

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

KARRIE MARREN,)	
)	
Petitioner,)	
)	
v.)	No.: 19-1512-I
)	
TENNESSEE SCHOOL BOARDS)	
ASSOCIATION,)	
)	
Respondent.)	

REPLY TO PETITIONER’S MOTION TO SHOW CAUSE AND
MEMORANDUM IN SUPPORT

COMES the Respondent Tennessee School Boards Association (“TSBA”), by and through counsel, and, in further support of its Reply to Petitioner’s Motion to Show Cause and Memorandum in Support, states as follows:

Petitioner’s cause of action sought documents under the Tennessee Public Records Act (“TPRA”) relating to (1) unpublished training materials of Respondent, TSBA; (2) communications between members of the Tennessee General Assembly (“legislature” or “legislators”) and the TSBA; and (3) certain documents regarding position statements that TSBA may have disseminated to legislators or other undefined and undesignated “public officials.” TSBA provided responsive documents to the first request and denied the other two requests. The other two requests were properly denied because communications with legislators are privileged, and the TSBA is not a governmental equivalent subject to the TPRA as it is a separate nonprofit. Petitioner filed a Motion to Show Cause to try to coerce TSBA into producing requested materials under the weight of this Court’s gavel. However, Petitioner is wrong on the law, and the Motion to Show Cause should be denied.

I. TSBA IS NOT SUBJECT TO THE TPRA BECAUSER IT IS NOT THE FUNCTIONAL EQUIVALENT OF A GOVERNMENTAL AGENCY.

Petitioner submits that TBSA is the functional equivalent of a governmental agency, subjecting TSBA to the strictures of the TPRA, and she relies heavily on *Memphis Publ'g Co. v. Cherokee Children & Family Servs.*, 87 S.W.3d 67 (Tenn. 2002), in support of this claim. See generally Mem. of Law in Supp. of Pet'r's Mot. to Show Cause. She is mistaken on several fronts, as *Cherokee Children* is distinguishable.

In *Cherokee Children*, a nonprofit generated 100% of its operating revenues by providing services under contracts with the Tennessee Department of Human Services (“TDHS”) and, therefore, all of the nonprofit’s records related to state business. *Cherokee Children*, 87 S.W.3d at 70–71, 78–80. Given the number of contracts the nonprofit performed, TDHS had control over how Cherokee operated. *Id.* at 79. The publisher of Memphis’s daily paper of record sued the nonprofit under the TPRA to obtain records relating to the nonprofit’s contracts with the state. *Id.* at 72–73. The trial court held that the nonprofit’s records belonged to the state and ordered their disclosure, but it ruled that the nonprofit was not a governmental actor. *Id.* at 73. The Court of Appeals reversed, also ruling that the nonprofit was not a governmental actor, but finding the trial court’s order to release all records to be overbroad. *Id.* at 73–74.

The Tennessee Supreme Court reversed as to whether the nonprofit was a governmental entity, and that was dispositive of what records were subject to disclosure. First, the Court construed the term “public records” in Tenn. Code Ann. § 10-7-503(a) to include “records in the hands of any private entity which operates as the functional equivalent of a governmental agency.” *Id.* at 79. The Court reasoned that “a governmental agency cannot, intentionally or unintentionally, avoid its disclosure obligations under the [TPRA] by contractually delegating its responsibilities to a private entity.” *Id.* Analyzing the approaches in numerous jurisdictions, the Court adopted a

multi-factor test for determining when a private entity is the functional equivalent of a governmental agency. Under *Cherokee Children*, Tennessee courts confronted with this question analyze whether a governmental agency has delegated its responsibilities to a private entity and the following non-exhaustive factors: “(1) the level of government funding of the entity; (2) the extent of government involvement with, regulation of, or control over the entity; and (3) whether the entity was created by an act of the legislature or previously determined by law to be open to public access.” *Id.* Applying this framework faithfully, Petitioner’s arguments fail on their faces.

A. Only a Small Portion of TSBA’s Revenues Come from Government Contracts.

Petitioner claims that, because TSBA is “funded by government, both directly and indirectly,” TSBA is the functional equivalent of a governmental agency. Petitioner misses the mark. Respondent is neither subsidized by legislative appropriation nor awarded grants. Rather, Respondent is primarily funded, as set forth on its Form 990, through “Program Service Revenue.” *See, e.g.*, Compl., Ex. 1 at 1 (line 9); *see also* Compl. Ex. 2 at 1 (same). Although governmental agencies purchase these services, *see, e.g.*, Compl., Ex. 3 (TSBA’s contract with the State of Tennessee), whether the government subsidizes TSBA or buys what TBSA sells is an important distinction under the law. TSBA is a nonprofit service provider that provides educational material to school systems and, as such, is similar to the Internal Medicine Education Foundation, Inc. (“IMEF”) discussed in *Gautreaux v. Internal Med. Educ. Found., Inc.*, 336 S.W.3d 526 (Tenn. 2011). There, the Tennessee Supreme Court held that a nonprofit medical educational services provider was not the “functional equivalent of a government agency” for TPRA purposes merely because a contractual relationship existed between the nonprofit and the state. *Id.* at 529–31; *see also Cherokee Children*, 87 S.W.3d at 79 (“We caution that our holding clearly is not intended to allow public access to the records of every private entity which provides any specific, contracted-

for services to governmental agencies. A private business does not open its records to public scrutiny merely by doing business with . . . state or municipal government.”). TSBA’s program service revenue is similar to the payments made by a governmental agency to IMEF for its medical educational services. Therefore, these program service revenue payments by the state do not establish that TSBA is a functional equivalent of a governmental agency.

In contrast to the nonprofit in *Cherokee Children*, too, which derived 100% of its revenues from contracts with the state, TSBA has only one contract with the state for the school board training sessions, *see* Compl., Ex. 3, which accounted for approximately only 12% of TSBA’s revenues in 2017, *see* Compl., Ex. 2 at 1–2 (divide \$296,823 from the second sub-line of line 4c on page 2, representing revenue for the school board training, by \$2,474,860 from line 12 on page 1, representing total annual revenue). This year, with the training cancellations due to COVID-19, TSBA estimates that its revenue from training will be less than 9% of its revenue. TSBA does not service any other contracts with the State Board of Education. According to the charter/constitution of TSBA, its stated purpose is to advance and improve public education, work for efficient and effective organization of public schools, get financial support for schools from the state, gather and disseminate information, inform school boards of education legislation, advocate for legislation that will help schools, sponsor, develop, and encourage programs that improve public education, hold conferences for board members, and to cooperate with organizations and agencies interested in public education. *See generally* Compl., Ex. 5. None of these purposes involve any regulatory authority over any governmental function, unlike the TSSAA, and nobody is required to buy TBSA’s training materials, unlike the contractor in *Cherokee Children*.

Importantly, Petitioner provides no evidence whatsoever to suggest that any governmental agency has ever tried to “avoid its disclosure obligations” by delegating its functions to the TSBA, the threshold inquiry in the *Cherokee Children* framework. See 87 S.W.3d at 79 (holding that, “[b]eyond *this* consideration,” other enumerated factors inform whether a private actor is the functional equivalent of a governmental agency (emphasis added)). If adopted by this Court, Petitioner’s extreme view of *Cherokee Children* and its progeny will wreak havoc among private actors like TSBA, which does not have any regulatory or enforcement power whatsoever and is merely a provider of material and training, who are working to support education in Tennessee. It would be unreasonable and fly in the face of controlling authority to hold that every contract service provider, lacking in any regulatory or enforcement power, is subject to the TPRA merely because it does business with a state or local government entity. *Contra Cherokee Children*, 87 S.W.3d at 79. Such a ruling would also force any private entity providing educational support or services to choose between opening its record books to public scrutiny while attempting to continue its work or abandoning public education altogether. Surely the General Assembly and did not intend such a result and, indeed, the courts of Tennessee have never before expanded the reach of the TPRA so sweepingly.

B. TSBA Does Not Organize School Boards or Set Ethical Standards.

One of the hallmarks of a functional equivalent of a government agency is whether and to what extent the entity performs a governmental or public function. *City Press Commc’ns, LLC v. Tenn. Secondary Sch. Athletic Ass’n*, 447 S.W.3d 230, 235 (Tenn. Ct. App. 2014). Petitioner states that the TSBA directs school boards and sets ethical standards. Mem. of Law in Supp. of Pet’r’s Mot. to Show Cause at 4. Petitioner, however, is wrong.

TSBA does not perform any governmental or public functions. TSBA has no regulatory authority. In fact, if a school board member fails to attend the school board training academy, TSBA has no power whatsoever to discipline that school board member in any way; it can only report the board member's failure to meet the annual training requirement to the State Department of Education ("TDOE"). The State Department of Education takes the ensuing administrative action against the board member, if any—not Respondent.

Petitioner quotes frequently from the case of *City Press Commc'ns.*, *see generally* Mem. in Supp. or Pet'r's Mot. to Show Cause, but that case involved the Tennessee Secondary School Athletic Association ("TSSAA"), which is an actual regulatory agency sanctioned by the State Board of Education and possesses myriad enforcement powers that TSBA does not possess. In its rules, the State Board of Education recognizes TSSAA as the entity to supervise and regulate athletic activities. *See* Tenn. Comp. R. & Regs. 0520-01-02.08 (attached hereto as Exhibit 1). Under this broad grant of regulatory authority from the State Board of Education, TSSAA has developed an extensive set of regulations that govern every aspect of more than twenty-one (21) sports and activities at both the middle school and secondary school levels. *See About TSSA*, TENN. SECONDARY SCH. ATHLETIC ASS'N, <https://tssaa.org/about-tssaa> (last visited May 12, 2020). Upon visiting this site, one will discover over sixty (60) pages of regulations that cover every aspect of interscholastic athletic competition at the middle and high school levels, including, but not limited to, regulations covering academic eligibility for students, numbers of semesters of eligibility, participation physicals, coaching eligibility requirements, fines, penalties and sanctions imposed by TSSAA, recruitment rules, transfer rules, sports calendars, scrimmage rules, and financial aid. Applying the authority given to it by the State Board of Education, TSSAA enforces its rules against the member schools unilaterally. Importantly, the rules that TSSAA promulgates are not

subject to the approval of the State Department of Education, and there is no appeal to either the State Department of Education or to the State Board of Education for any sanction, penalty, disagreement over the interpretation of a rule, or any other decision made by the legislative council or the board of control of TSSAA. Hence, TSSAA exercises complete operational jurisdiction over interscholastic athletics as sanctioned by the State Board of Education. *Cf. Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 291–93, 295–302 (2001) (in a federal civil rights case pursuant to 42 U.S.C. § 1983, describing TSSAA’s structure and functions, and holding that its actions were fairly attributable to the State of Tennessee because “[t]he entwinement down from the State Board [of Education to TSSAA] is . . . unmistakable, just as the entwinement up from the member public schools is overwhelming”).

In contrast, TSBA is responsible for developing and conducting educational modules for the school board training academy. *See* Tenn. Comp. R. & Reg. 0520-01-02-.11 (attached hereto as Exhibit 2). Any module that is offered for credit toward the mandatory training requirement for school board members may only be developed with the permission of the State Board of Education, and all program content is approved by the State Board of Education. TSBA can only *recommend* programs because it is only a service provider, having neither approval powers nor regulatory powers. Unlike the TSSAA, the TSBA has not received a broad grant of policy power from the State Board of Education. Therefore, the *City Press Commc’ns* case is distinguishable; TSSAA has regulatory authority that TSBA clearly does not possess.

C. TSBA Is Not Controlled by Government Officials.

Another one of the hallmarks of a functional equivalent of a governmental agency is whether and to what extent the state controls the entity. *City Press Commc’ns*, 477 S.W.3d at 235 (quoting *Cherokee Children*, 87 S.W.3d at 78–79). Petitioner contends that TSBA is controlled

by the state. Mem. of Law in Supp. of Pet'r's Mot. to Show Cause at 8–9. Here again, however, Petitioner is wrong.

The governing institution for a school district is the district board of education as a body; that body is made up of individual members, but the institution is not the board's individual members themselves. Tenn. Code Ann. §§ 49-1-101 (providing that the governing body of a school system is the board itself), 49-2-202(g) (providing that a majority of a board must be required to transact business for a school board). Similarly, TSBA's Board is made up of individual school board *members*, not school *boards*. Therefore, TSBA's activities are not carried out by governing institutions. *See* §§ 49-1-101, 49-2-202(g). Moreover, TSBA has no control or authority over local boards of education, whereas TSSAA did, and there are no *ex officio* members from any governmental entity on the Board of Directors of the TSBA.

D. TSBA Was Not Created by the Tennessee General Assembly and Has No Statutory Authority to Perform Any Governmental Function.

Whether an entity was created by the legislature also informs whether the entity is a functional equivalent of a governmental agency. *City Press Commc'ns*, 477 S.W.3d at 237. Petitioner argues that TSBA, “by its own acknowledgement, . . . has had special legislative recognition and authorization to perform a governmental function since 1953.” Mem. of Law. in Supp. of Pet'r's Mot. to Show Cause at 9 (citation omitted). Yet, even as Petitioner recognizes, TSBA was not created by a legislative act. *Id.* To the extent that TSBA has been “recognized” by the General Assembly at all, Tennessee Code Ann. § 49-2-2001 merely recognizes TSBA's existence; that statute does not establish or create the TSBA. Rather, it simply recognizes that TSBA is “the organization and representative agency of the [individual] members of school boards” in Tennessee. Tenn. Code Ann. § 49-2-2001(a). The entities of the state, such as the State Board of Education or local educational authorities, are empowered, but not mandated, to

cooperate with TSBA in training programs. At most, this statute authorizes districts to reimburse individual board members for dues and expenses. Tenn. Code Ann. § 49-2-2001(c)–(d). Nowhere does the statute empower the TSBA to act on behalf of the government or perform any regulatory function, unlike the TSSAA, which has actual regulatory authority over Tennessee interscholastic athletic programs.

The other cases that Petitioner cites are also easily distinguished. *Friedmann v. Corr. Corp. of Am.*, No. M2012-00212-COA-R3-CV, 2013 Tenn. App. LEXIS 150 (Tenn. Ct. App. Feb. 28, 2013), involved the operation of a prison by a private entity. Incarcerating convicted criminals to separate them from civil society and punish them for morally culpable wrongdoing is clearly a function of government, rendering any private actor doing such work the functional equivalent of a governmental agency. The TSBA does no such comparable work and does not have the vast policy or operational authority granted to a prison operator. Similarly, in *Allen v. Day*, 213 S.W.3d 244 (Tenn. Ct. App. 2006), the entity at issue was granted vast operational powers over an entertainment center that are totally inapposite from the TSBA’s relationship with the State of Tennessee. Finally, Petitioner cites *Wood v. Jefferson Cty. Econ. Dev. Oversight Comm., Inc.*, No. E2016-01452-COA-R3-CV, 2017 Tenn. App. LEXIS 643 (Tenn. Ct. App. Sep. 26, 2017), where the entity in question coordinated the development of an entire county and specifically took on duties of the county for the purpose of “lessening the burdens of government.” *Id.* at *6, 12–13. The TSBA has taken on no such burden of government, and this case is similarly inapplicable.

E. TBSA’s Participation in the Tennessee Consolidated Retirement System Does Not Make It the Functional Equivalent of a Governmental Agency.

Petitioner also scours the Tennessee Code to find some other reason upon which to claim that TSBA is the functional equivalent of a governmental entity. She contends that, since TSBA is a member of the local government pool in the Tennessee Consolidated Retirement System, then

it must, by some overreaching application of logic, be a governmental entity. Mem. of Law in Supp. of Pet'r's Mot. to Show Cause at 11–12. Bracketing and setting aside that participation in a state-controlled retirement fund is not one of the controlling *Cherokee Children* factors, the office of the state treasurer produces an annual report of the Tennessee Consolidated Retirement System (“TCRS”). That report lists some entities in a “Political Subdivision Participants” category of the retirement system, under “Miscellaneous Agencies.” TENN. DEP’T OF TREAS., COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2019, at 123 (2019), https://treasury.tn.gov/Portals/0/Documents/Retirement/CAFR%20Reports/2019/2019%20CAFR_Full%20Report.pdf (attached hereto as Exhibit 3). As one of the “Miscellaneous Agencies,” TSBA has merely been invited and allowed to invest funds in the TCRS for the benefit of its employees. The state does not make any contribution for, nor does it supplement the funds that these agencies invest on behalf of their employees to provide a retirement program. Asserting that any agency that has been invited to become a member of the TCRS, exercised its option for membership, and borne all of the financial requirements of membership has also transformed itself into a “public entity” for the purposes of open records scrutiny taxes the limits of logic and statutory construction beyond rational limits.

II. TO THE EXTENT THAT TSBA WITHHELD ANY DOCUMENTS, IT DID SO APPROPRIATELY UNDER BOTH ARTICLE II, § 2 OF THE TENNESSEE CONSTITUTION AND THE TPRA’S EXCEPTIONS.

The Tennessee Constitution provides, in pertinent part, that “No person or persons belonging to one of [the] departments [of the state government] shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.” Tenn. Const. art. II, § 2. On her Public Records Request form, Petitioner requested the following records: “Provide any and all communications *with legislators*, school board members, superintendents, or

any other elected officials or public officials about your 2018 and 2019 Legislative Agendas.” Compl., Ex. 6 (emphasis added). As such, this request is for communications “with legislators,” and enforcing her request would unconstitutionally restrict the powers of the legislature to conduct its business and run afoul of the TPRA’s statutory exemptions.

As for the structural constitutional considerations, a Tennessee Attorney General Opinion explains that

[t]he Tennessee Court of Appeals has refused to enforce the state Open Meetings Act, Tenn. Code Ann. §§ 8-44-101, *et seq.*, against the General Assembly for a variety of reasons. *Mayhew v. Wilder*, 46 S.W.3d 760 (Tenn. Ct. App. 2001), *p.t.a. denied* (2001). Among these reasons, the Court noted that, even if the act applied to the General Assembly, one session of the General Assembly cannot restrict the power of its successor. 46 S.W.3d at 770. The Court also stated that *deciding the judiciary must judge when legislative business ought to be kept secret “would greatly diminish the Legislature’s granted power to make its own rules, and to exercise all the powers necessary for a branch of the Legislature of a free State.’ Art. II, § 12.”* 46 S.W.3d at 773.

05 Op. Tenn. Att’y Gen. 099 (2005), 2005 Tenn. AG LEXIS 103, *13–14 (emphasis added). The Opinion goes on to explain that the TPRA should similarly be unenforceable against the legislature because doing so would similarly invite the judiciary to police what is properly the province of the legislature. *Id.* at *14. The Opinion does state that this argument is weaker when made against the records of an individual legislator, *id.*, but that is not the nature of Petitioner’s request here. Rather, Petitioner is specifically asking for communications regarding the “2018 and 2019 Legislative Agenda” and is therefore asking for information regarding legislative matters.

Furthermore, *Mayhew* states, “We have noted how the Tennessee Open Meetings Act does not apply to the Legislature and how, even if it did, it would not, in our opinion, bind a subsequent General Assembly. Therefore, this case is not persuasive authority for the plaintiffs.” *Mayhew v. Wilder*, 46 S.W.3d 760, 774 (Tenn. Ct. App. 2001). Therefore, the TPRA would not apply to a

subsequent legislature, such as the one at issue, and the TPRA is inapplicable as to these requested communications.

As for the TPRA's statutory exceptions, in the case of *Griffin v. City of Knoxville*, 821 S.W.2d 921 (1991), the Tennessee Supreme Court looked to the definition of "public record" contained in Tenn. Code Ann. § 10-7-301, a statute that regards the Public Records Commission that is separate and apart from the TPRA, to define what a "public record" is under the TPRA. The *Griffin* Court relied on *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67, 75 (Tenn. 2002), wherein the Tennessee Supreme Court recognized that the definition of "public record" in Part 3 of the TPRA provides "imperfect guidance" in defining the "records" mentioned in Part 5, Section 10-7-503, because the Section 10-7-301(6) definition does not expressly apply to other parts of the TPRA. However, the Court adopted the definition of "public record" provided in Section 10-7-301(6) for "records" in Section 10-7-503. *See id.* at 75, 79.

Using this same logic from *Griffin*, and due to a 2001 change to Tenn. Code Ann. § 10-7-301(1), the Court should construe "Agency" in such a way to exclude the legislature and hold that communications with legislators are excepted from disclosure under the TPRA. For example, according to the Tennessee Attorney General, this Court has already approved of such reasoning in the 2004 case of *Adams v. State*:

The 2001 amendment, therefore, explicitly excluded the legislative branch from the definition of "agency." Like the definition of "public record," the exclusion provides that it is only for the purposes of Part 3, which concerns the Public Records Commission. But, under the reasoning of the Tennessee Supreme Court in *Griffin*, it can be argued that this definition should be applied to determine the scope of public records available for inspection under Tenn. Code Ann. §§ 10-7-501, *et seq.* The Tennessee Chancery Court agreed with this reasoning in *Adams v. State*, Davidson County Chancery Court No. 04-3013-I (November 9, 2004) The Chancellor's ruling was not appealed and, therefore, is now final.

05 Op. Tenn. Att’y Gen. 099 (2005), 2005 Tenn. AG LEXIS 103, *7–8. Therefore, a specific statutory exception for legislative materials exists under the TPRA. The Court should not aid Petitioner’s back-door attempt to improperly obtain legislative material in violation of the Tennessee Constitution and TPRA.

As for another statutory exception, although the records of some entities that are similar to TSBA may be subject to open records scrutiny, there is an express statutory exception for entities that, under other circumstances, might be subject to the TPRA’s disclosure requirements. However, where a nonprofit entity makes its Form 990 available to the public, as TSBA does, *see About, TENN. SCH. BD. ASS’N*, <https://tsba.net/about/> (last visited May 12, 2020) (navigate to “TSBA is a 501(c)(3) non-profit corporation. For additional information click here,” and click the hyperlinked word “here” to be taken to a searchable database of Forms 990, where any member of the public can obtain TSBA’s federal nonprofit tax returns), the entity is exempt from the TPRA. Indeed, Petitioner cannot deny that TSBA’s Forms 990 are publicly accessible because she included copies from two years as exhibits to her Complaint. *See generally* Compl., Ex. 1, 2. According to the clear and unambiguous language of the statute, TSBA is exempt from disclosure under the TPRA. Petitioner’s remedy, if any, is in the General Assembly—not in this Court.

III. PETITIONER MISREPRESENTS WHAT TSBA DID DISCLOSE.

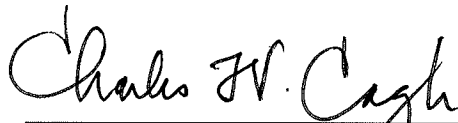
Respondent provided training materials requested, as well as a “Board Policies and Operations” Notebook, a “Planning: A Joint Venture” Notebook, and a survey related to a “Legal Issues Impacting School Boards” course. Therefore, Respondent largely complied with Petitioner’s request, far from mostly denying it.

IV. CONCLUSION

This Court should decline to issue an order to show cause and dismiss the Petition for numerous reasons. First, the TSBA is clearly not the functional equivalent of a governmental agency. Second, any documents that TSBA withheld were withheld in compliance with the Tennessee Constitution and language of the TPRA. Third, TSBA is exempt from the TPRA. Since the matters considered herein constitute a matter of first impression for the courts of this state, any fees, costs, or other penalties should be denied. TSBA prays that this matter be decided in its favor and dismissed with costs assigned to the Petitioner.

Respectfully submitted,

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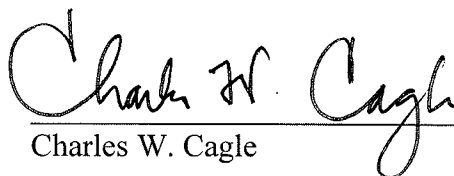
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served on the following counsel of record in the manner of service indicated below:



By sending document via email to: braden@beacontn.org

This the 12th day of May, 2020.



Charles W. Cagle

(Rule 0520-01-02-.06, continued)

15, 1979; effective January 8, 1980. Amendment filed November 13, 1982; effective March 16, 1982. Amendment filed June 4, 1982; effective September 30, 1982. Amendment filed August 17, 1983; effective November 14, 1983. Amendment filed June 28, 1984; effective September 11, 1984. Amendment filed August 20, 1984; effective November 13, 1984. Amendment filed September 26, 1986; effective December 14, 1985. Amendment filed May 8, 1986; effective June 27, 1986. Amendment filed September 20, 1987; effective December 22, 1987. Amendment filed October 18, 1988; effective January 29, 1989. Amendment filed November 9, 1989; effective February 28, 1990. Amendment filed July 11, 1990; effective October 29, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendments filed October 16, 2017; effective January 14, 2018.

0520-01-02-.07 JOINT CAREER AND TECHNICAL CENTERS.

Where two (2) or more local school system boards of education pool their resources in the establishment, operation, maintenance, and transportation of pupils of a joint career and technical center, such school shall meet the standards established by the State Board of Education for an approved school unless otherwise provided by law.

Authority: T.C.A. §§ 49-1-302, 49-11-101, and 49-11-104. **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 10, 1974; effective July 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment and new rule filed October 15, 1979; effective January 8, 1980. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed November 13, 1982; effective March 16, 1982. Amendment filed June 4, 1982; effective September 30, 1982. Amendment filed August 17, 1983; effective November 14, 1983. Repeal filed June 28, 1984; effective September 11, 1984. Amendment filed January 31, 1985; effective April 16, 1985. Repeal filed July 22, 1987; effective October 28, 1987. New rule filed February 16, 1989; effective April 2, 1989. Amendment filed November 9, 1989; effective February 28, 1990. Amendment filed July 11, 1990; effective October 29, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed September 6, 2007; effective January 28, 2008.

0520-01-02-.08 INTERSCHOLASTIC ATHLETICS.

- (1) The State Board of Education recognizes the value of participation in interscholastic athletics and the role of the Tennessee Secondary School Athletic Association in coordinating interscholastic athletic competition. The State Board of Education authorizes the public schools of the state to voluntarily maintain membership in the Tennessee Secondary School Athletic Association.
- (2) The total basketball games allowed per team in a school which serves any combination of grades K through 8 shall not exceed 20 during a school year. Tournaments shall count as two games notwithstanding the number of games in which each team participates in a tournament. Practice can begin no earlier than four weeks prior to the first scheduled game and shall end after the last tournament or regular season game in which the team participates.
- (3) All athletic practice within the regular hours of any school day must be approved on an annual basis by the local board of education; such action must be reflected in the minutes of the local board of education. All approved athletic practice during the regular hours of any school day shall conform to the same rules, regulations, and seasons as corresponding athletic practice outside the school day.
- (4) A local board of education shall not authorize high school credits in physical education for participation in interscholastic athletic practice during regular school hours.



(Rule 0520-01-02-.08, continued)

Authority: T.C.A. § 49-1-302. **Administrative History:** Original rule certified June 10, 1974. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed October 31, 1995; effective February 28, 1996. Amendment filed April 27, 1998; effective August 28, 1998.

0520-01-02-.09 ALTERNATIVE SCHOOLS.

- (1) Definition: An alternative school is a short term intervention program designed to develop academic and behavioral skills for students who have been suspended or expelled from the regular school program.
- (2) Requirements:
 - (a) The instruction shall be as nearly as practicable in accordance with the instructional program in the student's regular school.
 - (b) All course work and credits earned shall be transferred and recorded in the student's regular school.
 - (c) Students are subject to all rules of the school system providing the alternative school. Violation of rules may cause students to be removed from the program but shall not constitute grounds for extending the length of original suspension or expulsion.
 - (d) All laws, rules, and regulations shall be followed with children eligible for special education. If a change of placement is made, due process procedures are mandated.
 - (e) Reasons for placement in an alternative school must be documented. End of year reports must be made to the regular school for each student.
 - (f) Teachers must have a valid Tennessee teacher license.
 - (g) Support services such as counseling and psychological services must be accessible.
 - (h) All alternative school classrooms shall have working two-way communication systems that make it possible for teachers or other employees to notify a principal, supervisor, or other administrator that there is an emergency.
 - (i) It is the responsibility of the superintendent to insure that all alternative school teachers and other employees have been trained to use the two-way communication system and are notified of emergency procedures prior to the beginning of classes for any school year and when changes are made in the emergency procedures and/or personnel. Such emergency procedures shall be linked to the school and school system emergency preparedness plan.
- (3) Funding.
 - (a) Students attending an alternative school shall continue to earn state education funds in the regular school system.
 - (b) Other state funding shall be made according to a formula developed annually by State Commissioner of Education.
- (4) Facilities:

(Rule 0520-01-02-.10, continued)

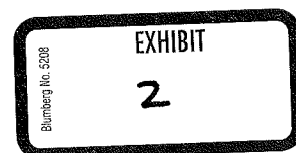
- (b) The initial homebound instruction period and any additional homebound instruction period shall be for the number of school days certified by the review team.
 - (c) Recertification must be obtained upon the expiration of each additional period of homebound instruction if homebound instruction is to be continued beyond the initial homebound instruction period.
- (5) Re-entry
- (a) Prior to the expiration of the period of homebound instruction, the review team shall develop a treatment plan and strategy for the student's reentry into the school environment.
- (6) Attendance
- (a) Students receiving homebound instruction shall not be counted absent from school and shall be included in all computations for purposes of generating state school funds.

Authority: T.C.A. §§ 49-10-1101, 49-10-1102, and 49-10-1103. **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 10, 1974; effective July 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repeal and new rule filed May 20, 2019; effective August 18, 2019.

0520-01-02-.11 SCHOOL BOARD TRAINING.

- (1) Every member of a local board of education shall participate annually in seven (7) hours of training provided by the School Board Academy. In addition, all newly-elected members of a local board of education shall attend a fourteen (14) hour orientation during their first year in office.
- (2) The School Board Academy shall be administered by the State Department of Education.
- (3) The annual program of the School Board Academy will consist of modules approved by the State Board of Education. The Tennessee School Boards Association (TSBA) shall develop and conduct the majority of the approved modules.
- (4) A School Board Academy Advisory Committee shall be established by the State Board of Education. The Advisory Committee will be responsible for evaluating academy programs. The Advisory Committee will also be responsible for recommending an annual program plan for the academy prior to the beginning of each school year for approval by the State Board of Education. The Advisory Committee will include the Executive Director and the President of the Tennessee School Boards Association, a member of the State Board of Education, the President of the Tennessee Organization of School Superintendents, and the Commissioner of Education or his designee. It will also include others appointed by the State Board of Education for terms designated by the State Board of Education.

Authority: T.C.A. §§ 49-2-202(a)(5) and 49-2-202(a)(6). **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 10, 1974; effective July 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment and new rule filed October 15, 1979; effective January 8, 1980. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed November 13, 1981; effective January 20, 1982. Amendment filed January 2, 1986; effective April 15, 1986. Amendment filed May 23, 1986; effective



(Rule 0520-01-02-.11, continued)

June 27, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed September 22, 2015; effective December 21, 2015.

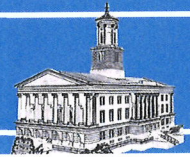
0520-01-02-.12 WAIVERS.

- (1) The Commissioner of Education is authorized to grant waivers to a school which does not comply with these rules and regulations only when requested by action of the local board of education.
- (2) For limitation on the Commissioner's authority to waive rules and regulations, see T.C.A. § 49-1-203.

Authority: T.C.A. § 49-1-203. **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed April 12, 1983; effective May 12, 1983. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed June 28, 1984; effective September 11, 1984. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed October 15, 1986; effective January 27, 1987. Amendment filed July 21, 1988; effective October 29, 1988. Repeal and new rule filed March 16, 1992; effective June 29, 1992.

0520-01-02-.13 FISCAL ACCOUNTABILITY STANDARDS.

- (1) Data Collection
 - (a) The Commissioner of Education shall prescribe a system of school fiscal accounting for all school systems which ensures that the expenditure of funds is properly accounted for and safeguarded in accordance with current law and State Board of Education rules, regulations, and minimum standards. The Commissioner shall require such reports from school systems as are required by federal or state law, State Board of Education rules, or as are otherwise necessary for ensuring fiscal accountability standards.
 - (b) To ensure proper financial reporting of revenue and expenditures for all public school purposes, the system of school fiscal accounting shall include a standard chart of accounts and audit procedures. The standard chart of accounts shall be the basis for the Annual Public School Budget Document, which shall contain the account codes necessary to ensure the capability for meaningful comparisons of school systems. At a minimum, the Budget Document shall include separate account codes for all classroom and non-classroom components of the Basic Education Program (BEP), or for accounts which may be compiled into BEP components, and sufficient revenue account codes to differentiate between federal, state and local revenue.
 - (c) The report of actual expenditures shall be the Annual Public School Financial Report and shall include sufficient information to allow a system by system comparison of budgeted and actual expenditures for BEP funding within the classroom and non-classroom areas. The Financial Report shall, at a minimum, contain account codes identifiable as BEP program components, or accounts which may be compiled into BEP components, and shall differentiate between federal, state and local revenue when reporting actual revenue for the prior year and estimated revenue for budget purposes.
 - (d) The Department of Education shall establish procedures for collecting and verifying average daily memberships for use in determining BEP allocations.
- (2) Reports & Documents



CITIES

Adams	Collierville**	Galloway	Lawrenceburg	New Johnsonville	South Pittsburg
Alamo	Collinwood	Gatlinburg	Lebanon	New Tazewell	Sparta
Alcoa	Cookeville	Gleason	Lenoir City*	Newport	Spencer
Ashland City	Coopertown	Goodlettsville	Linden	Nolensville	Spring City
Athens*	Cornersville	Gordonsville	Livingston	Norris	Spring Hill
Atoka	Covington	Grand Junction	Lobelville	Oak Hill	Springfield
Atwood	Cowan	Greenbrier	Lookout Mountain	Oak Ridge	Surgoinsville
Baileyton	Crossville**	Greeneville	Loretto	Oakland	Sweetwater
Baxter	Cumberland	Greenfield	Loudon	Obion	Tazewell
Belle Meade**	Dandridge	Halls	Luttrell	Oliver Springs	Tellico Plains
Bells	Dayton	Harriman	Madisonville	Paris	Townsend
Benton	Decatur	Harrogate	Manchester	Parsons	Tracy City**
Big Sandy	Decaturville	Hartsville	Martin	Pegram	Trenton
Bluff City	Decherd	Henderson	Maryville	Pikeville	Tullahoma
Bolivar	Dickson	Hendersonville	Maury City	Pittman Center	Tusculum
Bradford	Dover	Hohenwald	Maynardville	Pleasant Hill	Unicoi
Brentwood	Ducktown	Humboldt	McEwen	Pleasant View	Union City
Brighton	Dunlap	Huntington	McKenzie	Portland	Vanleer
Bristol	Dyer	Huntland	McMinnville	Puryear	Vonore
Brownsville	East Ridge	Jacksboro	Medina	Red Bank	Watauga
Bruceston	Elizabethton	Jackson	Middleton	Red Boiling Springs	Waverly
Byrdstown	Elkton**	Jamestown	Milan	Ripley	Waynesboro
Camden	Erin	Jefferson City	Millersville	Rockwood	Westmoreland
Carthage	Erwin	Johnson City**	Millington	Rogersville*	White Bluff
Caryville	Estill Springs	Jonesborough	Monterey	Rutherford	White House
Centerville	Etowah	Kenton	Morrison	Rutledge	White Pine
Charleston	Fairview	Kimball	Morristown	Savannah**	Whiteville
Charlotte	Fayetteville	Kingsport**	Moscow**	Selmer	Whitwell
Church Hill	Forest Hills**	Kingston	Mosheim	Sevierville	Woodbury
Clarksville	Franklin	Kingston Springs	Mountain City	Signal Mountain	
Cleveland	Friendship	Lafayette	Mt. Carmel	Soddy Daisy	
Clifton	Friendsville	Lafollette	Mt. Juliet	Somerville	
Clinton	Gainesboro	Lake City	Munford	South Carthage	
Collegedale	Gallatin	Lakeland**	Murfreesboro*	South Fulton**	

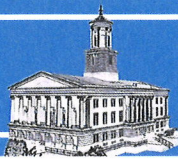
COUNTIES

Anderson	Coffee**	Hamilton	Lewis	Obion	Stewart
Bedford	Crockett	Hardeman	Lincoln	Overton	Sullivan
Benton	Cumberland	Hardin	Loudon	Perry	Sumner
Bledsoe	Decatur	Hawkins	Macon	Pickett	Tipton
Blount	DeKalb	Haywood	Madison**	Polk	Trousdale
Bradley	Dickson	Henderson	Marion	Putnam	Unicoi
Campbell	Fayette	Henry	Marshall	Rhea*	Union
Cannon	Fentress	Hickman	Maury	Roane	Van Buren
Carroll	Franklin	Humphreys	McMinn	Robertson	Warren
Carter	Gibson	Jackson	McNairy	Rutherford	Washington
Cheatham	Giles	Jefferson	Meigs**	Scott	Wayne
Chester	Grainger	Johnson	Monroe	Sequatchie	Weakley
Claiborne	Greene	Lake	Montgomery	Sevier	White
Clay	Grundy	Lauderdale	Moore*	Shelby*	Williamson
Cocke	Hamblen	Lawrence	Morgan	Smith	Wilson

*All departments not covered by TCRS.

**Plan closed to new hires.

(continued)



911 EMERGENCY COMMUNICATIONS DISTRICTS

Anderson Co.	Claiborne Co.	Hamblen Co.	Lawrence Co.	Overton Co.	Van Buren Co.
Bedford Co.	Cocke Co.	Hamilton Co.	Loudon Co.	Roane Co.	Warren Co.
Benton Co.	Crockett Co.	Hardeman Co.	Macon Co.	Robertson Co.	Washington Co.
Blount Co.	Cumberland Co.	Hardin Co.	Madison Co.	Rutherford Co.	Wayne Co.
Brentwood	DeKalb Co.	Hawkins Co.	Marshall Co.	Scott Co.	Weakley Co.
Campbell Co.	Dickson Co.	Henderson Co.	Mauzy Co.	Sequatchie Co.	White Co.
Cannon Co.	Fayette Co.	Humphreys Co.	McMinn Co.	Sevier Co.	Wilson Co.
Carroll Co.	Fentress Co.	Jefferson Co.	McNairy Co.	Shelby Co.	
Carter Co.	Gibson Co.	Johnson Co.	Monroe Co.	Sullivan Co.	
Cheatham Co.	Grainger Co.	Knox Co.	Montgomery Co.	Tipton Co.	
Chester Co.	Greene Co.	Lauderdale Co.	Obion Co.	Union Co.	

HOUSING AUTHORITIES

Bristol	Hohenwald	Memphis	South Pittsburg
Clinton	Lawrenceburg	Morristown	Sweetwater
Cookeville	Lenoir City	Rockwood	
Hartsville	Maryville	Rogersville**	

JOINT VENTURES

Argie Cooper Public Library	Fayetteville/Lincoln County Public Library	Smyrna/Rutherford County Airport Authority
Bradley-Cleveland Civil Defense	Gorham/MacBane Public Library	Tellico Area Service System
Bradley-Cleveland Community Service Agency	Jackson/Madison County Library**	TriCities Airport Authority
Brownsville-Haywood County Library	Johnson City/Washington County EMS	Tri-County Vocational School
Bolivar-Hardeman County Library	Kinser Park	Upper Cumberland Regional Airport
Clarksville/Montgomery County Public Library	Lawrence County Library	W. G. Rhea Public Library
Clarksville/Montgomery County Regional Planning	Linebaugh Public Library	Washington County/Johnson City Animal Control Center
Cleveland/Bradley County E-911	Morristown/Hamblen County Landfill	Wilson Emergency Management Agency
Edward Gauche Fisher Public Library	Sevier Solid Waste	

MISCELLANEOUS AGENCIES

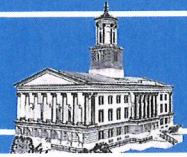
Anderson County Economic Development Association	Delta Human Resource Agency	Knox County Community Services Agency
Anderson County Water Authority	Douglas Cherokee Economic Authority	Loudon County Economic Development Agency
Beech River Watershed	East Tennessee Community Service Agency	Marion County Library
Bi County Solid Waste Management	Fayetteville-Lincoln County Industrial Development Board	Maryville, Alcoa, Blount Co. Parks & Rec.
Blount County Fire Protection District	First Tennessee Development District	McMinn County Economic Development District
Blount County Library	First Tennessee Human Resource Agency	Mid-Cumberland Community Service Agency
Books from Birth	Four Lake Regional Industrial Development Authority	Millington Airport Authority
Carter County Tomorrow	Greater Nashville Regional Council	Networks Sullivan Partnership
Cocke County Partnership, Inc.	Hamilton County Community Service Agency	Northeast Community Service Agency
County Officials Association of Tennessee	Joint Economic and Development Board of Wilson County	Northwest Tennessee Community Service Agency

*All departments not covered by TCRS.
**Plan closed to new hires.

(continued)



POLITICAL SUBDIVISION PARTICIPANTS (CONTINUED)



Obion County Library
 Putnam County Library
 Sequatchie Valley Planning and Development District
 Sevier County Economic Development Council
 Shelby County Community Service Agency
 South Central Human Resource Agency**
 South Central Tennessee Community Services Agency
 South Central Tennessee Development District
 South Central Tennessee Workforce Board
 Southeast Tennessee Community Service Agency
 Southeast Tennessee Development District
 Southeast Tennessee Human Resource Agency
 Southwest Tennessee Community Service Agency
 Southwest Tennessee Development District

Southwest Tennessee Human Resource Agency
 Tennessee Association of Assessing Officers
 Tennessee Association of County Mayors
 Tennessee Athletics Association**
 Tennessee County Commissioners Association
 Tennessee County Highway Officials Association
 Tennessee County Services Association
 Tennessee Duck River Development Agency
 Tennessee Education Association
 Tennessee Elk River Development Agency**
 Tennessee Historical Society
 Tennessee Municipal Bond Fund
 Tennessee Municipal League
 Tennessee Municipal League Risk Management Pool

Tennessee Organization of School Superintendents**
 Tennessee School Board Association
 Tennessee Secondary School Athletic Association
 Tennessee Sheriffs Association
 Tennessee State Employees Association
 Tennessee Veterans Home Board
 Upper Cumberland Community Services Agency
 Upper Cumberland Human Resource Agency
 Upper Cumberland Regional Airport
 Upper East Tennessee Human Development Agency
 Watauga River Regional Water Authority
 Workforce Solutions**

SPECIAL SCHOOL DISTRICTS/BOARDS OF EDUCATION

Arlington Community Schools
 Bartlett City Board of Education
 Bradford
 Clinch Powell Education Coop.
 Coffee County Board of Education
 Collierville Schools Board of Education
 Elizabethton Board of Education
 Franklin
 Germantown Board of Education

Gibson County School District
 Hollow Rock-Bruceton
 Huntingdon
 Lebanon
 Little Tennessee Valley Education Coop.
 McKenzie
 Milan
 Millington City Schools Board of Education
 Tullahoma City Board of Education

Oak Ridge Board of Education
 Oneida
 Paris
 South Carroll Special School District
 Trenton
 Union City Board of Education
 West Carroll County

UTILITY DISTRICTS

Alpha-Talbott
 Arthur Shawnee
 Big Creek
 Bloomingdale
 Bondecroft
 Bristol Electric System
 Cagle Fredonia Utility District
 Castalian Springs/Bethpage
 Chuckey Utility District
 Citizen's Gas
 Consolidated Utility District/Rutherford County
 Cookeville Boat Dock Road Utility District
 County Wide
 Crab Orchard

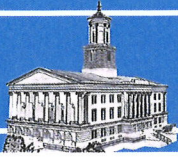
Cross Anchor Utility District
 Cumberland Utility District-Roane and Morgan Counties
 DeWhite
 Double Springs
 Dyersburg Suburban
 East Fork
 East Montgomery
 East Side
 Elizabethton
 Fall Creek Falls
 First Carter County
 First Hawkins County
 First Tipton County
 Gladeville

Glen Hills
 Greater Dickson Gas Authority
 Greeneville Light and Power
 Hampton South
 Hardeman-Fayette County
 Harriman**
 Hendersonville Weakley County
 Hixson
 Jackson County
 Johnson City Power Board
 LaGuardo Utility District
 Lake County
 Lakeview
 Lincoln County Board of Public Utilities

* All departments not covered by TCRS.

** Plan closed to new hires.

(continued)



POLITICAL SUBDIVISION PARTICIPANTS (CONTINUED)



Loudon	Riceville
Madison Suburban Utility District	River Road
Middle Tennessee	Roane Mountain Utility District
Municipal Electric	Russellville Whitesburg Utility District
New Market	Savannah Valley
North Utility District of Decatur and Benton Counties	Second South Cheatham Utility District
Northeast Henry County	Sevier County
O'Connor Utility District	Siam
Oak Ridge	Smith
Old Gainesboro Road	Sneedville
Old Hickory	Soddy Daisy-Falling Water
Old Knoxville Highway Utility District	Sylvia-Tennessee City Pond Water
Paris-Henry Utility District	Upper Cumberland Utility District
Persia	Walden's Ridge Utility District
Plateau	Webb Creek
Poplar Grove	West Knox**
Quebec-Walling	West Overton
Reelfoot Lake Regional	

*All departments not covered by TCRS.

**Plan closed to new hires