

**RULES  
OF  
STATE BOARD OF EDUCATION  
CHAPTER 0520-01-11  
INDIVIDUALIZED EDUCATION ACCOUNTS**

**TABLE OF CONTENTS**

<u>0520-01-11-.01</u>	<u>Purpose</u>	<u>0520-01-11-.07</u>	<u>Monitoring and Compliance</u>
<u>0520-01-11-.02</u>	<u>Definitions</u>	<u>0520-01-11-.08</u>	<u>Participating Schools and Providers</u>
<u>0520-01-11-.03</u>	<u>Application</u>	<u>0520-01-11-.09</u>	<u>Return to Local Education Agency</u>
<u>0520-01-11-.04</u>	<u>Term of the IEA</u>	<u>0520-01-11-.10</u>	<u>Appeal Procedures</u>
<u>0520-01-11-.05</u>	<u>Contract and Funds Transfer</u>	<u>0520-01-11-.11</u>	<u>Conflict of Interest</u>
<u>0520-01-11-.06</u>	<u>Use of Funds</u>	<u>0520-01-11-.12</u>	<u>Reserved</u>

**0520-01-11-.01 PURPOSE**

The purpose of these rules is to effectuate the Individualized Education Act as required by T.C.A. § 49-10-1401, *et sq.*

**Authority:** T.C.A. §§ 49-1-302, 49-10-1401, *et sq.*

**0520-01-11-.02 DEFINITIONS**

- (1) "Account Holder" means a parent as defined in subsection (18) of this section or a student who has attained the age of majority who signs the IEA contract, is the Account Holder for the IEA funds, and is responsible for complying with all of the requirements of the IEA Program.
- (2) "Act" means the Individualized Education Act.
- (3) "Agreement" means a document signed by a parent of an eligible student or an eligible student who has attained the age of majority and a designee of the Department, which qualifies the parent or student who has attained the age of majority to participate in the Program.
- (4) "Standard Application Form" means a document whereby parents and participating eligible students may seek to establish an Individualized Education Account (IEA).
- (5) "Computer hardware or other technological devices" means computer hardware or technological devices approved by the Department or a licensed treating physician that is used for the student's educational needs. Computer hardware and technological devices must meet one (1) of the following criteria:
  - (a) Is a required device for communication or for physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA, or
  - (b) Allows a student to access instruction or instructional content.
- (6) "Criminal background check" at a minimum shall include, but not be limited to, a check of the following: Tennessee's Sex Offender Registry and the Abuse Registry of the Tennessee Department of Health. All providers as defined in subsection (23) of this section and employers of

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

providers must maintain documentation that any persons providing services to participating students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation (FBI) for processing pursuant to the National Child Protection Act. All participating schools must maintain documentation that all persons working on school grounds when students are present and/or providing services to students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act. Individual contractors not employed by an organization shall fulfill the background check requirements by completing a fingerprint based criminal history records check conducted by the FBI.

- (7) "Department" means the Tennessee Department of Education.
- (8) "Educational purposes" means tuition, fees, and/or required textbooks at a participating school. Fees do not include: room and board or meals, meal plans, food, or consumable materials.
- (9) "Educational therapies" means individualized services designed to develop or improve academic performance through instructional and therapeutic techniques, and provided by therapists that meet the requirements set by the Department and the State Board of Education.
- (10) "Eligible postsecondary institution" means a Tennessee public community college, college of applied technology, or university of the University of Tennessee system or a locally governed state university within the Tennessee Board of Regents systems, or an accredited private postsecondary institution accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).
- (11) "Eligible student" means:
  - (a) A resident of this state with an active Individualized Education Program (IEP) in accordance with 34 C.F.R § 300 et seq., § 49-10-102, and regulations of the State Board of Education with one (1) of the following disabilities as defined by the rules of the State Board of Education 0520-01-09-.02 as the primary or secondary disability in effect at the time the Department receives the request for participation in the Program:
    - 1. Autism;
    - 2. Deaf-blindness;
    - 3. Developmental delay;
    - 4. Hearing impairments;

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

5. Intellectual disability;
  6. Multiple disabilities;
  7. Orthopedic impairments;
  8. Traumatic brain injury; or
  9. Visual impairments; and
- (b) Meets at least one (1) of the following requirements:
1. Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year in which the student receives an Individualized Education Account (IEA). For the purposes of these rules, one (1) full school year means that the student was counted in the enrollment figures for the LEA(s) for the entire school year as reported in the state's student information system;
  2. Has not previously attended a K-12 school in Tennessee, but is currently eligible to enroll in a kindergarten program in a public school in this state. Students meeting this eligibility requirement shall inform the LEA in which they reside of the student's intent to enroll in the program prior to August 1 of the year in which they are enrolled in the IEA program;
  3. Has not previously attended a school in Tennessee during the one (1) full school year immediately preceding the school year in which the student receives an IEA, and moved to Tennessee less than one (1) year prior to the date of enrollment in the IEA Program; or
  4. Received an IEA in the previous school year.
- (12) "Fee for service transportation provider" means a commercial transportation provider including a taxi or bus service. It does not include private transportation by a parent or participating student in accordance with the conflict of interest provision in these rules.
- (13) "Financial institution" or "private financial management firm" means an institution selected by the Department to administer the individualized education accounts.
- (14) "IEA" means a Tennessee Individualized Education Account.
- (15) "IEP" means an Individualized Education Program developed by a public school pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1400, et seq.
- (16) "Local Education Agency (LEA)," "school system," "public school system," "local school system," "school district," or "local school district" means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.

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

- (17) "Nonpublic online learning program or course" means online programs or courses that meet the requirements set by the Department.
- (18) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child.
- (19) "Participating school" means a nonpublic school that meets the requirements established in T.C.A. § 49-10-1401, et seq. and seeks to enroll eligible students.
- (20) "Participating student" means an eligible student whose parent is participating in the IEA Program or an eligible student who has attained the age of majority and is participating in the IEA Program.
- (21) "Physician" means a person licensed under T.C.A. § Title 63, Chapter 6 or T.C.A. § Title 63, Chapter 9.
- (22) "Program" means the Individualized Education Account (IEA) Program created in T.C.A. § 49-10-1401, et seq.
- (23) "Provider" means an individual or business that meets the requirements set by the State Board of Education and the Tennessee Department of Education.
- (24) "Tutoring services" means services provided by a tutor that meets the requirements set by the Department.

**Authority:** T.C.A. §§ 49-1-302 and 49-10-1401 et seq.

### **0520-01-11-.03 APPLICATION**

- (1) To apply to receive an IEA the parent of an eligible student, or an eligible student who has attained the age of majority, must fully complete the Standard Application Form available through the Department's website or through the Department's office by the deadline set by the Department.
  - (a) A school district, a nonpublic school, or the Department may assist a parent of an eligible student or an eligible student who has attained the age of majority in filing the Standard Application Form.
  - (b) The Standard Application Form must include all information requested by the Department and must be approved by the Department.
- (2) The Department shall make a determination of eligibility to participate in the Program and notify the parent of an eligible student or an eligible student who has reached the age of majority.
- (3) Once a completed Standard Application Form has been approved the parent of an eligible student or an eligible student who has attained the age of majority shall complete the enrollment procedures set by the Department to become enrolled in the Program, including execution of an Agreement to participate in the Program.

**Authority:** T.C.A. §§ 49-1-302 and 49-10-1405

**0520-01-11-.04 TERM OF THE IEA**

- (1) For purposes of continuity of educational attainment, a student who enrolls in the Program shall remain eligible until the participating student meets one of the following, whichever occurs first:
  - (a) Enrolls full-time in a public school;
  - (b) Graduates from high school. The student may continue in the Program until such time as he or she receives a high school diploma, or receives a passing score on all subtests of the GED or HiSET. Certificates of attendance do not constitute graduation from high school for the purpose of this Program; or
  - (c) Reaches twenty-two (22) years of age. The student may complete the school year in which he or she reaches the age of twenty-two (22), provided a student shall not be enrolled in the Program past August 15 of the next school year after they have reached twenty-two (22) years of age.
- (2) The Account Holder may remove the participating student from the nonpublic school and place the student in a public school. The Account Holder shall complete the procedures for withdrawal from the IEA Program set by the Department.
- (3) The Account Holder may move the student from one nonpublic school to another nonpublic school in accordance with procedures set by the Department.
- (4) In order for students to continue in the Program, the Account Holder shall annually renew the IEA by following the procedures posted on the Department's website.
- (5) After graduating from high school or reaching twenty-two (22) years of age, unused funds in an IEA from prior years can be used in subsequent years, up to four (4) consecutive years after a student has aged out of the Program, provided the student attends or takes courses from an eligible postsecondary institution and the expenditures are determined to be qualifying expenses.
- (6) Account Holders are not required to spend the entire sum each year, however, a portion of the funds must be used each year on approved expenses for the benefit of the student enrolled in the IEA Program and overall spending must equal fifty (50) percent of the annual award by the deadline for submission of the last expense report of the contract year.
  - (a) If overall spending does not equal fifty (50) percent by the deadline for submission of the last expense report and if the IEA is renewed for the following year, the Department will subtract the difference from the payments in the next contract year. If a student withdraws from the IEA Program or if the IEA is not renewed, the IEA shall be closed and any remaining funds shall be returned to the state treasurer to be placed in the Basic Education Program (BEP) account of the education trust fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.

**Authority:** T.C.A. § 49-1-302

**0520-01-11-.05 AGREEMENT AND FUNDS TRANSFER**

- (1) Upon notification by the Department that an IEA may be established, a parent of an eligible student or an eligible student who has attained the age of majority shall sign an agreement to:
  - (a) Provide an education for the participating student in at least the subjects of English language arts, mathematics, social studies, and science;
  - (b) Not enroll the participating student in a public school during the time the student is enrolled in the IEA Program; and
  - (c) Release the LEA in which the student resides and the school for which the student is zoned to attend from all obligations to educate the student during the time the student is enrolled in the IEA Program.
- (2) The Department shall provide the Agreement template to parents of an eligible student or eligible students who have attained the age of majority. Parents of an eligible student or eligible students who have attained the age of majority shall complete the Agreement and submit it along with all information requested by the Department by the date set by the Department before the first IEA payment is disbursed.
- (3) Participation in the Program shall have the same effect as a parental refusal to consent to the receipt of specially designed instruction and related services pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1414.
- (4) The Agreement shall be signed by the parent of an eligible student or by the eligible student who has attained the age of majority and a designee of the Department to be effective. The Agreement shall specify the acceptable uses of IEA funds and the responsibilities of the parent of an eligible student or eligible student who has attained the age of majority.
- (5) After receipt of the completely signed agreement, the Department shall remit the first payment to the IEA via electronic funds transfer. IEA funds shall be remitted to the IEA thereafter until termination of the Agreement.
- (6) The Department shall establish procedures to effectuate the funds transfer process and dates on which each IEA payment shall be disbursed.
- (7) After the initial payment to the IEA, the Account Holder shall submit expense reports and receipts for all IEA funds expended in accordance with the procedures set by the Department before the next IEA payment is disbursed.
- (8) In accordance with the procedures of the Department, the Department may remove any Account Holder from eligibility for an IEA if the Account Holder fails to comply with the terms of the IEA agreement or applicable laws, rules or procedures, or misuses monies. The Account Holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

(Rule 0520-01-11-.05, continued)

- (9) If the Department determines that IEA funds have been misspent, the Department shall notify the Account Holder, and the Account Holder shall repay the misspent amount in the manner and within the timeframe set by the Department. The Department is authorized to freeze and/or withdraw funding directly from the student's IEA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with the terms of the state laws, rules, procedures or the Agreement, if the student returns to the LEA, or if funds were deposited into the account in error. An Account Holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

**Authority:** T.C.A. § 49-1-302

#### **0520-01-11-.06 USE OF FUNDS**

- (1) Account Holders shall agree to use the funds deposited in the IEA for any, or any combination of, the following expenses:
- (a) Tuition or fees at a participating school;
  - (b) Textbooks required by a participating school;
  - (c) Tutoring services provided by an individual tutor that meets the requirements set by the Department or a tutoring organization accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE);
  - (d) Payment for purchase of curriculum, defined as instructional educational materials for an academic course of study for a particular content-area or grade level, including any supplemental materials required by the curriculum;
  - (e) Fees for transportation paid to a fee-for-service transportation provider. Transportation fees can only be used for transportation to schools and providers (including tutors and therapists);
  - (f) Tuition or fees for a nonpublic online learning program or course that meets the requirements set by the Department;
  - (g) Fees for nationally standardized norm-referenced achievement tests, Advanced Placement examinations, or any examinations related to college or university admission;
  - (h) Contributions to a Coverdell education savings account established under 26 U.S.C. § 530 for the benefit of the participating student;

(Rule 0520-01-11-.06, continued)

- (i) Educational therapies or services for participating students provided by a therapist who meets the qualifications set by the Department and the State Board of Education;
  - (j) Services provided under a contract with a public school, including individual classes and extracurricular programs;
  - (k) Tuition or fees at an eligible postsecondary institution.
  - (l) Textbooks required for courses at an eligible postsecondary institution;
  - (m) Fees for the management of the IEA by private financial management firms;
  - (n) Computer hardware and technological devices approved by the Department or a licensed treating physician, if the computer hardware is used for the student's educational needs and is a required device for communication or physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA or allows a student to access instruction or instructional content. Before purchasing computer hardware or technological devices using IEA funds, Account Holders must receive notification of pre-approval from the Department. An Account Holder may request pre-approval for computer hardware and technological devices by:
    - 1. Completing and submitting the Department's pre-approval form; or
    - 2. Submitting the Physician's pre-approval form completed by a licensed treating physician.
  - (o) Contributions to an Achieving a Better Life Experience (ABLE) account, for the benefit of a participating student; provided, that the funds are used only for the student's education expenses subject to the rules established by the ABLE Program and that the student meets the qualifications to participate in the ABLE Program pursuant to the ABLE Act, and § 529A of the Internal Revenue Code of 1986 (26 U.S.C. § 529A), as amended, and all rules, regulations, notices, and interpretations released by the United States Department of Treasury, including the Internal Revenue Service (IRS).
- (2) Account Holders shall obtain pre-approval for educational therapies, tutoring services, and any other expenses identified by the Department. If pre-approval is not obtained, the expense will be deemed an unapproved expenditure. An Account Holder may request pre-approval by completing and submitting the Department's pre-approval form.

**Authority:** T.C.A. § 49-1-302

#### **0520-01-11-.07 MONITORING AND COMPLIANCE**

- (1) The Department shall conduct fiscal and program compliance reviews of all IEAs pursuant to procedures developed by the Department for this purpose.
- (2) The Department shall conduct an annual review of all IEAs.



(Rule 0520-01-11-.07, continued)

- (3) The Department shall establish or contract for the establishment of an online anonymous fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an Account Holder, nonpublic school, school district, or participating school(s) of state laws, rules, or procedures relating to the Program. The Department shall conduct an inquiry of any written report of fraud, or make a referral to the appropriate agency for an investigation.

**Authority:** T.C.A. § 49-1-302

#### **0520-01-11-.08 PARTICIPATING SCHOOLS**

- (1) For the purposes of the IEA Program, a participating nonpublic school is considered to have an inclusive educational setting if the following two (2) criteria are met:
  - (a) Students with disabilities are educated with non-disabled children; and
  - (b) No more than fifty (50) percent (%) of the students in an individual classroom or setting are students with disabilities.
- (2) Nonpublic schools interested in enrolling students receiving IEAs shall submit an application to the Department by the deadline set by the Department.
  - (a) The Department shall determine the application process for nonpublic schools to participate in the Program. The Department shall create a standard application which shall include, at a minimum, the eligibility requirements set forth in the Act and these rules, and may also include additional eligibility requirements set by the Department.
  - (b) The Department shall review the application and notify the school as to whether the school meets the requirements to enroll students receiving IEAs.
  - (c) If the Department determines that a school is eligible to enroll students receiving IEAs, the Department shall list the school on the Department's website.
- (3) Participating schools shall include in their application to participate in the IEA Program and in their annual renewal application the maximum number of students receiving IEAs the school has the capacity to enroll.
  - (a) Participating schools must demonstrate financial viability to repay any funds that may be owed to the state by filing with the Department with the application financial information verifying the school has the ability to pay an amount of the IEA funds expected to be paid during the school year. The school may comply with this requirement by filing a surety bond payable to the state from a surety, and in an amount determined by the Department.
  - (b) Participating schools shall provide to the Department all required documentation, including the school calendar and the nonpublic school's student fee schedules.
- (4) Participating schools shall:

(Rule 0520-01-11-.08, continued)

- (a) Be academically accountable to the Account Holder for meeting the educational needs of the student by:
    - 1. At a minimum, annually providing to the Account Holder a written explanation of the student's progress; and
    - 2. Cooperating with the parent of a student enrolled in the IEA Program, or a student enrolled in the IEA Program who has attained the age of majority, who chooses for the student to participate in the statewide assessments.
  - (b) Comply with all health and safety laws or codes that apply to nonpublic schools and the profession of the provider;
  - (c) Certify that they shall not discriminate against students or applicants on the basis of race, color, or national origin;
  - (d) Conduct criminal background checks on employees;
  - (e) Exclude from employment any person not permitted by state law to work in a nonpublic school or as a provider; and
  - (f) Exclude from employment any person who might reasonably pose a threat to the safety of students.
- (5) The funds in an IEA may be used only for educational purposes. Participating schools, postsecondary institutions, and providers that enroll participating students shall provide Account Holders with a receipt for all qualifying expenses.
- (6) Participating schools shall annually submit to the Department the graduation and completion information of participating students in accordance with procedures set by the Department.
- (7) Annually, participating schools shall submit a notice to the Department if they intend to continue participating in the Program by following the procedures developed by the Department.
- (8) The Department may require participating schools to submit to the Department a financial audit of the school conducted by a certified public accountant. Such audit shall include a statement that the report is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the Department to be expended in a manner inconsistent with this part shall be returned to the state.
- (9) The Department may suspend or terminate a participating school from participating in the Program if the Department determines the school has failed to comply with the requirements of the Act, these rules, and/or the procedures set by the Department.
- (a) If the Department suspends or terminates a school's participation, the Department shall notify the Account Holder of the decision. If a participating school is suspended or if a participating school withdraws from the Program, affected participating students remain eligible to participate in the Program.

(Rule 0520-01-11-.08, continued)

- (b) A participating school may appeal the Department's decision pursuant to the appeals procedures in the Rules of the State Board of Education.
- (10) If a student withdraws from a participating school and transfers to another nonpublic school or returns to the LEA, the participating school shall refund the tuition and fees on a prorated basis based on the number of days the student was enrolled in the school. If the student transfers to another nonpublic school, the funds shall be returned to the student's IEA. If the student returns to the LEA, the funds from the IEA shall be returned to the state treasurer to be placed in the Basic Education Program (BEP) account of the education trust fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (11) Third parties are prohibited from sending IEAs to collections in order to settle unpaid debts. All contracts entered into are the responsibility of the private parties involved.

**Authority:** T.C.A. §§ 49-1-302 and 49-10-1405

#### **0520-01-11-.09 RETURN TO LOCAL EDUCATION AGENCY**

- (1) A participating student may return to the LEA upon termination of the student's participation in the Program.
- (2) If the student transfers from a nonpublic school and enrolls in the LEA, the parent of a participating student or the participating student who has attained the age of majority shall notify the Department and the LEA in which the student resides, by following the procedures and timeline set by the Department.
- (3) Upon termination of a student's participation in the Program, the Department shall close the participating student's IEA. Upon a student's withdrawal from the nonpublic school, participating schools shall send all educational records of the participating student to the LEA or other nonpublic school identified by the parent.
- (4) The LEA shall enroll the student and provide instruction in the general education curriculum.
- (5) If the parent or student who has attained the age of majority requests, in writing, an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

**Authority:** T.C.A. §§ 49-1-302 and 49-10-1403

#### **0520-01-11-.10 APPEAL PROCEDURES**

- (1) Participating schools may appeal the denial, suspension, or termination of the entity's participation in the IEA Program, and a parent or student who has attained the age of majority may appeal a denial of determination of eligibility, a denial of an expense paid for using IEA funds, or removal of the student from the IEA Program pursuant to the following two (2) step appeal process:

(Rule 0520-01-11-.10, continued)

- (a) Step one (1): The appeal shall be on the form provided by the Department and shall be submitted to the commissioner of education within ten (10) business days of receipt of the notice of application denial, suspension, termination, and/or removal. Notice of application denial, suspension, termination, and/or removal shall be provided electronically and via first-class USPS mail and be deemed received three (3) business days after the date of postmark. The appeal shall be reviewed by the commissioner of education, or the commissioner's designee, and a decision shall be issued within forty-five (45) calendar days.
- (b) Step two (2): The Account Holder or participating school shall be notified of the commissioner's decision in the step one (1) appeal electronically and via first-class USPS. Such notice shall be deemed received three (3) business days after the date of postmark. An appeal of the commissioner's decision in step one (1) shall be filed with the commissioner by the Account Holder or participating school within thirty calendar (30) days and shall conform to the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).

**Authority:** T.C.A. § 49-1-302

#### **0520-01-11-.11 CONFLICT OF INTEREST**

- (1) Use of IEA funds must be for the sole benefit of the participating student for which the IEA is established. Any services, resources, and/or equipment purchased using IEA funds shall only be used by the participating student whose IEA paid for said services, resources, and/or equipment.
  - (a) It is a conflict of interest and is considered a misuse of IEA funds against IEA Program rules and procedures for a family member of a participating student, including step parent, or member of an eligible student's household to derive any financial benefit from the IEA Program.
  - (b) It is also a conflict of interest and against IEA Program rules and procedures for a family member of a participating student, including a step parent, or a member of a participating student's household to provide a professional recommendation or approval for a service or the use of computer hardware or other technological device for the participating student.

**Authority:** T.C.A. § 49-1-302