

Legislative Update and Preview



TASBO 45th Annual Conference
November 16, 2011

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107th General Assembly



- Governor Bill Haslam
- 22 New Representatives
- 4 New Senators (two first-time legislators)
- With these changes, there were numerous new staff persons

Teacher Tenure



- Governor Haslam's legislation
- Public Chapter 70
- Teachers tenured prior to July 1, 2011 are only slightly affected by the legislation

Teacher Tenure – New Teachers



Tenure Eligibility

- (1) Has a degree from an approved four-year college or any career and technical teacher who has the equivalent amount of training established and licensed by the state board of education;
- (2) Holds a valid teacher license, issued by the state board of education, based on training covering the subjects or grades taught;
- (3) Has completed a probationary period of five (5) school years or not less than forty-five (45) months within the last seven-year period, the last two (2) years being employed in a regular teaching position rather than an interim teaching position;

Teacher Tenure – New Teachers



Tenure Eligibility (cont.)

- (4) Has received evaluations demonstrating an overall performance effectiveness level of "above expectations" or "significantly above expectations" as provided in the evaluation guidelines adopted by the state board of education pursuant to § 49-1-302, during the last two (2) years of the probationary period; and
- (5) Is reemployed by the director of schools for service after the probationary period.

Teacher Tenure – New Teachers



Retaining Tenure

(e) Any teacher who, after acquiring tenure status, receives two (2) consecutive years of evaluations demonstrating an overall performance effectiveness level of “below expectations” or “significantly below expectations”, as provided by the evaluation guidelines adopted by the state board of education pursuant to § 49-1-302, shall be returned to probationary status by the director of schools...

Evaluations



Tier 5	Significantly Above Expectations
Tier 4	Above Expectations
Tier 3	Meeting Expectations
Tier 2	Below Expectations
Tier 1	Significantly Below Expectations

Grandfathers in Current Teachers



- *No teacher who acquired tenure status prior to July 1, 2011, shall be returned to probationary status.*

Teacher Tenure



(Previous Language)

TCA § 49-5-501(6) “Inefficiency” means being below the standards of efficiency maintained by others currently employed by the board for similar work, or habitually tardy, inaccurate or wanting in effective performance of duties;

Teacher Tenure



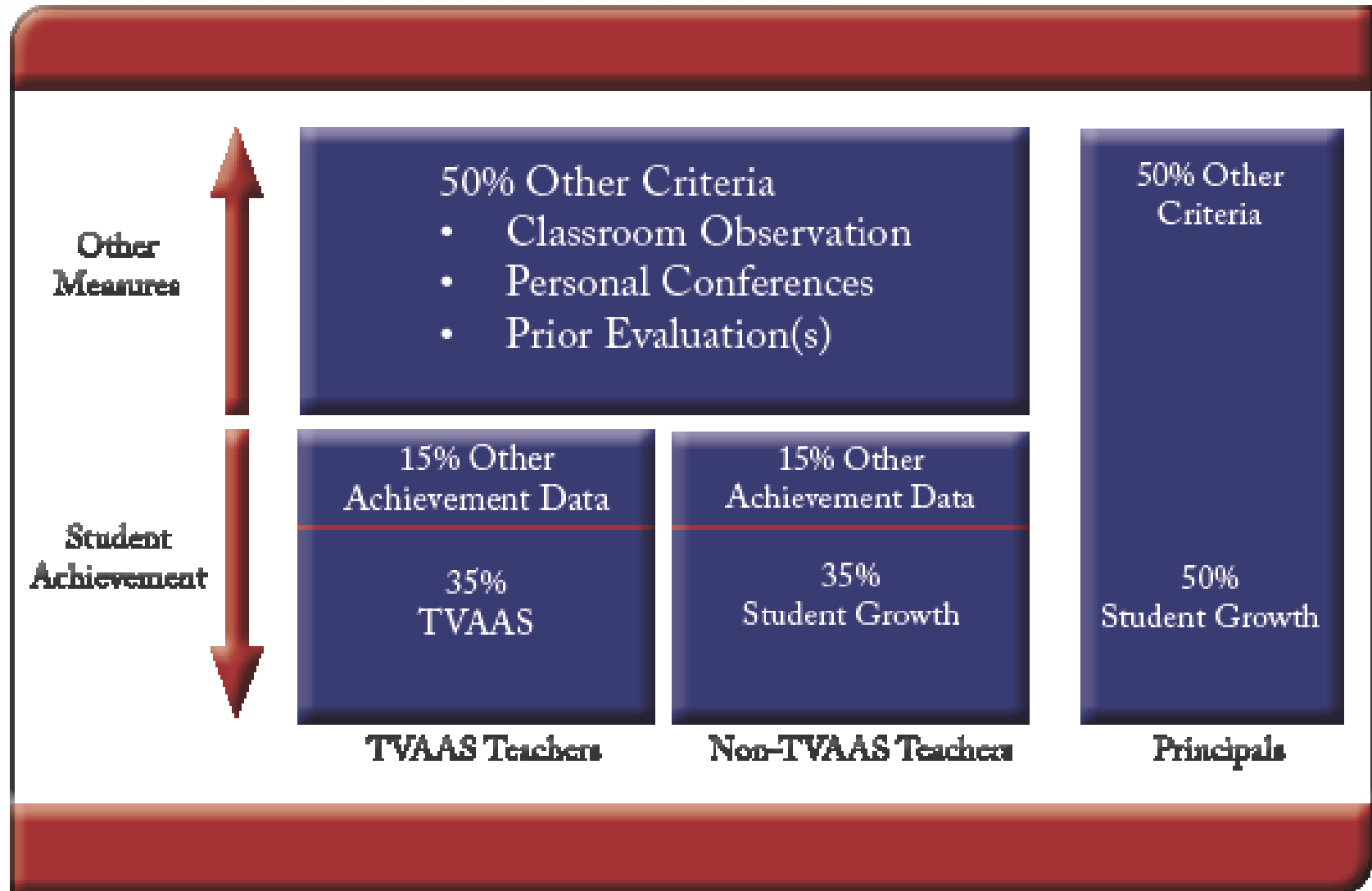
- PC 70 language:
- *“Inefficiency” means being below the standards of efficiency maintained by others currently employed by the board for similar work, or habitually tardy, inaccurate or wanting in effective performance of duties. The definition of inefficiency includes, but is not limited to, having evaluations demonstrating an overall performance effectiveness level that is “below expectations” or “significantly below expectations” as provided in the evaluation guidelines adopted by the state board of education pursuant to § 49-1-302.*

Teacher Evaluations



- Evaluations have to be in place by July 1, 2011.
- There are many questions and unknowns.
- Most likely, these evaluations will evolve/change as we move forward.
- Under FTTT, the evaluations must play a part in all personnel decisions.

Evaluations



Evaluations



Tier 5	Significantly Above Expectations
Tier 4	Above Expectations
Tier 3	Meeting Expectations
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Tier 1	Significantly Below Expectations

Teacher Tenure - recap



- Teachers in their second year of the probationary period..... Surprise!
- At least five years of a probationary status with the last two years' evaluations graded to be “above expectations” or “significantly above expectations.”
- After tenure is obtained, if a teacher's evaluations are graded to be “below expectations” or “significantly below expectations,” then the teacher automatically reverts to probationary status.

Charter Schools – Gov's Bill



- Very expansive legislation
- Opens eligibility to attend a charter school to all students
- Removes the cap on the number of charters
- Enables the Dept of Education to authorize charter schools to serve the students zoned to schools placed in the ASD

Charter Schools – Gov’s Bill



- Requires LEAs to give preference to charter applications targeting failing students, students attending failing schools, and FRPL students.
- If the State Board of Education overturns a local board’s decision, the State Board must state “The grounds upon which the state board of education based a decision to remand the application shall be stated in writing, specifying objective reasons for the decision.
- If the local denial was for fiscal concerns, the state treasurer shall review the fiscal impact on the LEA if the charter school were to open.

Charter Schools – TCSA



- LEAs must compile a list of “vacant and underutilized” properties each year.
- LEAs must make these properties available to charter schools – if a charter wants to use such property, the charter school and LEA will enter into a lease agreement.
- “Nothing in this section is intended to frustrate an LEA's ability to plan for the use of underutilized or vacant properties owned or operated by the LEA. In any LEA in which one (1) or more charter schools operates, the LEA shall submit each year its plans for the use of underutilized or vacant properties owned or operated by the LEA in its annual report to the department of education and the comptroller.”

Charter Schools – TCSA



- LEAs may not request additional financial reports than those required by law, unless the LEA has reason to believe the charter school is not in compliance with the law and submits the reason in writing.
- A sponsor who plans to file an application with an LEA must submit an letter of intention with the Department of Education at least 60 days prior to applying.
- Charter schools' governing boards' members must now complete annual training.
- Charter schools no longer have to provide transportation in the same manner as the LEA.

Support Staff as At-will Employees



SB 905 by Watson - HB 1475 by Forgety

- Support staff (non-licensed, classified)
- *Bailey v. BCBE* (TN Supreme Court, Jan. 2010)
- *All persons who are employed in a position for which no teaching license is required shall be hired at the will of the director of schools. The local board of education shall develop a policy for dismissing such employees.*

Board Policy – pre *Bailey*



- The director of schools may dismiss any non-certified employee during the contract year for incompetence, inefficiency, insubordination, improper conduct or neglect of duty.
- The director of schools shall provide the employee with written notice of the charge or charges against them and a pre-termination hearing before the director or the director's designee.

Board Policy – post *Bailey*



An employee may, within ten (10) working days of notice of termination, submit a written request for a hearing before an impartial hearing officer selected by the director. At that hearing, the terminated employee may:

1. Be represented by counsel;
2. Call and subpoena witnesses;
3. Examine all witnesses; and,
4. Require that all testimony be given under oath.

The decision and factual findings of the officer shall be reduced to writing and delivered to the parties not more than ten (10) working days after the close of the hearing. The employee, or the director upon his own initiative, may appeal the decision to the Board within ten (10) working days of the officer rendering the written decision to the employee. Written notice of appeal to the Board shall be given to the director of schools or the employee, as appropriate. Within twenty (20) days of receipt of notice, the director shall prepare a copy of the proceedings, transcript, documentary and other evidence presented and provide the Board a copy of the same.

The Board shall hear the appeal on the record below, and no new evidence shall be introduced. The employee may appear in person or be represented by counsel and shall have no more than fifteen (15) minutes to argue why the decision should be modified or reversed, unless additional time is granted by the Board. The director of the director's designee shall have no more than fifteen (15) minutes for rebuttal, unless additional time is granted by the Board. At the conclusion of the arguments, the Board shall take one of the following actions:

1. Sustain the decision;
2. send the record back if additional evidence is necessary; or,
3. revise the penalty or reverse the decision.

Before any decision is made, a majority of the membership of the Board shall concur in sustaining the charges. The Board shall render a decision on the appeal within ten (10) working days after the conclusion of the hearing.

Within twenty (20) days after receipt of notice of the decision of the Board, either party may appeal to the chancery court in the county where the school system is located. The Board shall provide the entire record of the hearing to the court.

Substitute Teachers



- **49-5-709. Substitute teachers. —**

Substitute teachers are those teachers used to replace teachers on leave authorized by § 49-5-701, § 49-5-710 or § 49-5-711, or to fill temporary vacancies as defined by the state board of education and granted under written local school board policies. All substitute teachers shall be employed by the director of schools and paid by the board of education of the school system in which substitute teachers are used.

Substitute Teachers



HB 1829 by Hensley / SB 1674 by Tracy

- *Substitute teachers may be employed and paid directly by a local education agency or by a third party public or private employer through an agreement between such third party employer and the local education agency. Substitute teachers employed by third party entities shall be subject to the same unemployment benefit eligibility conditions as substitute teachers employed directly by local education agencies.*

Collaborative Conferencing



- **Public Chapter 378**
 - The Professional Educators Collaborative Conferencing Act of 2011
- Completely abolished the Education Professional Negotiations Act
- The year of “collective bargaining”

Collaborative Conferencing



- Requires TOSS, in conjunction with other stakeholders to develop a training program.
- Requires LEAs to implement the training program by July 1, 2012.
- Suspends negotiations indefinitely between local boards of education and local professional employees' organizations.
- Existing contracts will remain in effect until their natural expiration.

Collaborative Conferencing



- Recognizes principals, assistant principals, and supervisors as members of the local board's management team.
- Requires collaborative conferencing on:
Salaries and wages, insurance, fringe benefits, leave, grievance procedures, payroll deductions, and working conditions.
- Requires MOU on the items agreed upon - The MOU shall be valid for up to three years.

Collaborative Conferencing



- If there is no agreement on any items, the Board has the authority to address them according to board policy.
- No teacher, group of teachers, or teachers' organization shall be denied the opportunity to represent themselves or groups of professional employees.
- Directors may communicate with teachers on the subjects of collaborative conferencing through any means, medium or format the director chooses.

Initiating Collaborative Conferencing



1. Between October 1 and November 1 of any year, 15% of the professional employees of an LEA submit, in writing, a request to conduct collaborative conferencing to the local board.
2. The local board appoints a number of local board members and an equal number of professional employees to a special question committee to hold a private poll.
3. The poll shall consist of two questions:

Initiating Collaborative Conferencing



Question 1: Shall the professional employees of this LEA undertake collaborative conferencing with the board of education?

If Yes

Question 2 (example):

Which of the following organizations would you like to represent you in collaborative conferencing?

- a. TEA
- b. PET
- c. unaffiliated

If No

Question 2 (example):

Which of the following organizations would you prefer to represent you in collaborative conferencing?

- a. TEA
- b. PET
- c. unaffiliated
- d. none of the above

Initiating Collaborative Conferencing



4. No board shall to engage in collaborative conferencing unless a majority of those eligible to vote respond "YES" to the first question.
5. If a majority vote "YES" to the first question, the board shall appoint between 7-11 persons to serve as management personnel, and the professional employees shall be represented by the same number of persons.
6. The representatives shall be selected according to each organization's proportional share of the responses to the second question; provided, however, that only those professional employees' organizations receiving fifteen percent (15%) or more of the responses to the second question shall be entitled to representation.

Initiating Collaborative Conferencing



7. "Unaffiliated" but not the category of "none of the above," shall be considered a professional employees' organization. If fifteen percent (15%) or more select an unaffiliated representative, then the special question committee shall appoint a person to serve as an unaffiliated representative.
8. The professional employee representatives shall serve terms of 3 years. In the event of a vacancy, the appointing body shall name the replacement for the remainder of the term.
9. Prior to expiration of the terms of the members of the panel, a new poll shall be conducted to determine whether the professional employees want to continue to engage in collaborative conferencing.

Initiating Collaborative Conferencing



10. Professional employee representatives and members of the local board's management personnel shall be appointed by December 1.
11. The results of the confidential poll and the names and positions of the appointed representatives shall be transmitted to the board, professional employees and professional employee organizations prior to January 1.
12. Those persons or organizations initiating the poll shall be assessed the reasonable costs necessitated in conducting the poll by the chair of the special question committee.

Conducting Collaborative Conferencing



1. Management personnel and professional employee representatives shall participate in collaborative conferencing on the following terms and conditions of employment:
 - Salaries or wages;
 - Grievance procedures;
 - Insurance;
 - Fringe benefits, but not to include pensions or retirement programs of the Tennessee consolidated retirement system or locally authorized early retirement incentives;
 - Working conditions; except those working conditions which are prescribed by federal law, state law, private act, municipal charter or rules and regulations of the state board of education, the department of education or any other department or agency of state or local government;
 - Leave; and
 - Payroll deductions (except those dollars going to political activity).

Conducting Collaborative Conferencing



2. No other terms or conditions of employment shall be the subject of collaborative conferencing and the following items are explicitly prohibited:
 - Differentiated pay plans or incentive compensation programs,
 - Expenditures of federal, state, local or private grants,
 - Evaluations of professional employees,
 - Staffing decisions and state board of education or local board of education policies relating to innovative educational programs, innovative high school programs, virtual education programs, and other programs for innovative schools or school districts that may be enacted,
 - Personnel decisions, such as transfers, assignments and filling vacancies, and none of these decisions may be based on seniority or length of service, and
 - Payroll deductions for political activities.

Conducting Collaborative Conferencing



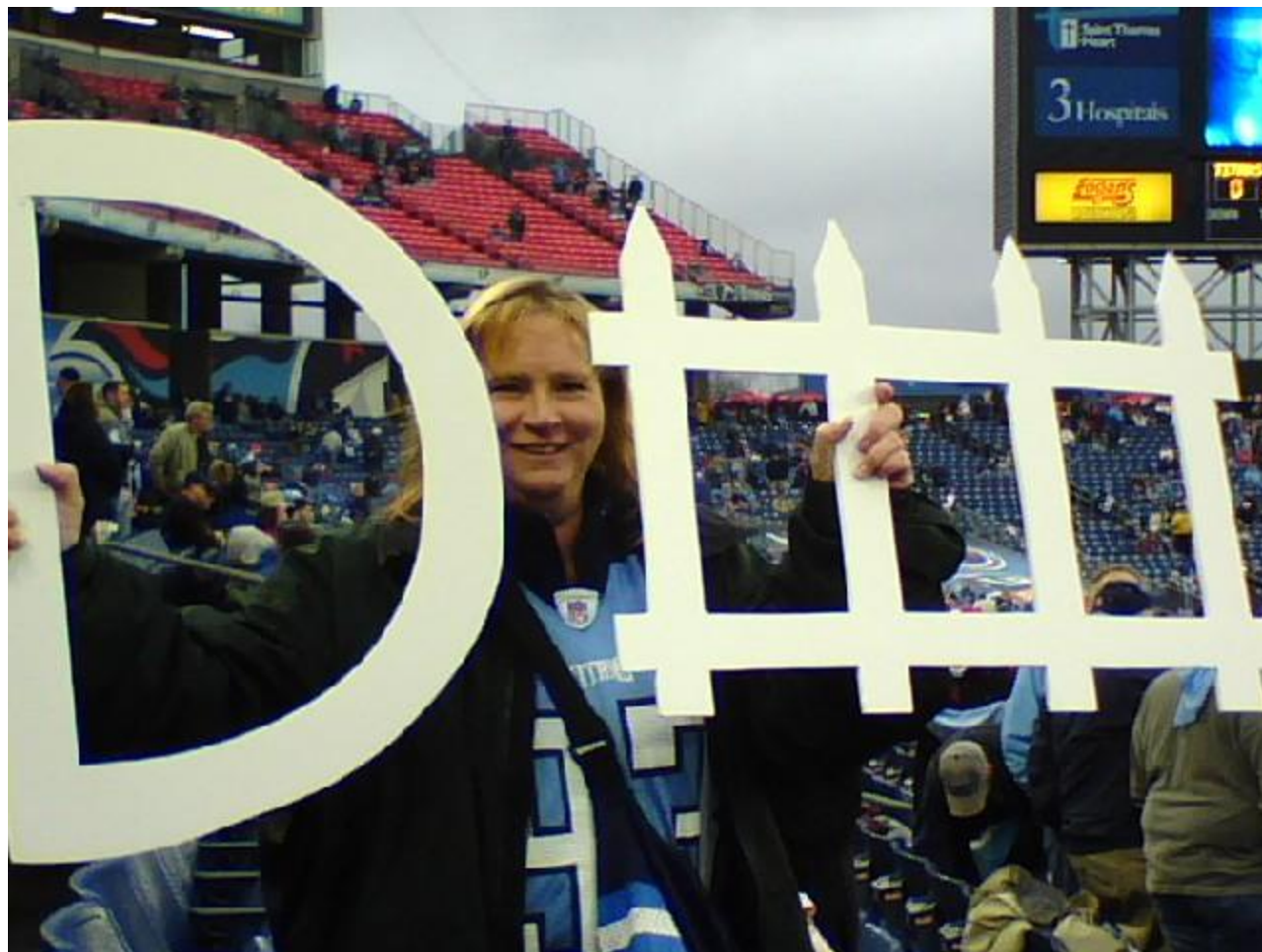
3. Through collaborative conferencing, the management personnel and the professional employee representatives may enter into a memorandum of understanding (MOU) on the terms and conditions of employment. The MOU shall not exceed three years in duration.
4. An MOU shall be binding on the parties from the date of its approval by the board of education or at a later effective date that is explicitly stated in the memorandum of understanding. However, any items included in the MOU that require funding shall not be considered effective until the local funding body has approved such funding in the budget. If the amount of funds appropriated is less than the amount required, then the parties may continue to confer to reach agreement within the amount of funds appropriated.

Conducting Collaborative Conferencing



5. Nothing in this act shall be construed to require collaborative conferencing, agreement on any terms and conditions of employment, or, if agreement has not been reached between the board of education and the representatives of the professional employees, a memorandum of understanding. Absent an agreement and memorandum of understanding on terms and conditions specified for collaborative conferencing in this act, the board of education shall have the authority to address such terms and conditions through board policy.

Next Year's Game Plan....



Elected Superintendents



HB 902 by Niceley / SB 787 by Campfield

- Would only apply to those systems that elected superintendents prior to 1992 EIA
- County Commission must pass resolution with 2/3 vote
- Issue would be placed on a referendum
- This bill failed by a vote of 8-9-1 in the full House Education Committee

Vouchers



SB 485 by Sen. Kelsey / HB 388 by Rep. Dunn

- Passed the full Senate 18-10
- As passed, would only apply to largest four counties.
- FRPL students would be eligible to attend another school within the LEA, a charter school, or a private school.
- The scholarship would be 50% of per pupil dollars.
- Stalled in the House Education Subcommittee and was referred to a summer study committee.
- It will be back, and most likely, in an across the board version.

School Start Dates



SB 1471 by Sen. Barnes / HB 1805 by Rep. J. DeBerry

- Passed the full Senate 24-5
- As passed, it would prohibit schools from starting before the second Monday in '12-'13, the third Monday in '13-'14, and the fourth Monday in '14-'15.
- It flew through the House Education Subcommittee and full Committee.
- It stalled on the House Floor due to 20+ amendments being filed to opt out counties.

TSBA Resolutions



- **The Tennessee School Boards Association urges the General Assembly to amend the law to add local school boards to the list of bodies whose members may attend a meeting remotely while complying with the requirements of open meetings.**
- **The Tennessee School Boards Association urges the General Assembly to amend the law to provide an option to local school districts whereby the State Board of Education would establish a minimum number of instructional hours or days in an academic year.**

TSBA Resolutions



- **The Tennessee School Boards Association urges the General Assembly to amend the law to enable a local education agency to unilaterally spend any dollars in the fund balance in excess of 3% of the budgeted annual operating expenses.**
- **The Tennessee School Boards Association urges the General Assembly to amend the law to enable a local education agency to unilaterally spend any dollars it may receive as a result of private or federal grants.**

TSBA Resolutions



- **The Tennessee School Boards Association urges the Tennessee General Assembly to repeal the County Financial Management System of 1981.**
- **The Tennessee School Boards Association urges the Tennessee General Assembly to require home schooled students who are registered with LEAs to take the state-mandated examinations that are administered in public schools.**

Conclusion



Questions?