
Education Savings Accounts Rule 0520-01-16-.02 through -.06, -.08, and -.10

The Background:

In July 2022, the Tennessee Department of Education began enrolling eligible students and non-public schools to participate in the Education Savings Account (ESA) program. T.C.A. § 49-6-2601 et seq. and Education Savings Accounts Chapter 0520-01-16 outline the student eligibility requirements and participation requirements of the ESA program.

This item proposes changes to the ESA Rules -.02 through -.06., -.08, and -.10 to align with legislation passed in 2023 and to provide additional clarity to the rules. Chapter 171 and Chapter 328 of the Public Acts of 2023 changed the eligibility requirements for students to expand the ESA Program. The changes include the following:

- Chapter 171 of the Public Acts of 2023 expands student eligibility for the ESA program to include students who:
 - Were enrolled in and attended a Tennessee public school for one (1) full school year in the 2019-20, 2020-21, or 2021-22 school year; or
 - Were eligible for the first time to enroll in a Tennessee public school for the 2019-20, 2020-21, or 2021-22 school year
- Chapter 328 of the Public Acts of 2023 adjusted the residency requirements for students to include Hamilton County.

This item also contains the following revisions to clarify operational aspects of the ESA Program and address omissions:

- Clarifies a student's right to a free appropriate public education (FAPE), waiving of accommodations under an individualized education program (IEP) and development of an individual service plan (ISP) to meet a student's special education needs. Revisions also clarify expectations regarding required changes to meet a student's needs if the student previously received services through an IEP or 504 Plan. Additionally, revisions were made in response to communication from the Office of Special Education Programs (OSEP) within the U.S. Department of Education.
- Specifies the amount of the ESA that must be used each year of participation in the Program. To align with the Individualized Education Account program expenditure requirements, these revisions propose that 50%, or half of the ESA, must be used each year of participation in the ESA program. Also, specifies actions the Department is to take if the minimum spending requirement is not reached by the end of the school year.
- Clarifies the amount of financial viability a school is required to submit with the school's application for participation in the program. This amount aligns with the quarterly disbursement of funds in student ESA accounts.

- Aligns language with recent guidance from the United States Department of Education Office of Special Education and Rehabilitative Services related to “state-funded school voucher and scholarship programs.” Specifically, the guidance clarifies that a child with a disability who received a state’s school choice voucher or scholarship retains the identification upon re-enrollment in a public school without undergoing any additional psychoeducational testing. Revisions align with the guidance provided in OSEP QA 22-01.
- Specifies in Section -.05 that all ESA expenses must be pre-approved by the Department as opposed to only certain expenses.
- Amends a statutory citation in Section -.03 of the rule that is specific to the Basic Education Program (BEP) and aligns the citation to the Tennessee Investment in Student Achievement (TISA) Act.

The State Board staff held a rulemaking hearing on October 2, 2023 to collect public feedback. No public comments were submitted at the hearing or in writing.

Minor typographical edits were made between first and final reading.

The Fiscal Analysis Impact:

T.C.A. § 49-1-212 requires that the Department prepare a fiscal analysis of any policy, rule, or regulation proposed to the State Board of Education. This item has no financial impact.

Connection to the [Master Plan](#):

This item supports the State Board’s strategic focus on engagement and accountability outlined in the Master Plan by reviewing and adopting rules as needed based on the quality of the implementation of rules and procedures.

The Recommendation:

The Department of Education recommends approval of this item on final reading. The SBE staff concurs with this recommendation.