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**Employees of the Special Schools, Rule**

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**The Background:**

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

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

To attempt to alleviate confusion, two rule chapters, 0520-1-1 and 0520-1-4 have been revised as follows:

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

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

**The Master Plan Connection:**

This item supports effective leaders and effective teachers by clarifying the procedures available to tenured teachers and other staff of the State special schools in employment matters.

**The Recommendation:**

Counsel for the Department of Education and the superintendents of the State special schools recommend adoption of the revisions on final reading. SBE staff concurs with this recommendation.

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520—4—1  
EMPLOYEES OF THE STATE SPECIAL SCHOOLS**

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**0520—4—1—.01 TENURED TEACHERS.**

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

**0520—4—1—.02 EMPLOYEE GRIEVANCES - DEFINITIONS.**

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

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

### **0520—4—1—.03 GRIEVANCES - RESPONSIBILITY.**

- (1) The State Board of Education will be responsible for providing and maintaining the basic standards and guidelines for the rules.
- (2) The Commissioner of Education, acting under delegated authority from the State Board of Education, will be responsible for the proper

effectuation of these rules throughout the state special schools. Modification of these procedures may be made in order to satisfy unusual circumstances within the state special schools if such modification is approved by the board.

- (3) The commissioner will be responsible for ensuring that all employees and supervisory personnel are aware of the provisions of these rules.

#### **0520—4—1—.04 GRIEVANCES - BASIC STANDARDS.**

- (1) An appeal must be filed with the Commissioner of Education within 30 calendar days after receiving notification of the superintendent's decision on the adverse job action. Otherwise, the appeal will be considered untimely and invalid.
- (2) A standard appeal in the form of a signed letter from the appellant shall be submitted to the Commissioner of Education. The letter shall state, with particularity, the grounds for the appeal.
- (3) Appellants, if they so desire, may be assisted or represented by another employee of the same school at each step of the appeals procedure.
- (4) Legal counsel or other outside counsel may only represent an appellant before a hearing conducted under the provisions of the Uniform Administrative Procedures Act, which is the final step of this procedure. The appellant and the State Department of Education may have counsel present at discussions prior to the final step, but only to advise and observe and not to participate as advocate.
- (5) Appellants may present appeals during business hours or other mutually agreeable hours as work situations may require. An appeal heard during an appellant's, witness', assistant's, or representative's scheduled off-duty hours will be considered overtime work, provided the person is still actively employed by the state special schools. Appellant, employees who appear with the appellant, State Department of Education employees, and employees who are subpoenaed as witnesses will not be required to use leave for such periods.
- (6) Appeals relative to suspension without pay must first be taken to the lowest step in the appeals procedure with authority to overturn, reduce, or alter the action.
- (7) Appeals relative to dismissal may be taken directly to the commissioner or his designated representative for this purpose.
- (8) Appeals concerning alleged discrimination, prohibited by Tenn. Code Ann. § 4-21-401 and in connection with race, creed, color, religion, sex, national origin, age, or handicap, may be appealed informally to the superintendent. The grounds for such appeals may also be grounds for filing charges with the Tennessee Human Rights Commission at any time. If the employee is not satisfied with the superintendent's decision, the appeal may be taken directly to the commissioner or his designated representative. If the appellant is unsatisfied with the decision of the commissioner or that of his designated representative, the appellant may appeal directly to the Tennessee Human Rights Commission which is empowered by Tenn. Code Ann. § 4-21-202 to investigate such matters.
- (9) Appeals decisions, with specific reasons for the decision, must be communicated in writing directly to the appellant in a timely manner as

outlined below. Certified mail, return receipt requested, is mandatory if a decision is mailed.

- (10) Appeals must be expressed in reasonable terms. Each appeal submitted should contain: (a) the basis for appeal; (b) the settlement or corrective action desired by the appellant; and, (c) sufficient supporting information to begin an investigation.
- (11) Appeals of Career Ladder evaluations must be pursued according to the provisions set out in Tenn. Code Ann. § 49-5-5009. No Career Ladder appeal may be pursued under the provisions of these rules.

#### **0520—4—4—.05 GRIEVANCES - PROCEDURES.**

- (1) Procedure shall not entail more than three steps to finality as follows:
  - (a) Step 1 - Appellant's superintendent (formal)
    1. Verbal discussion with superintendent within 15 workdays of cause;
    2. Superintendent's investigation and fact finding; and,
    3. Decision clearly communicated to appellant by the superintendent within five workdays of the discussion.
  - (b) Step 2 - Appeal to the Commissioner of Education or his designee (formal)
    1. Appellant prepares a letter requesting a hearing. The letter must be signed and is to state, with particularity, the basis of the appeal.
    2. The commissioner or his designee conducts a hearing on the matter within 15 working days of the receipt of the appeal. The hearing will include a discussion of the facts, allegations of the parties, and proposals for relief.
    3. Investigation, fact finding, and written decisions will be communicated to the appellant within ten working days after the hearing.
  - (c) Step 3 - Appeal to the State Board of Education (UAPA)
    1. Within 30 working days of receipt of an adverse ruling from the Commissioner of Education or his designee, appellant may appeal the decision to the State Board of Education through the executive director.
    2. The chairman shall set the matter for a contested case hearing either in the presence of the board or by an administrative law judge or hearing officer sitting alone, pursuant to Tenn. Code Ann. § 4-5-301(c). The board's decision shall be concurred in by a majority of those present and voting at the meeting when the board issues its order.
    3. Hearings conducted at Step 3 will conform to the model rules of the Secretary of State for contested cases and the

State Board of Education hereby adopts Rule 1360-4-1 in statutory compliance.

4. The Executive Director of the State Board of Education shall notify the appellant, in writing within 15 working days of the board meeting, of the action of the board.
5. The hearing conducted pursuant to the provisions of the Uniform Administrative Procedures Act and outlined in Step 3 shall be the final step for all appeals for regular employees.