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Sequence Number: 01-06-23

Rule ID(s): 9796

File Date: 1/6/2023

Effective Date: 4/6/2023

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
Contact Person:	Angie Sanders
Address:	500 James Robertson Parkway, 5 th Floor
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Revision Type (check all that apply):

- ☒ Amendment
☐ New
☐ 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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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
0520-01-09	Special Education Programs and Services
Rule Number	Rule Title
0520-01-09-.10	Funding Requirements
0520-01-09-.11	Evaluation Procedures

AMENDMENT

AMEND the rules of the State Board of Education Chapter 0520-01-09 Special Education Programs and Services, by amending Rule 0520-01-09-.10 and 0520-01-09-.11 so that the revised rules shall read:

RULES OF STATE BOARD OF EDUCATION CHAPTER 0520-01-09 SPECIAL EDUCATION PROGRAMS AND SERVICES

0520-01-09-.10 FUNDING REQUIREMENTS.

- (1) State funds shall be allocated to each LEA in an amount to be determined by applying the applicable State funding formula to the children with disabilities identified and served during the preceding school year.
- (2) In accordance with T.C.A. § 49-10-109, if an LEA is found by the Commissioner of Education ("Commissioner") to have failed to provide a FAPE to all children with disabilities who by law are entitled to receive a FAPE from the LEA, then the Commissioner may withhold all or any portion of the State funding for the LEA as, in the Commissioner's judgment, is warranted.
- (3) Pursuant to 34 § C.F.R. 300.203, maintenance of effort shall be met if the LEA budgets at least the same total or per-capita amount from the combination of state and local funds as the LEA spent for that purpose from the prior year. The LEA may reduce the level of expenditures below the level for the preceding year if the reduction is attributable to the following:
 - (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower salaried staff;
 - (b) A decrease in the enrollment of children with disabilities;
 - (c) The termination of the obligation of the LEA, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the Department, because the child:
 1. Has left the jurisdiction of the LEA;
 2. Has reached the age at which the obligation of the LEA to provide FAPE to the child has terminated; or
 3. No longer needs the program of special education; or
 - (d) The termination of costly expenditures for long-term high-cost purchases.
- (4) Each LEA shall establish appropriate policies and procedures for the administration of IDEA and preschool funds and shall maintain appropriate records and reports to be used in planning and evaluating special education programs and services. The Department shall notify each LEA of its allocation of federal funds annually.

- (5) LEAs shall use IDEA funds for the excess costs of providing special education and related services to children with disabilities. IDEA funds received by the LEA shall not be commingled with state funds.
- (6) LEAs shall maintain records that demonstrate compliance with the excess cost, non-supplanting, and comparability requirements for at least three (3) years after completion of the project described in the LEA's application for federal funds.
- (7) Subject to the availability of federal funds, the Department shall establish a process for LEAs to request reimbursement for high-cost children with disabilities.
 - (a) An LEA shall include qualifying services provided to children with disabilities in each public school in the LEA, including charter schools authorized by the LEA, in the LEA's annual request for high-cost reimbursement.
 - (b) An LEA shall coordinate with public charter schools authorized by the LEA in the same manner that the LEA coordinates with its other public schools in requesting reimbursement for high-cost children with disabilities.
 - (c) An LEA shall provide to public charter schools authorized by the LEA applicable high-cost reimbursement funds received by the LEA for any qualifying special education expenditures incurred directly by the public charter school.
- (8) Two (2) or more LEAs may submit a consolidated annual comprehensive plan, with the approval of the Department, under the conditions of federal law:
 - (a) Those participating in a consolidated plan will be jointly responsible for implementing a FAPE program in the participating LEA; and
 - (b) The consolidated plan must designate one (1) of the LEAs as the fiscal agent for the plan.
- (9) For children with disabilities unilaterally placed in non-public schools, the same proportionate amount that is spent on public school children with disabilities from IDEA and preschool grants is allocated for the number of non-public school children with disabilities within the LEA's jurisdiction. The preceding December 1st special education child count is used in calculating non-public and public school ratios to determine the proportionate amount.

Authority: T.C.A. §§ 49-10-101 et seq. and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed August 13, 2010 to be effective January 29, 2011; rule was withdrawn by the State Board of Education on October 15, 2010. Repeal filed August 29, 2013; effective January 29, 2014. Amendments filed May 14, 2021; effective August 12, 2021.

0520-01-09-.11 EVALUATION PROCEDURES.

The Department, in consultation with the Advisory Council for the Education of Students with Disabilities and other stakeholders with expertise in each disability category, shall establish standards for determining program eligibility criteria, evaluation procedures, and evaluation participants. These standards shall be submitted by the Department to the State Board for final review and approval.

Authority: T.C.A. §§ 49-10-101 et seq. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendments filed May 14, 2021; effective August 12, 2021.

* 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)
Nick Darnell	x				
Jordan Mollenhour				x	
Bob Eby	x				
Ryan Holt	x				
Warren Wells	x				
Lillian Hartgrove	x				
Nate Morrow	x				
Darrell Cobbins	x				
Larry Jensen	x				
Victoria Harpool, designee for Dr. Emily House, 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 10/28/2022 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: 8/8/2022

Rulemaking Hearing(s) Conducted on: (add more dates). 9/29/2022

Date: 12/16/2022

Signature: 

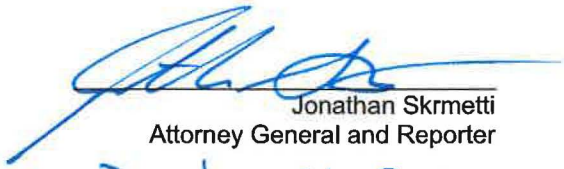
Name of Officer: Angie Sanders

Title of Officer: General Counsel

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-01-09-.10 and .11

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

December 21, 2022
Date

Department of State Use Only

Filed with the Department of State on: 1/6/2023

Effective on: 4/6/2023


Tre Hargett
Secretary of State

RECEIVED

Jan 06 2023, 11:10 am

Secretary of State
Division of Publications

Public Hearing Comments

The Tennessee State Board of Education held a public rulemaking hearing on Rule 0520-01-09-.10 through -.11 on September 29th, 2022, at 500 James Robertson Parkway, Nashville, TN and via Webex.

No public comments were submitted 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 not affect small business.

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.

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;

Special Education Programs and Services Rule 0520-01-09-.10 describes how students with disabilities will be counted for funding purposes, how funds will be allocated to local educational agencies (LEAs), and how LEAs must maintain records related to funding for students with disabilities. This item removes specific references to the Basic Education Program (BEP) from rule section -.10 to align with passage of the Tennessee Investment in Student Achievement Act (TISA). This item also proposes removal of the reference to State Board of Education Policy 3.500 in rule section -.11 until such policy is fully promulgated.

- (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;

The Tennessee Investment in Student Achievement Act transitions the state to a student-based funding approach in the 2023-24 school year. This item revises rule language to align with this new law.

T.C.A. § 49-10-101 authorizes the State Board to adopt rules and regulations to effectuate Title 49, Chapter 10 governing special education.

- (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 direct effect on the State Board of Education and the Department of Education and both urge adoption. The rule also has a direct effect on local education agencies. The State Board did not receive any comments from local education agencies 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;

N/A

- (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;

N/A

- (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

Angie Sanders

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

N/A

**RULES
OF
STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-09
SPECIAL EDUCATION PROGRAMS AND SERVICES**

0520-01-09-.10 FUNDING REQUIREMENTS.

- (1) ~~State~~ For purposes of the Basic Education Program (BEP), children with disabilities shall be counted in the same manner as children without disabilities.
- (2) ~~BEP~~ funds shall be allocated to each LEA in an amount to be determined by applying the applicable State funding ~~prescribed~~ formula to the ~~number of~~ children with disabilities identified and served during the preceding school year.
- (23) In accordance with T.C.A. § 49-10-109, if an LEA is found by the Commissioner of Education ~~("Commissioner") commissioner of education~~ to have failed to provide a FAPE to all children with disabilities who by law are entitled to receive a FAPE from the LEA, then the Commissioner ~~commissioner~~ may withhold all or any portion of the State ~~BEP~~ funding for the LEA as, in the commissioner's judgment, is warranted.
- (3) Pursuant to 34 § C.F.R. 300.203, maintenance ~~(4) Maintenance~~ of effort shall be met if the LEA budgets at least the same total or per-capita amount from the combination of state and local funds as the LEA spent for that purpose from the prior year. The LEA may reduce the level of expenditures below the level for the preceding year if the reduction is attributable to the following:
- (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower salaried staff;
 - (b) A decrease in the enrollment of children with disabilities;
 - (c) The termination of the obligation of the LEA, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the Department ~~state department of education~~, because the child:
 - 1. Has left the jurisdiction of the LEA;
 - 2. Has reached the age at which the obligation of the LEA to provide FAPE to the child has terminated; or
 - 3. No longer needs the program of special education;
 - (d) The termination of costly expenditures for long-term high cost ~~cost~~ purchases.
- (45) Each LEA shall establish appropriate policies and procedures for the administration of IDEA and preschool funds and shall maintain appropriate records and reports to be used in planning and evaluating special education programs and services. The Department ~~of Education~~ shall notify each LEA of its allocation of federal funds annually.
- (56) LEAs shall use IDEA funds for the excess costs of providing special education and related services to children with disabilities. IDEA funds received by the LEA shall ~~must~~ not be commingled with state funds.

- (67) LEAs ~~shall~~~~must~~ maintain records that demonstrate compliance with the excess cost, non-supplanting, and comparability requirements for at least three (3) years after completion of the project described in the LEA's application for federal funds.
- (78) Subject to the availability of federal funds, the Department ~~of Education~~ shall establish a process for LEAs to request reimbursement for high-cost children with disabilities.
 - (a) An LEA shall include qualifying services provided to children with disabilities in each public school in the LEA, including charter schools authorized by the LEA, in the LEA's annual request for high-cost reimbursement.
 - (b) An LEA shall coordinate with public charter schools authorized by the LEA in the same manner that the LEA coordinates with its other public schools in requesting reimbursement for high-cost children with disabilities.
 - (c) An LEA shall provide to public charter schools authorized by the LEA applicable high-cost reimbursement funds received by the LEA for any qualifying special education expenditures incurred directly by the public charter school.
- (89) Two (2) or more LEAs may submit a consolidated annual comprehensive plan, with the approval of the Department ~~of Education~~, under the conditions of federal law:
 - (a) Those participating in a consolidated plan will be jointly responsible for implementing a FAPE program in the participating LEA; and
 - (b) The consolidated plan must designate one (1) of the LEAs as the fiscal agent for the plan.
- (940) For children with disabilities unilaterally placed in ~~non-public~~~~private~~ schools, the same proportionate amount that is spent on public school children with disabilities from IDEA and preschool grants is allocated for the number of ~~non-public~~~~private~~ school children with disabilities within the LEA's jurisdiction. The preceding December 1st special education child~~census~~ count is used in calculating ~~non-public~~~~private~~ and public school ratios to determine the proportionate amount.

Authority: T.C.A. §§ 49-10-101 et seq. and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed August 13, 2010 to be effective January 29, 2011; rule was withdrawn by the State Board of Education on October 15, 2010. Repeal filed August 29, 2013; effective January 29, 2014. Amendments filed May 14, 2021; effective August 12, 2021.

0520-01-09-.11 EVALUATION PROCEDURES.

The Department ~~of Education~~, in consultation with the Advisory Council for the Education of Students with Disabilities and other stakeholders with expertise in each disability category, shall establish standards for determining program eligibility criteria, evaluation procedures, and evaluation participants. These standards shall be submitted by the Department ~~of Education~~ to the State Board for final review and approval. ~~and shall be defined in State Board Policy 3.500.~~

Authority: T.C.A. §§ 49-10-101 et seq. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendments filed May 14, 2021; effective August 12, 2021.