. seq., 49-1-201, 49-1-104, and Public Chapter 652 of 2020.
Administrative History: Original rule certified June 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed October 3, 1985; effective January 14, 1986. Amendment filed January 17, 1986; effective April 15, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed August 26, 1986; effective November 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed April 28, 1992; effective July 29, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed January 21, 1994; effective May 31, 1994. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed January 14, 1997; effective May 30, 1997. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed July 13, 1998; effective November 27, 1998. Amendment filed November 18, 1999; effective March 30, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed March 31, 2003; effective July 29, 2003. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed June 30, 2005; effective October 28, 2005. Amendments filed December 28, 2005; effective April 28, 2006. Amendments filed September 6, 2013; effective February 28, 2014. Amendment filed April 6, 2015; effective July 5, 2015. Amendments filed October 25, 2017; effective January 23, 2018. Amendments filed March 20, 2018; to have been effective June 18, 2018. However, on May 24, 2018, the Government Operations Committee filed a 5-day stay; new effective date June 23, 2018. Amendments filed January 11, 2019; effective April 11, 2019.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 7/26/2021

Signature: 

Name of Officer: Angela C. Sanders

Title of Officer: General Counsel

Department of State Use Only

Filed with the Department of State on: _____

Tre Hargett
Secretary of State