

(Rule 0520-01-11-.03, continued)

**RULES
OF
STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-11
INDIVIDUALIZED EDUCATION ACCOUNTS**

0520-01-11-.02 DEFINITIONS.

- (1) “Account Holder” means a parent as defined in subsection (18) of this section or a participating student who has attained the age of majority who signs the IEA contract, is the Account Holder for the IEA funds, and is responsible for complying with all of the requirements of the IEA Program.
- (2) “Act” means the Individualized Education Act.
- (3) “Active IEP” means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR §§ 300.320 through 300.324 that is being implemented on the date the application window for the IEA program closes.
- (4) “Agreement” means a document signed by an applicant and a designee of the Department, which qualifies the parent or student who has attained the age of majority to participate in the Program.
- (5) “Applicant” means the parent or legal guardian of a student, or student who has attained the age of majority, who has completed the Standard Application Form.
- (6) “Computer Hardware or Other Technological Devices” means computer hardware or technological devices approved by the Department or a licensed treating physician that is used for the student’s educational needs. Computer hardware and technological devices shall meet one (1) of the following criteria:
 - (a) Is a required device for communication or for physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA, or
 - (b) Allows a student to access instruction or instructional content.
- (7) “Criminal Background Check” at a minimum shall include, but not be limited to, a check of the following: Tennessee’s Sex Offender Registry and the Abuse Registry of the Tennessee Department of Health. All providers as defined in subsection (23) of this section and employers of 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 Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act. Individual contractors not employed by an organization shall fulfill the background check requirements by completing a fingerprint- based criminal history records check conducted by the FBI.
- (8) “Department” means the Tennessee Department of Education.
- (9) “Educational Therapies” means:
 - (a) Individualized services designed to develop or improve academic performance through instructional and therapeutic techniques, and provided by licensed therapists who meet the

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requirements set by the Department and the State Board of Education as further defined in the Department's IEA handbook or by therapist assistants who meet the requirements set by the Department and the State Board of Education as further defined in the Department's IEA handbook and who provide the services under the direct supervision of a licensed therapist; or

- (b) Tactile manipulatives recommended by the licensed therapist for the participating student pursuant to guidelines set forth by the Department.

(10) "Eligible Postsecondary Institution" means a Tennessee public community college, college of applied technology, or university of the University of Tennessee system or a locally governed state university within the Tennessee Board of Regents systems, or an accredited private postsecondary institution accredited by one (1) of the following: any accreditation division of Cognia (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).

(11) "Eligible Student" means:

- (a) A resident of this state in grades kindergarten through twelve (K-12) with an Active Individualized Education Program (IEP) in accordance with 34 C.F.R §§ 300 et seq., § 49-10-102, and regulations of the State Board of Education with one (1) of the following qualifying disabilities as defined by the rules of the State Board of Education 0520-01-09-.02 as the primary or secondary disability in effect at the time the Department receives the request for participation in the Program. For purposes of this Chapter, the Department receives the request for participation in the Program on the date the application window for the IEA program closes. Qualifying disabilities for eligible students include the following:

1. Autism;
2. Deaf-blindness;
3. Developmental delay;
4. Hearing impairments;
5. Intellectual disability;
6. Multiple disabilities;
7. Orthopedic impairments;
8. Specific learning disability;
9. Traumatic brain injury; or
10. Visual impairments; and

(b) Meets at least one (1) of the following requirements:

1. Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year in which the student receives an Individualized Education Account (IEA). For the purposes of these rules, one (1) full school year means that the student was counted in the enrollment figures for the LEA(s) for the entire school year as reported in the state's student information system;
2. Has not previously attended a K-12 school in Tennessee, but is currently eligible to enroll in a kindergarten program in a public school in this state. Students meeting this

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eligibility requirement shall inform the LEA in which they reside of the student's intent to participate in the program prior to July 1 of the year in which they are enrolled in the IEA Program;

3. Has not previously attended a school in Tennessee for the duration of one (1) full school year immediately preceding the school year in which the student receives an IEA, and moved to Tennessee less than one (1) year prior to the date of enrollment in the IEA Program; or
4. Received an IEA in the previous school year.

(12) "Fee-for-Service Transportation Provider" means a commercial transportation provider including a taxi or bus service. It does not include private transportation by a parent or participating student in accordance with the conflict of interest provision in these rules.

(13) "Financial Institution" or "Private Financial Management Firm" means an institution selected by the Department to administer the individualized education accounts.

(14) "IEA" means a Tennessee Individualized Education Account.

(15) "Inclusive Educational Setting" means that the Participating School provides a setting that meets the following two (2) criteria:

- (a) Students with disabilities are educated with students who do not have disabilities; and
- (b) No more than fifty percent (50%) of the students in an individual classroom or setting are students with disabilities.

(16) "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 or independent home school by the student's Parent.

~~(16)~~(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 general assembly.

~~(17)~~(18) "Non-public Online Learning Program or Course" means online programs or courses that meet the requirements set by the Department.

~~(18)~~(19) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child.

~~(19)~~(20) "Participating School" means a non-public school that meets the requirements established in T.C.A. §§ 49-10-1401, et seq. and seeks to enroll eligible students.

~~(20)~~(21) "Participating Student" means an eligible student whose parent is participating in the IEA Program or an eligible student who has attained the age of majority and is participating in the IEA Program.

~~(24)~~(22) "Physician" means a person licensed under T.C.A. Title 63, Chapter 3, Chapter 4, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 9, Chapter 10, Chapter 11, Chapter 14, Chapter 16, Chapter 17, Chapter 19, Chapter 22, Chapter 23, Chapter 24, or Chapter 25.

~~(22)~~(23) "Program" means the Individualized Education Account (IEA) Program created in T.C.A. §§ 49-10-1401, et seq.

~~(23)~~(24) "Provider" means an individual or business that meets the requirements set by the State Board of Education and the Tennessee Department of Education.

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~~(24)~~(25) "Standard Application Form" means a document whereby an Applicant may seek to establish an Individualized Education Account (IEA).

~~(25)~~(26) "Tutoring Services" means services provided by a tutor who meets the requirements set by the Department.

Authority: T.C.A. §§ 49-1-302 and 49-10-1401, et seq. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019. Amendments filed January 22, 2020; to have become effective April 21, 2020. However, the State Board of Education filed a 34-day stay of the effective date of the rules; new effective date May 25, 2020. Amendments filed December 27, 2021; effective March 27, 2022.

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

- (1) For purposes of continuity of educational attainment, a student who enrolls in the Program shall remain eligible until the Participating Student meets one (1) of the following, whichever occurs first:
 - (a) Enrolls full-time in a public school;
 - (b) Graduates from high school. The student may continue in the Program until such time as he or she receives a high school diploma, or receives a ~~high school equivalency credential approved by the State Board of Education passing score on all subtests of the GED or HiSET~~. Certificates of attendance do not constitute graduation from high school for the purpose of this Program; or
 - (c) Reaches twenty-two (22) years of age. The student may complete the school year in which he or she reaches the age of twenty-two (22), provided a student shall not be enrolled in the Program past August 15 of the next school year after they have reached twenty-two (22) years of age.
- (2) The Account Holder may remove the Participating Student from the non-public school and place the student in a public school. The Account Holder shall complete the procedures for withdrawal from the IEA Program set by the Department.
- (3) The Account Holder may move the student from one (1) non-public school to another non-public school in accordance with procedures set by the Department.
- (4) In order for students to continue in the Program, the Account Holder shall annually renew the IEA by following the procedures posted on the Department's website.
- (5) After graduating from high school or reaching twenty-two (22) years of age, unused funds in an IEA from prior years can be used in subsequent years, up to four (4) consecutive years after a student has exited the Program, provided the student attends or takes courses from an Eligible Postsecondary Institution and the expenditures are determined to be qualifying expenses.
- (6) Account Holders are not required to spend the entire sum each year, however, a portion of the funds shall be used each year on approved expenses for the benefit of the student

enrolled in the IEA Program and overall spending shall equal fifty (50) percent of the annual award by the deadline for submission of the last expense report of the contract year.

- (a) If overall spending does not equal fifty (50) percent by the deadline for submission of the last expense report and if the IEA is renewed for the following year, the Department shall subtract the difference from the payments in the next contract year. If a student withdraws from the IEA Program or if the IEA is not renewed, the IEA shall be closed, and any remaining funds shall be returned to the state treasurer pursuant to T.C.A. § 49-10-1403.
- (7) All benefits and obligations established by participation in the Program, including the right to continue participation in the IEA Program, vest in the Participating Student when the student attains eighteen (18) years of age, unless the student's educational and financial decision-making rights have been transferred to his or her parent or guardian through a power of attorney, created in accordance with T.C.A. §§ 34-6-101 et seq., or a conservatorship, created in accordance with §§ 34-3-101 et seq.

*Authority: T.C.A. §§ 34-3-101, et seq.; 34-6-101, et seq.; 49-1-302; and 49-10-1401, et seq. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019. Amendments filed January 22, 2020; to have become effective April 21, 2020. However, the State Board of Education filed a 34-day stay of the effective date of the rules; new effective date May 25, 2020. Amendments filed December 27, 2021; effective March 27, 2022. Amendments filed January 26, 2023; effective April 26, 2023.*

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

- (1) Upon notification by the Department that an IEA may be established, the applicant shall sign an Agreement outlining the Account Holder's contractual obligations upon enrolling in the Program, including the acceptable uses of IEA funds and expense reporting requirements. In the Agreement, the Account Holder shall:
 - (a) Agree to provide an education for the Participating Student in at least the subjects of English language arts, mathematics, social studies, and science;
 - (b) Agree to not enroll the Participating Student in a public school during the time the student is enrolled in the IEA Program;
 - (c) Agree to release the LEA in which the student resides and the school for which the student is zoned to attend from all obligations to educate the student during the time the student is enrolled in the IEA Program;
 - (d) Acknowledge that upon enrolling in the Program, the Participating Student shall have no individual entitlement to a free appropriate public education from their LEA, including special education and related services, so long as the child remains in the Program. 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 Individualized Education Program (IEP) but instead will be entitled to equitable services through an Individualized Service Plan (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. Students who were previously eligible to receive an IEP maintain their eligibility for special education and related services but remain inactive as long as they are enrolled in the IEA Program.

- (2) The Agreement shall:
 - (a) Be submitted to the Department, along with all required information, by the date set by the Department before the first IEA payment is disbursed; and
 - (b) Be signed by the Account Holder and a designee of the Department prior to becoming effective.
- (3) After the Agreement is fully executed by the Account Holder and the Department, the Department shall remit the first payment to the IEA. IEA funds shall be remitted to the IEA thereafter until termination of the Agreement.
- (4) The Department shall establish procedures to effectuate the funds transfer process and dates on which each IEA payment shall be disbursed.

Authority: T.C.A. §§ 49-1-302 and 49-10-1401, et seq. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019. Amendments filed January 22, 2020; to have become effective April 21, 2020. However, the State Board of Education filed a 34-day stay of the effective date of the rules; new effective date May 25, 2020. Amendments filed December 27, 2021; effective March 27, 2022.

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

- (1) A Participating Student may return to the LEA upon termination of the student's participation in the Program.
- (2) If the Participating Student transfers from a nonpublic school and enrolls in the LEA, the Account Holder shall notify the Department and the LEA in which the student resides, by following the procedures and timeline set by the Department.
- (3) Upon termination of a student's participation in the Program, the Department shall close the Participating Student's IEA.
- (4) Upon a student's withdrawal from the nonpublic school, Participating Schools shall send all educational records of the Participating Student to the LEA or other nonpublic school identified by the Pparent.
- (5) The LEA shall enroll the student and provide instruction in the general education curriculum.

~~(6) If the parent or student who has attained the age of majority requests, in writing, an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301. Upon enrollment in the LEA, students previously eligible for an IEP as set forth in State Board Chapter 0520-01-09 the student remains eligible for special education and related services pursuant to the Individuals with Disabilities Education Act (IDEA), as defined in 34 C.F.R. § 300.8, unless the student's Individualized Education Program (IEP) team LEA conducts a reevaluation and determines that the child is no longer eligible for special education and related services.~~

Authority: T.C.A. §§ 49-1-302 and 49-10-1403. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019. Amendments filed January 22, 2020; to have become effective April 21, 2020. However, the State Board of Education filed a 34-day stay of the effective date of the rules; new effective date May 25, 2020. Amendments filed December 27, 2021; effective March 27, 2022.