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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: State Board of Education
Division: N/A
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Revision Type (check all that apply):

☒ Amendment ☐ Content based on previous emergency rule filed on _____
☐ New ☐ Content is identical to the emergency rule
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0520-01-16	Education Savings Accounts
Rule Number	Rule Title
0520-01-16-.02	Definitions
0520-01-16-.03	Application and Admission
0520-01-16-.04	Agreement and Funds Transfer
0520-01-16-.05	Use of Funds
0520-01-16-.06	Term of the ESA
0520-01-16-.08	Participating Schools
0520-01-16-.10	Return to Local Education Agency

AMENDMENT

AMEND the rules of the State Board of Education Chapter 0520-01-16 Education Savings Accounts, Sections .02, .03 .04, .05 .06, .08 and .10, so that, as amended, the revised Rule Sections 02, .03 .04, .05 .06, .08 and .10 shall read:

RULES OF STATE BOARD OF EDUCATION

CHAPTER 0520-01-16 EDUCATION SAVINGS ACCOUNTS

0520-01-16-.02 DEFINITIONS.

- (1) "Account Holder" means a parent as defined in paragraph (17) of this section or a student who has reached the age of eighteen (18) who is approved by the Department to participate in the Program and signs the ESA agreement and is responsible for complying with all of the requirements of the Program.
- (2) "Agreement" means a document signed by a parent of an eligible student or an eligible student who has reached the age of eighteen (18) and a designee of the Department, that qualifies the parent or student who has reached the age of eighteen (18) to participate in the Program.
- (3) "Computer Hardware or Technological Devices" means computer hardware or technological devices approved by the Department that is used for the student's educational needs. Computer hardware and technological devices shall be purchased at or below fair market value through a participating school, private school, or provider.
- (4) "Contractor" means an entity that is paid by the Department to operate the Program or portions of the Program.
- (5) "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 paragraph (23) of this section and employers of providers shall 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 shall 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 TBI and forwarded by the TBI to the FBI 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.
- (6) "Department" means the Tennessee Department of Education.
- (7) "Early Postsecondary Opportunity Courses" means a course and/or exam recognized by the Department that give students a chance to obtain postsecondary credit while still in high school.

- (8) "Educational Therapy Services" means individualized services provided by therapists that meet the requirements established by the Department and the State Board.
- (9) "Eligible Postsecondary Institution" means an institution operated by the Board of Trustees of the University of Tennessee; the Board of Regents of the state university and community college system; or a local governing board of trustees of a state university in this state; or a private postsecondary institution accredited by an accrediting organization approved by the State Board.
- (10) "Eligible Private School" means a private school, as defined by § 49-6-3001(c)(3)(A)(iii), that meets the requirements established by the Department and the State Board for a Category I, II, or III private school, and applies to the Department to participate in the Program.
- (11) "Eligible Student" means a Tennessee resident in grades kindergarten through twelve (K-12) who:
 - (a) Meets one (1) of the following enrollment requirements:
 - 1. Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year for which the student receives an ESA;
 - 2. Is eligible for the first time to enroll in a Tennessee school;
 - 3. Received an ESA in the previous school year;
 - 4. Was 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
 - 5. Was eligible for the first time to enroll in a Tennessee public school in the 2019-20, 2020-21, or 2021-22 school year;
 - (b) Is zoned to attend a school in Shelby County Schools, Metropolitan Nashville Public Schools, Hamilton County Schools, or is zoned to attend a school that was in the Achievement School District on May 24, 2019; and
 - (c) Is a member of a household with an annual income for the previous year that does not exceed twice the federal income eligibility guidelines for free lunch.
- (12) "ESA" means a Tennessee Education Savings Account.
- (13) "Fee-for-Service Transportation Provider" means a commercial transportation provider including a school bus service. It does not include private transportation by a family member, parent, or participating student in accordance with the conflict of interest provisions set forth in this Chapter.
- (14) "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.
- (15) "ISP" means an Individualized Service Plan and is a written statement that describes the special education and related services to be provided by an LEA to a student who is eligible under

Individuals with Disabilities Education Act at 20 U.S.C. § 1400, *et seq.*, but has been enrolled in a non-public school by the student's parent.

- (16) "Legacy Student" means a participating student who graduates from high school or exits the Program by reaching twenty-two (22) years of age; and
 - (a) Has funds remaining in the student's ESA; and
 - (b) Has an open ESA.
- (17) "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 Tennessee general assembly.
- (18) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child under T.C.A. § 49-6-3001.
- (19) "Participating School" means an eligible private school that has been approved to participate in the Program and seeks to enroll eligible students.
- (20) "Participating Student" means an eligible student who is seventeen (17) years of age or younger and whose parent is participating in the Program or an eligible student who has reached the age of eighteen (18) and is participating in the Program.
- (21) "Private or Non-Profit Financial Management Organization" means an institution selected by the Department to administer the education savings accounts.
- (22) "Program" means the ESA Program created in T.C.A. § 49-6-2602, *et seq.*
- (23) "Provider" means an individual or business that provides educational services in accordance with T.C.A. § 49-6-2601, *et seq.* and that meets the requirements established by the Department and the State Board.
- (24) "State Board" means the Tennessee State Board of Education.
- (25) "Summer Education Programs and Specialized Afterschool Education Programs" means educational programs approved by the Department that are operated outside of the regular school day or school year, which do not include afterschool childcare.
- (26) "Technology Fees" means fees charged by a participating school, private school, or provider for the use of technology or technological devices.
- (27) "Tuition or Fees" means tuition or fees of an instructional nature at a participating school, or an eligible postsecondary institution. Fees do not include: room and board, food, or consumable school supplies.
- (28) "Tutoring Services" means educational services provided by a tutor or tutoring facility that is approved by the Department and the State Board.

- (29) "Qualified Expenses" means the expenses outlined in T.C.A. § 49-6-2603(a)(4) and this rule.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.03 APPLICATION AND ADMISSION.

- (1) To apply to receive an ESA, the parent of an Eligible Student or an Eligible Student who has reached the age of eighteen (18), must submit a completed application through the Department's website by the deadline set by the Department.
- (2) As part of the Program application, the parent of an Eligible Student or an Eligible Student who has reached the age of eighteen (18), must provide verification that the student is a member of a household with an annual income for the previous year that does not exceed twice the federal income eligibility guidelines for free lunch.
 - (a) Income verification shall be established through:
 1. Federal income tax returns from the previous year; or
 2. Proof of eligibility for enrollment in the state's Temporary Assistance for Needy Families (TANF) program.
 - (b) The Department may require additional information to verify household income.
 - (c) Students identified as "economically disadvantaged" as defined in T.C.A. § 49-3-104(10) shall automatically satisfy the income requirements for eligibility.
- (3) If, in the application period for a school year, the number of Program applications received by the Department from Eligible Students exceeds the maximum number of students that may participate in the Program for that school year pursuant to T.C.A. § 49-6-2604(c), then the Department shall conduct an enrollment lottery process. Students who participated in the Program in the previous school year shall be reenrolled in the Program if renewal criteria is met and shall be excluded from entering into an enrollment lottery. If an enrollment lottery is conducted, then enrollment priority must be granted in the following order:
 - (a) Eligible Students who have a sibling participating in the Program;
 - (b) Eligible Students zoned to attend a priority school as defined by the state's accountability system pursuant to T.C.A. § 49-1-602, at the time of the enrollment lottery;
 - (c) Eligible Students eligible for direct certification under 42 U.S.C. § 1758(b)(4); and
 - (d) All other Eligible Students.
- (4) Once a completed application has been approved by the Department, the parent of an Eligible Student or an Eligible Student who has reached the age of eighteen (18) shall complete the enrollment procedures set by the Department to become enrolled in the Program.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.04 AGREEMENT AND FUNDS TRANSFER.

- (1) Upon notification by the Department that an ESA may be established, a parent of an Eligible Student or an Eligible Student who has reached the age of eighteen (18) shall sign an Agreement to:
 - (a) Ensure the provision of an education for the Participating Student that satisfies the compulsory school attendance requirement provided in T.C.A. § 49-6-3001(c)(1) through enrollment in a Category I, II, or III private school as defined by the State Board;
 - (b) Comply with the requirement that Participating Students in grades three through eleven (3-11) participate in the Tennessee comprehensive assessment program ("TCAP") tests for Math and English Language Arts, or successor tests authorized by the State Board, each year of enrollment in the Program;
 - (c) Not enroll the Participating Student in a public school during the time the student is enrolled in the Program;
 - (d) Not enroll the Participating Student in the Individualized Education Account (IEA) Program during the time the student is enrolled in the Program;
 - (e) Release the LEA in which the Participating Student resides and the school for which the Participating Student is zoned to attend from all obligations to educate the Participating Student during the time the Participating Student is enrolled in the Program;
 - (f) Acknowledge that participation in the Program has the same effect as parental refusal to consent to the receipt of services under the Individuals with Disabilities Education Act at 20 U.S.C. § 1414. Participating students will no longer be entitled to a free appropriate public education (FAPE) provided through an IEP but instead will be entitled to equitable services through an ISP. Account holders acknowledge that students with an ISP are only entitled to receive some special education and related services, not all of the services that are required for a student with an IEP to receive FAPE. Participating Students who previously held IEPs should engage with the LEA to develop an ISP through the consultation process, as defined in 34 C.F.R. § 300.134 and 300.137.
 - (g) Acknowledge that if the Participating Student enrolls in the ESA Program, the Participating School is only required to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 if the school receives federal funding; and
 - (h) Comply with the acceptable uses of ESA funds and the responsibilities of the Parent of a Participating Student or Participating Student who has reached the age of eighteen (18).
- (2) The Agreement and any additional information required by the Department shall be submitted to and received by the Department by the deadlines set by the Department before the first ESA payment is disbursed.

- (3) The Agreement shall be signed by the Parent of an Eligible Student or by the Eligible Student who has reached the age of eighteen (18) and a designee of the Department to be effective.
- (4) The Department shall establish procedures to effectuate the ESA funds transfer process and dates on which each ESA payment shall be disbursed.
- (5) Prior to the first disbursement of ESA funds, the Account Holder must provide proof of enrollment in a Category I, II, or III private school. No funds shall be disbursed to an ESA account without proof of enrollment in a Category I, II, or III private school.
- (6) ESA funds shall not be used for Tuition at a non-participating school.
- (7) The maximum annual amount to which a Participating Student is entitled under the Program shall be equal to the amount representing the per pupil state and local funds generated and required through the state's K-12 education funding formula for the LEA in which the Participating Student resides, or the statewide per pupil average of required state and local funds as determined through the state's K-12 education funding formula, whichever amount is less.
- (8) If a Participating Student enrolls in the Program for less than an entire school year, the ESA amount for that school year shall be reduced on a prorated daily basis.
- (9) After the initial and each subsequent payment to the ESA, the Account Holder shall submit expense reports and receipts for all ESA funds expended in accordance with the procedures set by the Department before the next ESA payment is disbursed.
- (10) In accordance with the procedures set by the Department, the Department may remove any Account Holder from eligibility for an ESA if the Account Holder fails to comply with the terms of the Agreement or applicable laws, rules or procedures, or misuses funds. The Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.
- (11) If the Department determines that ESA funds have been misused, the Department shall notify the Account Holder, and the Account Holder shall repay the misused amount in the manner and within the timeframe set by the Department. Additionally, the Department is authorized to freeze or withdraw funding directly from the student's ESA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with state laws, rules, procedures or the Agreement, the Participating Student's return to the LEA, or the funds having been deposited into the account in error. An Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601 et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.05 USE OF FUNDS.

- (1) Account Holders shall agree to use the funds deposited in the ESA 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:
 - 1. An individual tutor, including, but not limited to, a licensed Tennessee educator;
 - 2. A tutoring facility 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) Fees for transportation paid to a Fee-for-Service Transportation Provider. Transportation fees can only be used for transportation to and from:
 - 1. Participating Schools; or
 - 2. Providers;
 - (e) Fees for Early Postsecondary Opportunity Courses and related examinations, or any examinations related to college admission;
 - (f) Computer Hardware, Technological Devices, or other technology fees approved by the Department, if the Computer Hardware, Technological Device, or technology fee is used for the student's educational needs and is purchased at or below fair market value through a Participating School, Private School, or Provider;
 - (g) School uniforms, if required by a Participating School;
 - (h) Tuition and fees for Summer Education Programs and Specialized Afterschool Education Programs, as approved by the Department, which do not include afterschool childcare;
 - (i) Tuition and Fees at an Eligible Postsecondary Institution;
 - (j) Textbooks required by an Eligible Postsecondary Institution;
 - (k) Educational Therapy Services designed to improve academic performance through instructional and therapeutic techniques, and provided by therapists that meet the requirements established by the Department and the State Board; and/or
 - (l) Fees for the management of the ESA by a Private or Non-Profit Financial Management Organization approved by the Department, not to exceed two percent (2%) of the funds deposited in an ESA account in a fiscal year.
- (2) Account Holders shall obtain pre-approval for all expenses. If pre-approval is not obtained, the expense shall be deemed an unapproved expenditure. An Account Holder may request pre-approval by completing and submitting the Department's pre-approval form in accordance with procedures developed by the Department.

- (3) Any Tuition or Fees charged by a Participating School or Eligible Postsecondary Institution that exceed the ESA amount shall be the responsibility of the Account Holder.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.06 TERM OF THE ESA.

- (1) For purposes of continuity of educational attainment, a Participating Student shall remain eligible to participate in the Program until the Participating Student meets one (1) of the following, whichever occurs first:
 - (a) Enrolls in a public school;
 - (b) Enrolls in a Category IV or V private school or a private school not approved under the rules of the State Board;
 - (c) Ceases to be a resident of Shelby, Hamilton, or Davidson Counties;
 - (d) Is suspended or terminated from participating in the Program in accordance with T.C.A. § 49-6-2808;
 - (e) Graduates or withdraws from high school with no funds remaining in an open ESA account;
 - (f) Reaches twenty-two (22) years of age with no funds remaining in an open ESA account. However, if the Participating Student reaches the age of twenty-two (22) with funds remaining in an open ESA account after the commencement of the school year, the Participating Student may remain in the Program until the conclusion of that school year; or
 - (g) No longer meets or fails to verify that the Participating Student's household income meets the requirements of T.C.A. § 49-6-2602(3)(D) and this rule according to the schedule and income-verification process developed by the Department.
- (2) A Participating Student may voluntarily withdraw from the Program at any time. The Account Holder shall complete the procedures for withdrawal from the Program as set by the Department.
- (3) If a Participating Student becomes ineligible to participate in the Program for any reason or withdraws from the Program, the Participating Student's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (4) The Account Holder may transfer the Participating Student from the Participating School to another Participating School in accordance with procedures set by the Department.
- (5) In order for a Participating Student to continue in the Program, the Account Holder shall annually apply to renew the ESA by following the procedures developed by the Department and posted on the Department's website.

- (6) If a Participating Student graduates high school or reaches twenty-two (22) years of age while enrolled in high school pursuant to T.C.A. § 49-6-2603(d)(1), and has funds remaining in the Participating Student's open ESA, the Participating Student shall become a Legacy Student.
 - (a) A Legacy Student may use ESA funds to attend or take courses from an Eligible Postsecondary Institution and those expenditures are determined to be Qualifying Expenses.
 - (b) A Legacy Student's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358, after the first of the following events:
 - 1. Upon a Legacy Student's graduation from an Eligible Postsecondary Institution;
 - 2. After four (4) consecutive years elapse immediately after a Legacy Student enrolls in an Eligible Postsecondary Institution; or
 - 3. After a Legacy Student is not enrolled in an Eligible Postsecondary Institution for twelve (12) consecutive months.
- (7) Account Holders are not required to spend the entire sum each year, however, a minimum amount of fifty percent (50%) of the funds must be used each year on approved expenses for the benefit of the student enrolled in the Program.
 - (a) If overall spending does not equal fifty percent (50%) by the deadline for submission of the last expense report and if the ESA is renewed for the following year, the Department shall subtract the difference from the payments in the next contract year. If a student withdraws from the ESA Program or if the ESA is not renewed, the ESA shall be closed, and any remaining funds shall be returned to the state treasurer pursuant to T.C.A. § 49-6-2603.
- (8) The Department shall provide Parents of Participating Students or Participating Students who have reached the age of eighteen (18) with a written explanation of the allowable uses of ESA funds and the responsibilities of Parents of Participating Students and Participating Students who have reached the age of eighteen (18) regarding ESA funds. The Department shall also provide Parents of Participating Students or Participating Students who have reached the age of eighteen (18) with a written explanation of the Department's duties regarding ESA funds, Eligible Students, Participating Students, and Legacy Students.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-08 PARTICIPATING SCHOOLS.

- (1) Eligible Private Schools interested in enrolling students receiving ESAs shall submit an application to the Department by the deadline set by the Department.
 - (a) The Department shall develop an application and application process for Eligible Private Schools to participate in the Program. Such application shall be posted on the

Department's website and shall request, at a minimum, the following information from an applicant:

1. The maximum number of students receiving ESAs the school has the capacity to enroll per grade level;
 2. Demonstration of financial viability to repay any funds that may be owed to the state by filing with the application financial information verifying the school has the ability to pay an aggregate amount equal to twenty five percent (25%) of the amount of ESA funds expected to be paid during the school year. The school may comply with this requirement by filing an annual surety bond payable to the state from a surety, and in an amount determined by the Department; and
 3. The school's academic calendar, the school's admission policy, and the school's tuition and fee schedule.
- (b) The Department shall review the application and notify the school as to whether the school meets the requirements outlined in (a) to become a Participating School and receive ESA funds from a Participating Student for Qualified expenses including, tuition and fees.
- (c) If an Eligible Private School is approved to be a Participating School, the Department shall list the school on the Department's website, including grades served and any other information the Department determines may assist parents in selecting a Participating School.
- (2) As a condition of approval to become a Participating School, the school shall agree to the following:
- (a) Be academically accountable to the Account Holder for meeting the educational needs of the Participating Student by:
 1. At a minimum, annually providing to the Account Holder a written explanation of the student's progress; and
 2. Ensuring Participating Students in grades three through eleven (3-11) are administered the TCAP tests in math and English Language Arts, or successor tests approved by the State Board, each year the Participating Student is enrolled in the Participating School.
 - (b) Comply with all state and federal health and safety laws or codes that apply to non-public schools;
 - (c) Comply with monitoring requirements set by the Department;
 - (d) Certify that they shall not discriminate against Participating Students or applicants on the basis of race, color, or national origin;
 - (e) Agree to accept reimbursement payments for tuition and fees from an Account Holder on the payment schedule identified by the Department;

- (f) Agree to participate in the Program for the full school year unless the school is suspended or terminated by the Department;
- (g) Comply with T.C.A. § 49-5-202;
- (h) Comply with the minimum kindergarten age requirement pursuant to T.C.A. § 49-6-201(b)(3) and the State Board of Education Rule 0520-07-02;
- (i) Conduct criminal background checks on employees upon employment and at least every five (5) years thereafter; and
- (j) Exclude from employment:
 - 1. Any person not permitted by state law to work in a nonpublic school; and
 - 2. Any person who might reasonably pose a threat to the safety of students. Participating schools have ultimate discretion to determine whether or not a person might reasonably pose a threat to the safety of students; however, participating schools may consider excluding persons who have ever been convicted of any of the following offenses, or the same or similar offense in any jurisdiction, including convictions for the solicitation of, attempt to commit, conspiracy, or acting as an accessory to:
 - (i) A sexual offense or a violent sexual offense as defined in T.C.A. § 40-39-202;
 - (ii) An offense listed in T.C.A. §§ 39-13-102 – 39-13-115;
 - (iii) An offense listed in T.C.A. §§ 39-14-301 and 39-14-302;
 - (iv) An offense listed in T.C.A. §§ 39-14-401 – 39-14-404;
 - (v) An offense listed in T.C.A. §§ 39-15-401 and 39-15-402;
 - (vi) An offense listed in T.C.A. § 39-17-417; and
 - (vii) An offense listed in T.C.A. title 39, chapter 17, part 13.
- (3) The funds in an ESA may be used only as provided in section .05 of this rule for educational purposes. Participating schools that enroll Participating Students shall provide Account Holders with a receipt for all qualifying expenses paid to the Participating School using ESA funds.
- (4) Participating Schools shall not charge an Account Holder or Participating Student additional tuition or fees that are not also charged to non-participating students.
- (5) Participating Schools shall not, in any manner, refund, rebate, or share ESA funds with an Account Holder or Participating Student.
- (6) Within five (5) business days of receipt of a Participating Student's notice of withdrawal, a Participating School shall notify the Department of the Participating Student's withdrawal.

- (7) Participating Schools shall annually submit to the Department the graduation and completion information of Participating Students in accordance with procedures set by the Department.
- (8) 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.
- (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 state law, rules, or procedures.
 - (a) If the Department suspends or terminates a school's participation, the Department shall notify the affected Participating Students, the Account Holder, and the Participating School of the decision. If a Participating School is suspended or terminated or if a Participating School withdraws from the Program, affected Participating Students remain eligible to participate in the Program.
 - (b) A Participating School may appeal the Department's decision pursuant to the appeals procedures set forth in this Chapter.
- (10) The Department may suspend or terminate a Participating School from participating in the Program for low academic performance. Low academic performance is defined as failure of Participating Students to make academic progress as demonstrated by multiple performance measures, including, but not limited to, lack of progress or growth on the TCAP tests, or successor tests approved by the State Board, or any nationally normed assessment utilized by the Participating School.
- (11) All contracts entered into are the responsibility of the private parties involved.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.10 RETURN TO LOCAL EDUCATION AGENCY.

- (1) A Participating Student who is otherwise eligible to return to the student's LEA may return to the LEA at any time after enrolling in the Program. Upon enrollment in an LEA, the student's participation in the Program shall be terminated.
- (2) If a Participating Student enrolls in an LEA, the Parent of a Participating Student or the Participating Student who has reached the age of eighteen (18) shall notify the Department in accordance with the procedures and timelines set by the Department.
- (3) Upon termination of a student's participation in the Program, the Department shall close the Participating Student's ESA and any remaining funds shall be returned to the state treasurer to be placed in the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (4) Upon enrollment in the LEA, students previously eligible for an IEP, as set forth in State Board Chapter 0520-01-09, remain eligible for special education and related services unless the LEA conducts a reevaluation and determines the student is no longer eligible for special education and related services.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Jordan Mollenhour	X				
Bob Eby	X				
Ryan Holt	X				
Warren Wells	X				
Lillian Hartgrove	X				
Nate Morrow	X				
Darrell Cobbins	X				
Larry Jensen	X				
Krissi McInturff	X				
Laurel Cox				X	
Victoria Harpool, designee for Steven Gentile, Interim Executive Director, Tennessee Higher Education Commission Non-Voting Ex-Officio					


I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education on 11/03/2023, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/11/2023

Rulemaking Hearing(s) Conducted on: (add more dates), 10/02/2023

Date: 11/22/2023

Signature: 

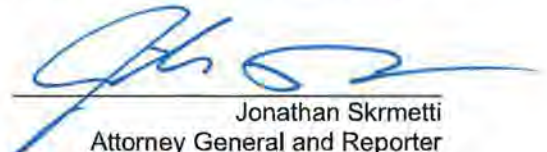
Name of Officer: Angie Sanders

Title of Officer: General Counsel

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-01-16

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Jonathan Skrmetti
Attorney General and Reporter
Nov. 29, 2023
Date

Department of State Use Only

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Secretary of State
Division of Publications

Filed with the Department of State on: 12/18/2023

Effective on: 3/17/2024



Tre Hargett
Secretary of State

Public Hearing Comments

The Tennessee State Board of Education held a public rulemaking hearing on Rules 0520-01-16-.02, .03 .04, .05 .06, .08 and .10 on October 2, 2023, at 500 James Robertson Parkway, Nashville, TN and via Webex. No public comments were submitted at the hearing regarding this rule.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule does affect small businesses.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

Some smaller Category I, II, or III eligible private schools would likely qualify as small business as they may employ fewer than 50 people. It is not anticipated that there will be any cost to small businesses as the proposed revisions to this rule reflect alignment with recent legislation regarding student eligibility to participate in the ESA program and other requirements specific to participating students and not participating schools. The provisions affecting participating schools merely clarify the amount of financial viability a school is required to submit with the school's application for participation in the program to reflect the quarterly disbursement schedule. The requirement to demonstrate financial viability is not new to the rule.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

There are not projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed changes to this rule.

(3) A statement of the probable effect on impacted small businesses and consumers;

There is not a projected impact on small businesses from this rule revision.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;

There is no less burdensome, less intrusive, or less costly alternative method of achieving the purposes and/or objectives of the proposed rule. It is not anticipated that this rule will have a fiscal impact or create burdens on small business.

(5) A comparison of the proposed rule with any federal or state counterparts; and

Federal: The proposed rule has no federal counterpart. However, provisions of the rule were added in compliance with United States Department of Education Office of Special Education and Rehabilitative Services guidance related to "state-funded school voucher and scholarship programs."

State: In drafting these initial rules, the Department of Education and the State Board utilized similar language from the Individualized Education Account program rules already in effect in Tennessee. Additionally, staff researched how other states handle ESA and voucher programs, including North Carolina, Florida, and Indiana. Given the unique nature of the ESA statute in Tennessee, these rules do not align directly with any other state, but to the extent possible, reflect feedback received from other states regarding best practices and lessons learned.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

The rule does not provide any exemptions for small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

This rule has no fiscal impact on local governments beyond the authorizing legislation.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

T.C.A. § 49-6-2601 *et seq.* and State Board Rules Chapter 0520-01-16 outline the student eligibility and participation requirements for the Education Savings Account (ESA) program. Revisions are proposed to ESA Rules -.02 through -.06., -.08, and -.10 to align with legislation passed in 2023 and to provide additional clarity to the rules.

Revisions were made in alignment with Chapter 171 and Chapter 328 of the Public Acts of 2023. These Acts changed the eligibility requirements for students eligible to enroll in 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 (Chapter 171);
- 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 171);
- Are residents of Hamilton County (Chapter 328).

The following revisions were also made 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.
- 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.
- 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.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Chapter 171 and Chapter 328 of the Public Acts of 2023 changed the eligibility requirements for students to participate in the ESA program.

T.C.A. §§ 49-6-2601 *et seq.* establishes the Education Savings Account program. T.C.A. § 49-6-2610 authorizes the State Board of Education to promulgate rules to effectuate the Education Savings Account program.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule has a direct effect on the State Board and Department of Education and both urge adoption. These rules also have a direct effect on schools participating in and/or eligible for the ESA program, Local Education Agencies where students are eligible to participate in the program, eligible students, and students enrolled in the ESA program. The State Board did not hear from any of these parties urging adoption or rejection of the rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Angie Sanders (State Board of Education)
Angela.C.Sanders@tn.gov

Nathan James (State Board of Education)
Nathan.James@tn.gov

Robin Yeh (Department of Education)
Robin.Yeh@tn.gov

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Angie Sanders (State Board of Education)
Angela.C.Sanders@tn.gov

Nathan James (State Board of Education)
Nathan.James@tn.gov

Robin Yeh (Department of Education)
Robin.Yeh@tn.gov

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**RULES
OF
STATE BOARD OF EDUCATION

CHAPTER 0520-01-16
EDUCATION SAVINGS ACCOUNTS**

0520-01-16-.02 DEFINITIONS.

- (1) "Account Holder" means a parent as defined in paragraph (17) of this section or a student who has reached the age of eighteen (18) who is approved by the Department to participate in the Program and signs the ESA agreement and is responsible for complying with all of the requirements of the Program.
- (2) "Agreement" means a document signed by a parent of an eligible student or an eligible student who has reached the age of eighteen (18) and a designee of the Department, that qualifies the parent or student who has reached the age of eighteen (18) to participate in the Program.
- (3) "Computer Hardware or Technological Devices" means computer hardware or technological devices approved by the Department that is used for the student's educational needs. Computer hardware and technological devices shall be purchased at or below fair market value through a participating school, private school, or provider.
- (4) "Contractor" means an entity that is paid by the Department to operate the Program or portions of the Program.
- (5) "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 paragraph (232) of this section and employers of providers shall 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 shall 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 TBI and forwarded by the TBI to the FBI 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.
- (6) "Department" means the Tennessee Department of Education.
- (7) "Early Postsecondary Oppportunity Courses" means a course and/or exam recognized by the Department that give students a chance to obtain postsecondary credit while still in high school.

- (8) "Educational ~~T~~therapy ~~S~~services" means individualized services provided by therapists that meet the requirements established by the Department and the State Board.
- (9) "Eligible ~~P~~postsecondary ~~I~~institution" means an institution operated by the Board of Trustees of the University of Tennessee; the Board of Regents of the state university and community college system; or a local governing board of trustees of a state university in this state; or a private postsecondary institution accredited by an accrediting organization approved by the State Board.
- (10) "Eligible ~~P~~private ~~S~~school" means a private school, as defined by § 49-6-3001(c)(3)(A)(iii), that meets the requirements established by the Department and the State Board for a Category I, II, or III private school, and applies to the Department to participate in the Program.
- (11) "Eligible ~~S~~student" means a Tennessee resident in grades kindergarten through twelve (K-12) who:
- (a) Meets one (1) of the following enrollment requirements:
 - 1. Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year for which the student receives an ESA;
 - 2. Is eligible for the first time to enroll in a Tennessee school; ~~or~~
 - 3. Received an ESA in the previous school year;
 - 4. Was 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
 - 5. Was eligible for the first time to enroll in a Tennessee public school in the 2019-20, 2020-21, or 2021-22 school year;
 - (b) Is zoned to attend a school in Shelby County Schools, Metropolitan Nashville Public Schools, Hamilton County Schools, or is zoned to attend a school that was in the Achievement School District on May 24, 2019; and
 - (c) Is a member of a household with an annual income for the previous year that does not exceed twice the federal income eligibility guidelines for free lunch.
- (12) "ESA" means a Tennessee Education Savings Account.
- (13) "~~Fee-for-~~~~S~~service ~~T~~ransportation ~~P~~rovider" means a commercial transportation provider including a taxi-or-school bus service. It does not include private transportation by a family member, parent, or participating student in accordance with the conflict of interest provisions set forth in these Rules~~this Chapter~~.
- (14) "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.

~~(14)~~(15) "ISP" means an Individualized Service Plan and is a written statement that describes the special education and related services to be provided by an LEA to a student who is eligible under Individuals with Disabilities Education Act at 20 U.S.C. § 1400, et seq., but has been enrolled in a non-public school by the student's parent.

~~(15)~~(16) "Legacy Sstudent" means a participating student who graduates from high school or exits the Program by reaching twenty-two (22) years of age; and

- (a) Has funds remaining in the student's ESA; and
- (b) Has an open ESA.

~~(16)~~(17) "Local Education Agency (LEA)," "Sschool Ssystem," "Ppublic Sschool Ssystem," "Llocal Sschool Ssystem," "Sschool Ddistrict," or "Llocal Sschool Ddistrict" 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 Tennessee general assembly.

~~(17)~~(18) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child under T.C.A. § 49-6-3001.

~~(18)~~(19) "Participating Sschool" means an eligible private school that has been approved to participate in the Program and seeks to enroll eligible students.

~~(19)~~(20) "Participating Sstudent" means an eligible student who is seventeen (17) years of age or younger and whose parent is participating in the Program or an eligible student who has reached the age of eighteen (18) and is participating in the Program.

~~(20)~~(21) "Private or Non-Pprofit Ffinancial Mmanagement Oorganization" means an institution selected by the Department to administer the education savings accounts.

~~(21)~~(22) "Program" means the ESA Program created in T.C.A. § 49-6-2602, et seq.

~~(22)~~(23) "Provider" means an individual or business that provides educational services in accordance with T.C.A. § 49-6-2601, et seq. and that meets the requirements established by the Department and the State Board.

~~(23)~~(24) "State Board" means the Tennessee State Board of Education.

~~(24)~~(25) "Summer Eeducation Pprograms and Sspecialized Aafterschool Eeducation Pprograms" means educational programs approved by the Department that are operated outside of the regular school day or school year, which do not include afterschool childcare.

~~(25)~~(26) "Technology Ffees" means fees charged by a participating school, private school, or provider for the use of technology or technological devices.

~~(26)~~~~(27)~~ "Tuition or Fees" means tuition or fees of an instructional nature at a participating school, or an eligible postsecondary institution. Fees do not include: room and board, food, or consumable school supplies.

~~(27)~~~~(28)~~ "Tutoring Services" means educational services provided by a tutor or tutoring facility that is approved by the Department and the State Board.

~~(28)~~~~(29)~~ "Qualified Expenses" means the expenses outlined in T.C.A. § 49-6-2603(a)(4) and this rule.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:**

0520-01-16-.03 APPLICATION AND ADMISSION.

- (1) To apply to receive an ESA, the parent of an Eligible Student or an Eligible Student who has reached the age of eighteen (18), must submit a completed application through the Department's website by the deadline set by the Department.
- (2) As part of the Program application, the parent of an Eligible Student or an Eligible Student who has reached the age of eighteen (18), must provide verification that the student is a member of a household with an annual income for the previous year that does not exceed twice the federal income eligibility guidelines for free lunch.
 - (a) Income verification shall be established through:
 1. Federal income tax returns from the previous year; or
 2. Proof of eligibility for enrollment in the state's Temporary Assistance for Needy Families (TANF) program.
 - (b) The Department may require additional information to verify household income.
 - (c) Students identified as "at-riskeconomically disadvantaged" as defined in T.C.A. § ~~49-3-307(a)(6)~~49-3-104(10) shall automatically satisfy the income requirements for eligibility.
- (3) If, in the application period for a school year, the number of Program applications received by the Department from Eligible Students exceeds the maximum number of students that may participate in the Program for that school year pursuant to T.C.A. § 49-6-2604(c), then the Department shall conduct an enrollment lottery process. Students who participated in the Program in the previous school year shall be reenrolled in the Program if renewal criteria is met and shall be excluded from entering into an enrollment lottery. If an enrollment lottery is conducted, then enrollment priority must be granted in the following order:
 - (a) Eligible Students who have a sibling participating in the Program;
 - (b) Eligible Students zoned to attend a priority school as defined by the state's accountability system pursuant to T.C.A. § 49-1-602, at the time of the enrollment lottery;

- (c) Eligible Students eligible for direct certification under 42 U.S.C. § 1758(b)(4); and
 - (d) All other Eligible Students.
- (4) Once a completed application has been approved by the Department, the parent of an Eligible Student or an Eligible Student who has reached the age of eighteen (18) shall complete the enrollment procedures set by the Department to become enrolled in the Program.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.04 AGREEMENT AND FUNDS TRANSFER.

- (1) Upon notification by the Department that an ESA may be established, a parent of an Eligible Student or an Eligible Student who has reached the age of eighteen (18) shall sign an Agreement to:
 - (a) Ensure the provision of an education for the Participating Student that satisfies the compulsory school attendance requirement provided in T.C.A. § 49-6-3001(c)(1) through enrollment in a Category I, II, or III private school as defined by the State Board;
 - (b) Comply with the requirement that Participating Students in grades three through eleven (3-11) participate in the Tennessee comprehensive assessment program ("TCAP") tests for Math and English Language Arts, or successor tests authorized by the State Board, each year of enrollment in the Program;
 - (c) Not enroll the Participating Student in a public school during the time the student is enrolled in the Program;
 - (d) Not enroll the Participating Student in the Individualized Education Account (IEA) Program during the time the student is enrolled in the Program;
 - (e) Release the LEA in which the Participating Student resides and the school for which the Participating Student is zoned to attend from all obligations to educate the Participating Student during the time the Participating Student is enrolled in the Program;
 - (f) Acknowledge that participation in the Program has the same effect as parental refusal to consent to the receipt of services under the Individuals with Disabilities Education Act at 20 U.S.C. § 1414. Participating students will no longer be entitled to a free appropriate public education (FAPE) provided through an IEP but instead will be entitled to equitable services through an ISP. Account holders acknowledge that students with an ISP are only entitled to receive some special education and related services, not all of the services that are required for a student with an IEP

to receive FAPE. Participating Students who previously held IEPs should engage with the LEA to develop an ISP through the consultation process, as defined in 34 C.F.R. § 300.134 and 300.137.

- (g) Acknowledge that- if the Participating Student enrolls in the ESA Program, the Participating School is only required to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 if the school receives federal funding; and
- (g) Comply with the acceptable uses of ESA funds and the responsibilities of the Parent of a Participating Student or Participating Student who has reached the age of eighteen (18).
- (2) The Agreement and any additional information required by the Department shall be submitted to and received by the Department by the deadlines set by the Department before the first ESA payment is disbursed.
- (3) The Agreement shall be signed by the Parent of an Eligible Student or by the Eligible Student who has reached the age of eighteen (18) and a designee of the Department to be effective.
- (4) The Department shall establish procedures to effectuate the ESA funds transfer process and dates on which each ESA payment shall be disbursed.
- (5) Prior to the first disbursement of ESA funds, the Account Holder must provide proof of enrollment in a Category I, II, or III private school. No funds shall be disbursed to an ESA account without proof of enrollment in a Category I, II, or III private school.
- (6) ESA funds ~~shall~~may not be used for Tuition at a non-participating school.
- (7) The maximum annual amount to which a ~~P~~participating ~~S~~tudent is entitled under the Program shall be equal to the amount representing the per pupil state and local funds generated and required through the state's K-12 education funding formula for the LEA in which the Participating Student resides, or the statewide per pupil average of required state and local funds as determined through the state's K-12 education funding formula, whichever amount is less.
- (8) If a Participating Student enrolls in the Program for less than an entire school year, the ESA amount for that school year shall be reduced on a prorated daily basis.
- (9) After the initial and each subsequent payment to the ESA, the Account Holder shall submit expense reports and receipts for all ESA funds expended in accordance with the procedures set by the Department before the next ESA payment is disbursed.
- (10) In accordance with the procedures set by the Department, the Department may remove any Account Holder from eligibility for an ESA if the Account Holder fails to comply with the terms of the Agreement or applicable laws, rules or procedures, or misuses funds. The

Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.

- (11) If the Department determines that ESA funds have been misused, the Department shall notify the Account Holder, and the Account Holder shall repay the misused amount in the manner and within the timeframe set by the Department. Additionally, the Department is authorized to freeze or withdraw funding directly from the student's ESA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with state laws, rules, procedures or the Agreement, the Participating Student's return to the LEA, or the funds having been deposited into the account in error. An Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601 et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.05 USE OF FUNDS.

- (1) Account Holders shall agree to use the funds deposited in the ESA for any, or any combination of, the following expenses:
- (a) Tuition or fees at a Pparticipating Sschool;
 - (b) Textbooks required by a Pparticipating Sschool;
 - (c) Tutoring Sservices provided by:
 - 1. An individual tutor, including, but not limited to, a licensed Tennessee educator;
 - 2. A tutoring facility 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) Fees for transportation paid to a Ffee-for-Sservice Transportation Provider. Transportation fees can only be used for transportation to and from:
 - 1. Participating Sschools; or
 - 2. Providers;
 - (e) Fees for Early Postsecondary Oppportunity Courses and related examinations, or any examinations related to college admission;

- (f) Computer ~~H~~hardware, ~~T~~technological ~~D~~devices, or other technology fees approved by the Department, if the ~~C~~computer ~~H~~hardware, ~~T~~technological ~~D~~device, or technology fee is used for the student's educational needs and is purchased at or below fair market value through a ~~P~~participating ~~S~~school, ~~P~~private ~~S~~school, or ~~P~~provider;
 - (g) School uniforms, if required by a ~~P~~participating ~~S~~school;
 - (h) Tuition and fees for ~~S~~summer ~~E~~education ~~P~~programs and ~~S~~specialized ~~A~~afterschool ~~E~~education ~~P~~programs, as approved by the Department, which do not include afterschool childcare;
 - (i) Tuition and ~~F~~ees at an ~~E~~eligible ~~P~~postsecondary ~~I~~institution;
 - (j) Textbooks required by an ~~E~~eligible ~~P~~postsecondary ~~I~~institution;
 - (k) Educational ~~T~~therapy ~~S~~services designed to improve academic performance through instructional and therapeutic techniques, and provided by therapists that meet the requirements established by the Department and the State Board; and/or
 - (l) Fees for the management of the ESA by a ~~P~~private or ~~N~~non-~~P~~profit ~~F~~financial ~~M~~management ~~O~~organization approved by the Department, not to exceed two percent (2%) of the funds deposited in an ESA account in a fiscal year.
- (2) Account Holders shall obtain pre-approval for ~~tuition and fees, computer hardware or other technological devices, tutoring services, educational therapy services, summer education programs and specialized afterschool education programs, and any other expenses identified by the Department all expenses~~. If pre-approval is not obtained, the expense shall be deemed an unapproved expenditure. An Account Holder may request pre-approval by completing and submitting the Department's pre-approval form in accordance with procedures developed by the Department.
- (3) Any ~~T~~uition or ~~F~~ees charged by a ~~P~~participating ~~S~~school or ~~E~~ligible ~~P~~postsecondary ~~I~~institution that exceed the ESA amount shall be the responsibility of the Account Holder.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.06 TERM OF THE ESA.

- (1) For purposes of continuity of educational attainment, a Participating Student shall remain eligible to participate in the Program until the Participating Student meets one (1) of the following, whichever occurs first:
 - (a) Enrolls in a public school;

- (b) Enrolls in a Category IV or V private school or a private school not approved under the rules of the State Board;
 - (c) Ceases to be a resident of Shelby, Hamilton, or Davidson Counties;
 - (d) Is suspended or terminated from participating in the Program in accordance with T.C.A. § 49-6-2808;
 - (e) Graduates or withdraws from high school with no funds remaining in an open ESA account;
 - (f) Reaches twenty-two (22) years of age with no funds remaining in an open ESA account. However, if the Participating Student reaches the age of twenty-two (22) with funds remaining in an open ESA account after the commencement of the school year, the Participating Student may remain in the Program until the conclusion of that school year; or
 - (g) No longer meets or fails to verify that the Participating Student's household income meets the requirements of T.C.A. § 49-6-2602(3)(D) and this rule according to the schedule and income-verification process developed by the Department.
- (2) A Participating Student may voluntarily withdraw from the Program at any time. The Account Holder shall complete the procedures for withdrawal from the Program as set by the Department.
 - (3) If a Participating Student becomes ineligible to participate in the Program for any reason or withdraws from the Program, the Participating Student's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
 - (4) The Account Holder may transfer the Participating Student from the Participating School to another Participating School in accordance with procedures set by the Department.
 - (5) In order for a Participating Student to continue in the Program, the Account Holder shall annually apply to renew the ESA by following the procedures developed by the Department and posted on the Department's website.
 - (6) If a Participating Student graduates high school or reaches twenty-two (22) years of age while enrolled in high school pursuant to T.C.A. § 49-6-2603(d)(1), and has funds remaining in the Participating Student's open ESA, the Participating Student shall become a Legacy Student.
 - (a) A Legacy Student may use ESA funds to attend or take courses from an Eligible Postsecondary Institution and those expenditures are determined to be Qualifying Expenses.

(b) A Legacy Student's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358, after the first of the following events:

1. Upon a Legacy Student's graduation from an Eligible Postsecondary Institution;
2. After four (4) consecutive years elapse immediately after a Legacy Student enrolls in an Eligible Postsecondary Institution; or
3. After a Legacy Student is not enrolled in an Eligible Postsecondary Institution for twelve (12) consecutive months.

(7) Account Holders are not required to spend the entire sum each year, however, a minimum amount of fifty percent (50%) of the funds must be used each year on approved expenses for the benefit of the student enrolled in the Program.

(a) If overall spending does not equal fifty- percent (50%) by the deadline for submission of the last expense report and if the ESA is renewed for the following year, the Department shall subtract the difference from the payments in the next contract year. If a student withdraws from the ESA Program or if the ESA is not renewed, the ESA shall be closed, and any remaining funds shall be returned to the state treasurer pursuant to T.C.A. § 49-6-2603.

(8) The Department shall provide Parents of Participating Students or Participating Students who have reached the age of eighteen (18) with a written explanation of the allowable uses of ESA funds and the responsibilities of Parents of Participating Students and Participating Students who have reached the age of eighteen (18) regarding ESA funds. The Department shall also provide Parents of Participating Students or Participating Students who have reached the age of eighteen (18) with a written explanation of the Department's duties regarding ESA funds, Eligible Students, Participating Students, and Legacy Students.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.08 PARTICIPATING SCHOOLS.

(1) Eligible ~~P~~private ~~S~~schools interested in enrolling students receiving ESAs shall submit an application to the Department by the deadline set by the Department.

(a) The Department shall develop an application and application process for ~~E~~eligible ~~P~~private ~~S~~schools to participate in the Program. Such application shall be posted on the

Department's website and shall request, at a minimum, the following information from an applicant:

1. The maximum number of students receiving ESAs the school has the capacity to enroll per grade level;
 2. Demonstration of financial viability to repay any funds that may be owed to the state by filing with the application financial information verifying the school has the ability to pay an aggregate amount equal to twenty five percent (25%) of the amount of ESA funds expected to be paid during the school year. The school may comply with this requirement by filing an annual surety bond payable to the state from a surety, and in an amount determined by the Department; and
 3. The school's academic calendar, the school's admission policy, and the school's tuition and fee schedule.
- (b) The Department shall review the application and notify the school as to whether the school meets the requirements outlined in (a) to become a Pparticipating Sschool and receive ESA funds from a Pparticipating Sstudent for Qualified expenses including, tuition and fees.
- (c) If an Eligible Private Sschool is approved to be a Pparticipating Sschool, the Department shall list the school on the Department's website, including grades served and any other information the Department determines may assist parents in selecting a Pparticipating Sschool.
- (2) As a condition of approval to become a Pparticipating Sschool, the school shall agree to the following:
- (a) Be academically accountable to the Account Holder for meeting the educational needs of the Pparticipating Sstudent by:
 1. At a minimum, annually providing to the Account Holder a written explanation of the student's progress; and
 2. Ensuring Pparticipating Sstudents in grades three through eleven (3-11) are administered the TCAP tests in math and English Language Arts, or successor tests approved by the State Board, each year the Pparticipating Sstudent is enrolled in the Pparticipating Sschool.
 - (b) Comply with all state and federal health and safety laws or codes that apply to non-public schools;
 - (c) Comply with monitoring requirements set by the Department;
 - (d) Certify that they shall not discriminate against Pparticipating Sstudents or applicants on the basis of race, color, or national origin;

- (e) Agree to accept reimbursement payments for tuition and fees from an Account Holder on the payment schedule identified by the Department;
 - (f) Agree to participate in the Program for the full school year unless the school is suspended or terminated by the Department;
 - (g) Comply with T.C.A. § 49-5-202;
 - (h) Comply with the minimum kindergarten age requirement pursuant to T.C.A. § 49-6-201(b)(3) and the State Board of Education Rule 0520-07-02;
 - (i) Conduct criminal background checks on employees upon employment and at least every five (5) years thereafter; and
 - (j) Exclude from employment:
 - 1. Any person not permitted by state law to work in a nonpublic school; and
 - 2. Any person who might reasonably pose a threat to the safety of students. Participating schools have ultimate discretion to determine whether or not a person might reasonably pose a threat to the safety of students; however, participating schools may consider excluding persons who have ever been convicted of any of the following offenses, or the same or similar offense in any jurisdiction, including convictions for the solicitation of, attempt to commit, conspiracy, or acting as an accessory to:
 - (i) A sexual offense or a violent sexual offense as defined in T.C.A. § 40-39-202;
 - (ii) An offense listed in T.C.A. §§ 39-13-102 – 39-13-115;
 - (iii) An offense listed in T.C.A. §§ 39-14-301 and 39-14-302;
 - (iv) An offense listed in T.C.A. §§ 39-14-401 – 39-14-404;
 - (v) An offense listed in T.C.A. §§ 39-15-401 and 39-15-402;
 - (vi) An offense listed in T.C.A. § 39-17-417; and
 - (vii) An offense listed in T.C.A. title 39, chapter 17, part 13.
- (3) The funds in an ESA may be used only as provided in section .05 of this rule for educational purposes. Participating schools that enroll Pparticipating Students shall provide Account Holders with a receipt for all qualifying expenses paid to the Pparticipating School using ESA funds.

- (4) Participating Schools shall not charge an Account Holder or Participating Student additional tuition or fees that are not also charged to non-participating students.
- (5) Participating Schools shall not, in any manner, refund, rebate, or share ESA funds with an Account Holder or Participating Student.
- (6) Within five (5) business days of receipt of a Participating Student's notice of withdrawal, a Participating School shall notify the Department of the Participating Student's withdrawal.
- (7) Participating Schools shall annually submit to the Department the graduation and completion information of Participating Students in accordance with procedures set by the Department.
- (8) 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.
- (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 state law, rules, or procedures.
 - (a) If the Department suspends or terminates a school's participation, the Department shall notify the affected Participating Students, the Account Holder, and the Participating School of the decision. If a Participating School is suspended or terminated or if a Participating School withdraws from the Program, affected Participating Students remain eligible to participate in the Program.
 - (b) A Participating School may appeal the Department's decision pursuant to the appeals procedures set forth in ~~these rules~~this Chapter.
- (10) The Department may suspend or terminate a Participating School from participating in the Program for low academic performance. Low academic performance is defined as failure of Participating Students to make academic progress as demonstrated by multiple performance measures, including, but not limited to, lack of progress or growth on the TCAP tests, or successor tests approved by the State Board, or any nationally normed assessment utilized by the Participating School.
- (11) All contracts entered into are the responsibility of the private parties involved.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:**

0520-01-16-.10 RETURN TO LOCAL EDUCATION AGENCY.

- (1) A Participating Student who is otherwise eligible to return to the student's LEA may return to the LEA at any time after enrolling in the Program. Upon enrollment in an LEA, the student's participation in the Program shall be terminated.

- (2) If a Participating Student enrolls in an LEA, the Parent of a Participating Student or the Participating Student who has reached the age of eighteen (18) shall notify the Department in accordance with the procedures and timelines set by the Department.
- (3) Upon termination of a student's participation in the Program, the Department shall close the Participating Student's ESA and any remaining funds shall be returned to the state treasurer to be placed in the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (4) Upon enrollment in the LEA, students previously eligible for an IEP, as set forth in State Board Chapter 0520-01-09, remain eligible for special education and related services unless the LEA conducts a reevaluation and determines the student is no longer eligible for special education and related services. ~~if the Parent or student who has reached the age of eighteen (18) requests 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 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.