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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	State Board of Education
Division:	N/A
Contact Person:	Angie Sanders
Address:	500 James Robertson Parkway, 8th Floor, Nashville, TN 37243
Phone:	(615) 253-5707
Email:	Angela.C.Sanders@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Angie Sanders
Address:	500 James Robertson Parkway, 8th Floor, Nashville, TN 37243
Phone:	(615) 253-5707
Email:	Angela.C.Sanders@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway		
Address 2:	Davy Crockett Building, Conference Room 1C, 1 st Floor		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	10/2/2023		
Hearing Time:	10:30 am	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

****Anyone wishing to participate electronically may access the hearing using the following information:****

URL: <https://tn.webex.com/tn/j.php?MTID=mc36ea222b909e98796bc91bbd2d5bd5d>

Meeting number: 2309 723 7425
Password: SBERules
Phone: +1-415-655-0001
Access Code: 2309 723 7425

Please check the State Board's website at <https://www.tn.gov/sbe/meetings.html> for any additional information regarding this rulemaking hearing.

Oral comments are invited at the hearing.
 In addition, written comments may be submitted via email at angela.c.sanders@tn.gov or mailed to:
 Tennessee State Board of Education

Attention: Angie Sanders
 Davy Crockett Tower, 8th Floor
 500 James Robertson Parkway
 Nashville, Tennessee 37243

Written comments must be received by **9:00 AM CT on October 5, 2023** in order to ensure consideration.

*****Email comments are preferred as regular mail is running very slow and may not arrive in time*****

For further information, please contact Angie Sanders by e-mail at angela.c.sanders@tn.gov.

If attending the hearing in-person, please bring identification so that you may be checked into the building by security. Conference room 1C is located on the first floor.

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

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0520-15-01-.03	Making Public Records Requests
0520-15-01-.04	Responding to Public Records Requests
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Chapter Number	Chapter Title
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AMENDMENT

RULES OF THE STATE BOARD OF EDUCATION

CHAPTER 0520-15-01 PUBLIC RECORDS REQUESTS

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0520-15-01-.01 PUBLIC RECORDS REQUESTS GENERALLY.

- (1) In accordance with the Tennessee Public Records Act (TPRA), T.C.A. § 10-7-503 et seq., the State Board's public records shall, at all times during business hours, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law. Accordingly, the public records of the State Board are presumed to be open for inspection unless an exemption is otherwise provided by law.
- (2) Personnel of the State Board shall provide access and assistance to Tennessee citizens requesting access to public records, in accordance with the provisions of the TPRA and this Chapter. No provision of this Chapter shall be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the State Board, shall be protected as provided by current law. Concerns about the provisions or enforcement of this Chapter should be addressed to the State Board's Public Records Request Coordinator or to the Tennessee Office of Open Records Counsel (OORC).
- (3) The TPRA grants Tennessee citizens the right to access public records that exist at the time of the request. Nothing in the TPRA or this Chapter shall be construed as requiring a Records Custodian or the PRRC to sort through files to compile information or to create or recreate a record that does not exist.
- (4) In accordance with the TPRA and this Chapter, State Board personnel will respond promptly to public record requests upon proof of Tennessee citizenship by presentation of a validly issued Tennessee driver's license or Tennessee-issued photo identification that includes the Requestor's address. If the Requestor does not possess photo identification, then other forms of identification evidencing the Requestor's identity and Tennessee citizenship may be accepted.

Authority: T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

0520-15-01-.02 DEFINITIONS.

- (1) "Public Records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental entity. Public records do not include the device or equipment, including, but not limited to, a cell phone, computer, or other electronic or mechanical device or equipment, that may have been used to create or store a public record.

- (2) Public Records Request Coordinator” or “PRRC” means the individual, or individuals, identified in this Rule who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA. The PRRC may also be a records custodian.
- (3) “Records Custodian” means the office, official or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.
- (4) “Redacted Record” means a public record otherwise open for public inspection from which protected or confidential information is removed or obscured prior to release or inspection.
- (5) “Requestor” means a Tennessee citizen requesting access to a public record, whether for inspection or duplication.

Authority: T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

0520-15-01-.03 MAKING PUBLIC RECORDS REQUESTS.

- (1) All public record requests shall be made to the PRRC in order to ensure public record requests made pursuant to the TPRA are routed to the appropriate Records Custodian and fulfilled in a timely manner. The designated PRRC for the State Board is the General Counsel, or in the absence of the General Counsel, the Deputy General Counsel or an Associate Counsel, provided, however, that the responsibilities of the PRRC may be delegated to one or more State Board employees under the supervision of the PRRC.
 - (a) The PRRC may be contacted at:
 Tennessee State Board of Education
 Attn: Public Records Request Coordinator
 Davy Crockett Tower, 8th Floor
 500 James Robertson Parkway
 Nashville, TN 37243
 615-741-2966 (phone)
 615-741-0371 (fax)
 SBEPublic.Records@tn.gov
- (2) Requests for inspection shall be made orally or in writing to the PRRC at the PRRC’s contact information noted in paragraph (1)(a) above. Requests for copies or requests for inspection and copies shall be made in writing via fax, email, mail, or hand delivery using the contact information in paragraph (1)(a) above.

Authority: T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019. Amendments filed December 23, 2019; effective March 22, 2020.

0520-15-01-.04 RESPONDING TO PUBLIC RECORDS REQUESTS.

- (1) The PRRC shall review public record requests received by the State Board and make an initial determination of the following:
 - (a) If the Requestor has provided evidence of Tennessee citizenship;
 - (b) If the records requested are described with sufficient specificity to identify them; and
 - (c) If the State Board is the custodian of the records requested.

- (2) The PRRC shall acknowledge receipt of the request and take any of the following action(s), as appropriate:
- (a) Advise the Requestor of this Rule and:
 - 1. Any determinations regarding proof of Tennessee citizenship;
 - 2. Applicable fees (and labor threshold and waivers if applicable);or
 - 3. Aggregation of multiple or frequent requests.
 - (b) Deny the request in writing if an appropriate ground applies, including the basis for the denial, using the Public Records Request Response Form developed by State Board staff. Appropriate grounds for denial include, but are not limited to, the following:
 - 1. Requestor is not, or has not presented evidence of being, a Tennessee citizen;
 - 2. Request lacks specificity or needs clarification;
 - 3. An exemption makes the requested record not subject to disclosure under state or federal law;
 - 4. The State Board is not the custodian of the requested records;
 - 5. The requested records do not exist.
 - (c) If appropriate, contact the Requestor to see if the request can be narrowed or clarified.
 - (d) Forward the records request to the appropriate Records Custodian and advise the Requestor of such action.
 - (e) If the requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the Requestor of the correct entity and PRRC for that entity, if known.

Authority: T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

0520-15-01-.05 RECORDS CUSTODIAN.

- (1) Upon receiving a public records request, the Records Custodian shall make requested records available as promptly as practicable in accordance with T.C.A. § 10-7-503, if the requested records are not exempt from disclosure.
- (2) If it is not practicable for the Records Custodian to promptly provide requested records because additional time is necessary to determine whether the requested records exist, to gain access to records, to determine whether the records are open, to redact records, or for other similar reasons, then the Records Custodian shall notify the PRRC who shall, within seven (7) business days from the Records Custodian's or PRRC's receipt of the request, send the Requestor a completed Public Records Request Response Form developed by State Board staff stating the time reasonably necessary to produce the record or information.
- (3) If the Records Custodian determines that a public record request should be denied, the Records Custodian shall notify the PRRC, who shall deny the request in writing using the Public Records Request Response Form developed by State Board staff and provide the ground(s) for denial in writing, including, but not limited to the following:

- (a) Requestor is not, or has not presented evidence of being, a Tennessee citizen;
 - (b) Request lacks specificity or needs clarification;
 - (c) An exemption makes the record not subject to disclosure under state or federal law;
 - (d) The State Board is not the custodian of the requested records;
 - (e) The requested records do not exist.
- (4) If the requested records relate to another governmental entity and the PRRC is aware of the correct governmental entity, the PRRC shall advise the Requestor of the correct governmental entity and PRRC for that entity, if known.
 - (5) If the Records Custodian reasonably determines production of records should be segmented because the records request is for a large volume of records or additional time is necessary to prepare the records for access, the Records Custodian shall notify the Requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the Records Custodian should contact the Requestor to see if the request can be narrowed.
 - (6) If the Records Custodian discovers records responsive to a records request were omitted from the production, the Records Custodian or PRRC shall promptly contact the Requestor concerning the omission and produce the records as quickly as practicable.

Authority: T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

0520-15-01-.06 REDACTION.

- (1) If a record contains confidential information or information that is not open for public inspection, the Records Custodian shall prepare a redacted copy prior to providing access. If questions arise concerning redaction, the Records Custodian shall coordinate with the PRRC regarding review and redaction of records. The Records Custodian and the PRRC may also consult with the OORC or the Office of the Attorney General and Reporter.
- (2) Whenever a Redacted Record is provided, the Records Custodian or PRRC shall provide the Requestor with the basis for redaction. The basis given for redaction shall not disclose confidential information. A records custodian is not required to produce a privilege log.

Authority: T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

0520-15-01-.07 INSPECTION OF RECORDS.

- (1) There is no charge to view public records that are subject to inspection under the TPRA.
- (2) Inspection of records shall take place at the offices of the State Board of Education. The location for inspection of records within the offices of the State Board shall be specified by the Records Custodian or PRRC.
- (3) A Records Custodian or PRRC may require an appointment for inspection of records that cannot be promptly made available for inspection. A Records Custodian or PRRC may also require inspection of records at an alternate location under reasonable circumstances.

Authority: T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

0520-15-01-.08 COPIES OF RECORDS.

- (1) Copies will be available for pickup at the State Board's offices during regular business hours.
- (2) Upon payment for costs of postage, copies will be delivered to the Requestor's home address by U.S. Postal Service.
- (3) A Requestor will not be allowed to make copies of records with personal equipment. However, a Requestor may use a personal camera to take a photograph of a record.
- (4) If the State Board maintains the requested record(s) in an electronic format, copies of the requested records may be provided to the Requestor in an electronic format as follows:
 - (a) The records may be downloaded to a flash drive (or equivalent storage device) provided by the State Board. The Requestor shall be charged for the flash drive (or equivalent storage device) at the current cost to the State Board. Downloading to a flash drive (or equivalent storage device) provided by the Requestor shall not be permitted.
 - (b) If the requested record exists in an electronic format that may be transmitted by email, the records may be sent via email.
- (5) The records custodian shall respond to a public record request for copies in the most economic and efficient manner practicable.

Authority: T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019. Amendments filed December 23, 2019; effective March 22, 2020.

0520-15-01-.09 FEES AND CHARGES.

- (1) Prior to producing copies of records, the Records Custodian shall provide the Requestor with an estimate of the charges (itemized by per page costs, labor, and other) to be assessed, and may require pre-payment of such charges before producing requested records. If the time required to identify, locate, redact (if applicable), and download or transmit records maintained electronically via methods set forth in Section .08 of this Chapter exceeds the labor threshold identified in paragraph three (3) below, the production of the records shall be subject to the same labor charge identified in paragraph three (3) below.
- (2) When fees for copies and labor do not exceed \$10.00, the fees shall be waived. Requests for waivers for fees above \$10.00 must be presented to the PRRC, who is authorized to determine if such waiver is in the best interest of the State Board and for the public good.
- (3) Fees and charges for copies are as follows, but no more than the safe harbor amount authorized by the OORC Schedule of Reasonable Charges, unless a higher charge can be documented:
 - (a) \$0.15 cents per page for letter and legal-sized black and white copies;
 - (b) \$0.50 cents per page for letter and legal-sized color copies.
 - (c) Labor will be charged when time exceeds two (2) hours and calculated according to the OORC Schedule of Reasonable Charges.
 - (d) If an outside vendor is used, the actual costs assessed by the vendor.
 - (e) Other charges shall be in accordance with the OORC Schedule of Reasonable Charges.

- (4) Payment is to be made in cash, money order, or personal check payable to the Tennessee State Board of Education.
- (5) Payment in advance will be required when costs are estimated to exceed \$100.00.

Authority: T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

0520-15-01-.10 AGGREGATION OF FREQUENT AND MULTIPLE REQUESTS.

- (1) The State Board will aggregate record requests for the purpose of calculating charges for copies or duplicates of public records in accordance with the Reasonable Charges for Frequent and Multiple Request Policy promulgated by the OORC when more than four (4) requests are received within a calendar month, either from a single individual or a group of individuals deemed working in concert.
- (2) If it is determined that records requests submitted to the State Board will be aggregated:
 - (a) Records requests will be aggregated at the agency level.
 - (b) The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC or the Records Custodian must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC.

Authority: T.C.A. § 10-7-503. **Administrative History:** Original rules filed June 25, 2019; effective September 23, 2019.

AMENDMENT

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-12
EDUCATION OF INCARCERATED STUDENTS**

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0520-01-12-.01 SCOPE OF RULES.

- (1) Each Local Education Agency (LEA) shall be responsible for providing educational services to all students detained for longer than seventy-two (72) hours in a Center located in the LEA's jurisdiction, as set forth below in Rule 0520-01-12-.03.
- (2) A Center shall be considered within an LEA's jurisdiction when the Center is within the geographic boundaries of the LEA, and the LEA can serve the educational needs for the grade level of the student located at the Center. In the event the Center is located within the geographic boundaries of an LEA that cannot serve the educational needs for the grade level of the students incarcerated, the Center shall be within the jurisdiction of the LEA serving the county in which the Center is located, unless an agreement between LEAs states otherwise. In the event of any dispute between LEAs, the Department of Education shall determine which LEA is responsible for providing educational services.
- (3) Educational services may be provided directly by the LEA, through contract, or through other methods deemed appropriate by the LEA and approved by the Department.

Authority: T.C.A. § 49-6-3023. **Administrative History:** Original rule filed January 10, 2018; effective April 10, 2018.

0520-01-12-.02 DEFINITIONS.

- (1) "Center" means a Detention Center as defined in T.C.A § 37-5-501 and licensed by the Department of Children's Services under T.C.A. § 37-5-502.
- (2) "Commissioner" means the Commissioner of the Tennessee Department of Education.
- (3) "Comparable Services" means special education and related services that are equivalent or similar to those included on the student's last effective individualized education program (IEP) prior to incarceration.
- (4) "Department" means the Tennessee Department of Education.
- (5) "ESP" means an Educational Service Plan, which shall be developed jointly by the Home L E A and the Receiving L E A.
- (6) "Home LEA" means the Local Education Agency in which the incarcerated student was enrolled at the time of the student's placement into the Center.

- (7) "Instructional Day" means a day when the Receiving L E A is in session and providing classroom instruction based on the Receiving LEA's instructional calendar.
- (8) "LEA" means a Tennessee local education agency and has the same meaning given in T.C.A. § 49-1-103(2)
- (9) "Receiving LEA" means the LEA responsible for providing educational services to students held in a Center outside of their Home LEA, as set forth in Rule 0520-01-12-.01(2).
- (10) "State Board" means the Tennessee State Board of Education.

Authority: T.C.A. § 49-6-3023. **Administrative History:** Original rule filed January 10, 2018; effective April 10, 2018.

0520-01-12-.03 NOTIFICATIONS AND TRANSFER OF RECORDS.

- (1) Once a student has been held in a Center outside of the geographic boundaries of the student's Home LEA for seventy-two (72) consecutive hours, the Center shall send written notification to the Receiving LEA. The written notification shall include the name of the student incarcerated, the location of the Center, and the first date the student was incarcerated at the Center. The Receiving LEA shall notify the Department of the student's incarceration in accordance with Department guidance
- (2) The Receiving LEA shall request the student's education records from the Home LEA within five (5) business days of receiving the written notification from the Center. The Home LEA shall provide the student's education records to the Receiving LEA within five (5) business days after receipt of the request from the Receiving LEA, but shall provide, at a minimum, the student's transcript and any education records indicating a need for specialized support or instruction within two (2) business days of receiving the request from the Receiving LEA. Education records indicating a need for specialized support or instruction include, but are not limited to the following:
 - (a) A Section 504 plan;
 - (b) An Individualized Education Program (IEP) as defined in State Board Rules Chapter 0520-01-09, including any supporting documents or plans necessary for the student to receive a free appropriate public education (FAPE), such as a behavior intervention plan (BIP) or a safety plan;
 - (c) An Individualized Learning Plan (ILP) as defined in State Board Rules Chapter 0520-01-19; or
 - (d) An Individualized Learning Plan – Dyslexia (ILP-D) as defined in State Board Rules Chapter 0520-01-22.
- (3) Students Receiving General Education Services.
 - (a) When a student receiving general education services is held in a Center outside of the geographic boundaries of the student's Home LEA, the student shall remain enrolled in the Home LEA for the purpose of generating funding through the state's K-12 funding formula pursuant to guidelines developed by the Department.

- (b) No later than the student's eighth (8th) Instructional Day in the Center, the Receiving LEA shall work with the Home LEA to develop an ESP for the student.
 - (c) No later than the student's tenth (10th) Instructional Day in the Center, the Receiving LEA shall ensure that the student begins receiving educational services in accordance with the ESP.
 - (d) When a student receiving general education services exits the Center, the Receiving LEA shall notify the Department within five (5) business days and shall provide the number of Instructional Days the student was held in accordance with Department guidance.
 - (e) The Department shall transfer an amount equal to the per pupil state and local funds generated through the state funding formula from the Home LEA to the Receiving LEA for the length of instructional days a student receiving general education services was held in a Center outside of the geographic boundaries of the student's Home LEA, in accordance with Rule 0520-01-12-.05 of this Chapter.
 - (f) When a student exits the Center, the Receiving LEA shall forward all education records to the student's Home LEA within ten (10) business days if the student returns to the Home LEA or to the student's LEA of next placement if the student enrolls in a new LEA.
- (4) Students Receiving Special Education Services.
- (a) When a student receiving special education services through an IEP is held in a Center outside of the geographic boundaries of the student's Home LEA, the student shall be unenrolled from the Home LEA and fully enrolled in the Receiving LEA no later than the tenth (10th) Instructional Day in the Center. The Receiving LEA shall receive the per pupil state and local funds for the student under the state's K-12 education funding formula.
 - (b) The Receiving LEA shall provide Comparable Services to the student until the Receiving LEA adopts the IEP developed by the Home LEA or develops, adopts, and implements a new IEP. Comparable Services shall be determined based on the individualized needs of the student, not the resources available at the Center.
 - (c) When a student exits the Center, the Receiving LEA shall forward all education records to the student's Home LEA within ten (10) business days if the student returns to the Home LEA or to the student's LEA of next placement if the student enrolls in a new LEA.
 - (d) The Receiving LEA shall ensure that the Center complies with the requirements of the Individuals with Disabilities Education Act and state special education law.
- (5) If a student held in a Center is enrolled in a public charter school, the authorizing LEA of the public charter school shall be the Home LEA. The public charter school shall work with the Home LEA to ensure all requirements regarding the transfer of records and funding are met as set forth in paragraphs (3) and (4) of this Rule.

Authority: T.C.A. § 49-6-3023. **Administrative History:** Original rule filed January 10, 2018; effective April 10, 2018.

0520-01-12-.04 BASIC EDUCATIONAL SERVICES, TESTING REQUIREMENTS.

- (1) The minimum length of the school day for students held in a Center shall be four (4) hours.

- (2) Instruction shall be provided by a teacher holding a valid Tennessee teacher license as provided in T.C.A. Title 49, Chapter 5.
- (3) For students held in a Center outside their Home LEA, the Receiving LEA shall consult with the Home LEA on how the Receiving LEA may best provide basic educational services in, at a minimum, English Language Arts and Mathematics for the student. The Receiving LEA shall set forth the general education services available to each student in an ESP.
- (4) Pursuant to the federal Every Student Succeeds Act, each Receiving LEA shall ensure that Centers comply with the following testing requirements:
 - (a) Each student shall complete a nationally norm-referenced pre-test approved by the Department, no later than the student's fifth (5th) Instructional Day at the Center.
 - (b) Each student shall complete a benchmark assessment at least every four (4) weeks the student remains incarcerated in the Center.
- (5) The Receiving LEA shall be responsible for ensuring that students receive all services, supports, and accommodations required by federal and state law, including, but not limited to, services, supports, and accommodations required under Section 504 of the Rehabilitation Act of 1973 and Title VI of the Civil Rights Act of 1964.

Authority: T.C.A. § 49-6-3023. **Administrative History:** Original rule filed January 10, 2018; effective April 10, 2018. Amendments filed December 12, 2018; effective March 12, 2019.

0520-01-12-.05 CALCULATION OF FUNDS.

- (1) For general education students, the Department shall calculate the daily rate of funds to be transferred from the Home LEA to the Receiving LEA to be used for the student's education. The funds shall be allocated on a prorated daily basis for the length of the student's incarceration. The funds shall be calculated as follows:
 - (a) Per pupil state and local funds generated through the state's K-12 education funding formula and additional local funds received by the LEA in the prior fiscal year divided by the average daily membership (ADM) from the prior fiscal year to equal the per pupil state and local funding;
 - (b) The per pupil state and local funding is then divided by the one hundred eighty (180) days to equal the total daily rate.
- (2) For students receiving special education services, the Receiving LEA shall receive per pupil state and local funds generated through the state's K-12 education funding formula.

Authority: T.C.A. § 49-6-3023. **Administrative History:** Original rule filed January 10, 2018; effective April 10, 2018.

0520-01-12-.06 POINTS OF CONTACT.

- (1) The Department, the Tennessee Department of Children's Services, the Receiving LEA, and the Home LEA shall each establish a primary point of contact to resolve issues arising under these Rules. The Receiving LEA's and Home LEA's primary point of contact shall be the person currently filling the Attendance Officer position unless the LEA designates another position. Any designation shall be done in writing and sent to the Department for approval.

- (2) The Department shall maintain a list of all the primary points of contact designated in paragraph (1) of this Rule.

Authority: T.C.A. § 49-6-3023. **Administrative History:** Original rule filed January 10, 2018; effective April 10, 2018.

0520-01-12-.07 SECURITY.

- (1) The Center shall be responsible for providing a secure setting for the education of students. This space shall be adequate in size and conducive to instruction for the number of students required to be educated at the Center.
- (2) The Center shall supply appropriate staff to ensure the safety of students and Receiving LEA staff in the Center. The Center shall also ensure students are able to access educational services provided by the Receiving LEA.
- (3) Any security decision with respect to student or staff safety shall be within the purview of the Center's director or their designee. A Center's lack of staff or other necessary resources shall not absolve the Receiving LEA of its responsibility to provide appropriate educational services to incarcerated students.
- (4) If the Department receives notice that the Center is not providing a secure setting or access to educational services as set forth in paragraphs (1) through (3) of this Rule, the Department shall provide notice to the Commissioner of the Department of Children's Services.

Authority: T.C.A. § 49-6-3023. **Administrative History:** Original rule filed January 10, 2018; effective April 10, 2018.

0520-01-12-.08 MONITORING AND MEDIATION.

- (1) The Department shall annually monitor each Center to ensure the Receiving LEA's compliance with this Chapter.
- (2) The Department shall monitor the Receiving LEA, Home LEA, and the Center in order to ensure that there are appropriate educational services being offered at the Center.
- (3) If a dispute arises under this Chapter, the dispute shall be mediated by the Commissioner or Commissioner's designee. The Commissioner's or Commissioner's designee's decision with regard to any mediation shall be considered a final and binding decision.

Authority: T.C.A. § 49-6-3023. **Administrative History:** Original rule filed January 10, 2018; effective April 10, 2018.

AMENDMENT
RULES
OF
STATE BOARD OF EDUCATION
CHAPTER 0520-01-16
EDUCATION SAVINGS ACCOUNTS
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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 in 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 these Rules.
 - (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:**

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
 - (b) School is suspended or terminated or if a Participating School withdraws from the Program, affected Participating Students remain eligible to participate in the Program.
 - (c) 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:**

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.

AMENDMENT

RULES OF THE STATE BOARD OF EDUCATION

CHAPTER 0520-02-03 EDUCATOR LICENSURE

0520-02-03-.11 ENDORSEMENTS.

- (1) All educators shall hold a full and valid Tennessee educator license with an endorsement covering the work assignment as provided in T.C.A. Title 49, Chapter 5.
- (2) Prospective educators seeking initial licensure shall meet requirements in at least one (1) area of endorsement.
- (3) In accordance with T.C.A. § 49-5-5619, beginning August 1, 2023, educators seeking to obtain or maintain endorsements identified in the Educator Licensure Policy 5.502 as requiring passage of a foundational literacy skills assessment or completion of an approved foundational literacy skills professional development course, must submit required documentation demonstrating completion of the foundational literacy skills assessment or foundational literacy skills professional development course as set forth below. If an educator chooses to complete the foundational literacy skills professional development course, evidence of completion of the course shall be submitted to the Department within the twelve (12) months preceding the applicable licensure transaction.
 - (a) Educators seeking licensure and endorsement in an applicable area as identified in Policy 5.502 must demonstrate meeting this requirement at the time of licensure issuance, except

- for candidates enrolled in an educator preparation program with a job-embedded clinical practice.
- (b) Educators who hold a license and endorsement(s) in an applicable area as identified in Policy 5.502 while enrolled in a program with a job-embedded clinical practice and all other educators seeking to renew or advance a teacher or instructional leader license with an endorsement in an applicable area as identified in Policy 5.502 must complete this requirement to renew or advance the license.
 - (c) Educators seeking to add an endorsement in an applicable area as identified in Policy 5.502 to a teaching license must demonstrate completion of this requirement prior to the endorsement being added to the license.
 - (d) Educators who hold multiple endorsements on a license, at least one (1) of which is not impacted by T.C.A. § 49-5-5619, may maintain licensure and any endorsements not identified in Policy 5.502, without demonstrating completion of this requirement; however, any applicable endorsement(s) identified in Policy 5.502 will become inactive at the time of renewal or advancement of the license unless the educator demonstrates completion of this requirement.
 - (e) Educators who only hold a license with applicable endorsement(s) as identified in Policy 5.502 and who do not complete this requirement will not be able to renew or advance the license and it will become inactive.
 - (f) Educators whose license becomes inactive as provided for in subparagraph (e) may reactivate a license and/or applicable endorsement(s) identified in Policy 5.502 held on a license by demonstrating completion of the required foundational skills literacy assessment or approved professional development course required by T.C.A. § 49-5-5619.
 - (g) Once an educator has demonstrated completion of the requirement to pass the foundational literacy skills assessment or complete an approved foundational literacy skills professional development course as provided in subparagraphs (a) through (f), the educator will not have to re-take the course or the assessment to maintain licensure.
- (4) Educators may add additional endorsements to a license in accordance with rules and policies established by the State Board, State Board Educator Licensure Policy 5.502, and guidelines established by the Department.
 - (5) When an endorsement held by an out-of-state applicant does not match the content area or grade span of an available Tennessee endorsement, the Department shall identify the most appropriate match, if possible. In some cases, if there is not an equivalent endorsement and the grade span and/or content area do not have an appropriate match, the Department may request additional evidence to demonstrate knowledge and/or experience in the content area and/or grade span covered by the available Tennessee endorsement prior to issuing or reactivating a license in Tennessee. The same process shall also apply to an educator who is seeking to reactivate an expired license if the endorsements previously held are no longer issued.
 - (6) All educators who teach a course in which a state-level end-of-course examination is required shall hold the subject-specific endorsement for the course or meet the appropriate employment standard set forth in Employment Standards Rule Chapter 0520-02-06, unless the educator is granted a temporary permit or endorsement exemption by the Commissioner to teach a course in which an end-of-course examination is required pursuant to Public Chapter 932 of 2022 for the 2022-23 or 2023-24 school year.

- (7) An educator may teach up to two (2) sections of one (1) course outside the educator's area of endorsement each school year, except for courses in which a state-level end of course examination is required, elementary physical education courses, or special education courses.
- (8) An educator who holds a full and valid and active license may teach more than one (1) course or more than two (2) sections of one (1) course outside of the educator's area of endorsement if an endorsement exemption is requested by the director of schools or director of public charter school and approved by the Commissioner.
- (a) In reviewing an initial endorsement exemption for approval, the Commissioner shall consider:
1. The educator's previous teaching experience;
 2. The educator's postsecondary coursework and degrees held; and
 3. The content and grade span of endorsements held on the educator's current license.
- (b) Endorsement exemptions shall be valid for one (1) school year. A director of schools or director of public charter school may request renewal of an endorsement exemption for an educator who demonstrates progress toward earning the relevant endorsement. An endorsement exemption may be renewed no more than two (2) times.
- (c) Educators may teach on an approved endorsement exemption for no more than a total of three (3) school years.
- (d) Unless otherwise stipulated in paragraph (6) of this Rule, an endorsement exemption shall not be issued by the Commissioner to an individual to teach a course in which an end of course examination is required, in accordance with T.C.A. § 49-6-6006 or a special education course in accordance with Federal laws.
- (9) Licensed educators enrolled in an additional endorsement program in special education offered by a State Board-approved educator preparation provider may add a provisional special education endorsement by:
- (a) Submitting a recommendation from the educator preparation provider verifying:
1. Enrollment in a program of study for additional endorsement in the special education endorsement area; and
 2. An assurance that the educator will be assigned a mentor who is endorsed in the special education endorsement area.
- (b) In order to transition from a provisional endorsement to a full endorsement, educators shall submit qualifying scores on all State Board-required assessments and successfully complete the program of study within three (3) years of receiving a provisional endorsement. The provisional endorsement shall be valid for three (3) years and shall not be renewed.

Authority: T.C.A. §§ 49-1-302, 49-5-106, 49-5-108, 49-5-403, 49-6-303, 49-5-5619, and 49-6-6006.
Administrative History: Original rule filed November 16, 1989; effective February 29, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999. Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal filed October 27, 2015; effective January 25, 2016. New rules filed August 16, 2019; effective November

14, 2019. Emergency rules filed July 9, 2021; effective through January 5, 2022. Emergency rules expired effective January 6, 2022, and the rules reverted to their previous statuses. Amendments filed December 2, 2021; effective March 2, 2022.

0520-02-03-.12 PERMITS.

- (1) Academic Permits.
 - (a) After the director of schools or the director of a charter school notifies the director's local board of education or the governing body of the director's charter school, as applicable, that the LEA or charter school is unable to secure a qualified teacher with a valid license for the type and kind of school in which a vacancy exists, the director of schools or the director of a charter school may certify to the Commissioner that the LEA or charter school is unable to secure a qualified teacher with a valid license for the position in which a vacancy exists.
 - (b) In accordance with T.C.A. § 49-5-106, upon the Commissioner's receipt of the certification, the Commissioner may grant a temporary permit to teach in the unfilled position to an individual who does not hold an active Tennessee educator license under the conditions set forth in this rule.
 - (c) The LEA or charter school shall provide evidence of a targeted recruitment strategy for the vacant position.
 - (d) The director of schools or charter school leader shall recommend the individual for a teaching permit.
 - (e) The recommended individual shall hold a minimum of a bachelor's degree from a regionally accredited college or university.
 - (f) If an individual indicates an affirmative answer on the personal affirmation section of the application for a permit, the individual shall show cause why the permit should be issued despite the individual's affirmative answers. The permit application of any individual who indicates an affirmative answer on the personal affirmation section of the application shall be sent to the State Board for review in accordance with State Board Rule 0520-02-03-.09 for a determination of whether the permit may be issued by the Commissioner.
 - (g) If an individual teaching on a permit issued by the Commissioner is reported to the State Board by a director of schools as described in State Board Rule 0520-02-03-.09 and the misconduct, if substantiated, would warrant disciplinary action under State Board Rule 0520-02-03-.09, the State Board may direct the Commissioner to not to issue a subsequent permit to the individual upon expiration of the individual's current permit pursuant to T.C.A. § 49-5-106 and State Board Rule 0520-02-03-.09.
 - (h) In reviewing a permit application for approval, the Commissioner may consider, but is not limited to, the following:
 - 1. The individual's previous work experience;
 - 2. The individual's postsecondary coursework and degrees held;
 - 3. The individual's relevant experience in the subject area where the individual is seeking to teach; and
 - 4. The individual's progress toward obtaining a Tennessee educator license.
 - (i) The Commissioner may re-issue a temporary permit to teach a course in which an end-of-course examination is required for the 2022-23 and 2023-24 school years if the individual

served on a permit to teach a course in which an end-of-course examination was required in the 2021-22 school year.

- (j) Unless otherwise stipulated in paragraph (1)(i) of this Rule, individuals with a teaching permit shall not teach an elementary physical education class required under T.C.A. § 49-6-1021(e), a course in which a state-level end-of-course examination is required, in accordance with T.C.A. § 49-6-6006, or a special education course in accordance with Federal laws.
 - (k) Each permit issued by the Commissioner shall be valid only until June 30 following the date of issuance.
 - (l) An individual may be issued no more than three (3) permits. An individual shall meet the requirements set forth in this rule for each issuance of a permit.
 - (m) A local board of education or governing body of a charter school may employ an individual holding a permit, but not holding a valid license, only for such period for which the local board of education or the governing body of the charter school is unable to secure a qualified teacher with a valid license for the type and kind of school. The permit issued to an unlicensed individual is only valid for the school and LEA identified in the permit application submitted to the Department and shall not be used for any other purpose.
 - (n) If an individual has had a permit application denied by the Commissioner pursuant to paragraph (1)(f) or (1)(g) of this Rule, the individual must indicate such on any future application for an educator license or permit in Tennessee.
- (2) Clinical Practice Permits.
- (a) After the director of schools or the director of a charter school notifies the director's local board of education or the governing body of the director's charter school, as applicable, that the LEA or charter school is unable to secure a qualified teacher with a valid license for the type and kind of school in which a vacancy exists, the director of schools or the director of a charter school may certify to the Commissioner that the LEA or charter school is unable to secure a qualified teacher with a valid license for the position in which a vacancy exists.
 - (b) In accordance with Public Chapter 284 of 2023, upon the Commissioner's receipt of the certification, the Commissioner may grant a clinical practice permit to teach in the unfilled position to an individual who does not hold an active Tennessee educator license under the conditions set forth in this Rule.
 - (c) A director of schools or a director of a public charter school shall submit a conditional offer of employment made by the respective director of schools or the director of the public charter school for the individual to fill a position for which the LEA or public charter school is unable to secure a qualified teacher with a valid license for the type and kind of school in which a vacancy exists. The conditional offer of employment must include a certification by the director of schools or the director of the public charter school that the director has notified the Commissioner of the LEA's or public charter school's inability to fill the vacancy and its intent to employ the individual pursuant to a clinical practice permit issued pursuant to this Rule.
 - (d) To be eligible to receive a clinical practice permit, an individual shall be enrolled in a State Board approved educator preparation program ("EPP"), have completed all EPP coursework except for the clinical practice required pursuant to T.C.A. § 49-5-5604 and State Board Rule 0520-02-04, and submit with the application for a clinical practice permit a letter of recommendation from the EPP in which the individual is enrolled. In accordance with T.C.A. § 49-5-5604, courses required as part of the clinical practice shall be considered part of the clinical practice.

1. In reviewing the clinical practice permit application for approval, the Commissioner may consider, but is not limited to, the following:
 - (i) The individual's postsecondary coursework; and
 - (ii) The individual's progress toward obtaining a Tennessee educator license.
 2. In accordance with Public Chapter 284 of 2023, the Commissioner may issue a clinical practice permit to teach a course in which an end-of-course examination is required to satisfy the graduation requirements established by the State Board if the individual demonstrates sufficient content knowledge in the course material by taking and passing, at the teacher's own expense, all specialty area content assessments.
 3. The Commissioner shall not grant an individual a clinical practice permit to teach a physical education class required under T.C.A. § 49-6-1021(e) or a special education course in accordance with Federal and state law.
- (e) If an individual indicates an affirmative answer on the personal affirmation section of the application for a clinical practice permit, the individual shall show cause why the permit should be issued despite the individual's affirmative answers. The permit application of any individual who indicates an affirmative answer on the personal affirmation section of the application shall be sent to the State Board for review in accordance with State Board Rule 0520-02-03-.09 for a determination of whether the permit may be issued by the Commissioner.
- (f) An individual who teaches under a clinical practice permit issued pursuant to this Rule satisfies the clinical practice required pursuant to § 49-5-5604 and State Board Rule 0520-02-04-.10 if:
1. The individual is assigned to, and receives guidance, evaluations, and instructions from a clinical mentor who meets criteria set forth in State Board Rule 0520-02-04-.10 and Educator Preparation Policy 5.504 for school-based clinical mentors, for an amount of time that is at least equal to the amount of time required for candidates of the EPP in which the individual is enrolled to meet the EPP's clinical practice requirements;
 2. The EPP clinical supervisor assigned to the individual evaluates the individual as having adequately met the same requirements that candidates of the EPP in which the individual is enrolled must meet to satisfy the clinical practice requirements of § 49-5-5604 and State Board Rule 0520-02-04-.10, including, but not limited to, teaching under a clinical practice permit in a course or endorsement area aligned to the specialty area for which the individual is being prepared; and
 3. The individual teaches under a clinical practice permit for an amount of time that is at least equal to the amount of time required for candidates of the EPP in which the individual is enrolled to complete the clinical practice requirements of § 49-5-5604.
- (g) For the purposes of this Rule "clinical practice" has the same meaning as State Board Rule 0520-04-02-.02(4).
- (h) Each clinical practice permit issued by the Commissioner shall be valid only until June 30 following the date of issuance.
- (i) An individual may only be issued one (1) clinical practice permit. A clinical practice permit shall not be re-issued by the Commissioner.

- (j) The clinical practice permit issued to an unlicensed individual is only valid for the school and LEA identified in the clinical practice permit application submitted to the Department and shall not be used for any other purpose.
 - (k) If an individual teaching on a clinical practice permit issued by the Commissioner is reported to the State Board by a director of schools as described in State Board Rule 0520-02-03-.09 and the misconduct, if substantiated, would warrant disciplinary action under State Board Rule 0520-02-03-.09, the State Board may direct the Commissioner to not to issue any subsequent permit to the individual upon expiration of the individual's current clinical practice permit.
 - (l) If an individual has had a clinical practice permit application denied by the Commissioner pursuant to paragraph (2)(e) of this Rule or if the State Board has directed the Commissioner not to issue the individual any subsequent temporary permits pursuant to paragraph (2)(k) of this Rule, the individual must indicate such on any future application for an educator license or temporary permit in Tennessee.
- (3) Occupational Permits.
- (a) After the director of schools or the director of a charter school notifies the director's local board of education or the governing body of the director's charter school, as applicable, that the LEA or charter school is unable to secure a qualified occupational teacher with a valid occupational license for the course of study in which a vacancy exists, the director of schools or the director of a charter school may certify to the Commissioner that the LEA or charter school is unable to secure a qualified occupational teacher with a valid occupational license for the position in which a vacancy exists.
 - (b) In accordance with T.C.A. § 49-5-106, upon the Commissioner's receipt of the certification, the Commissioner may grant a temporary occupational permit to teach in the unfilled position to an individual who does not hold an active Tennessee educator license under the conditions set forth in this rule.
 - (c) The LEA or charter school shall provide evidence of a targeted recruitment strategy for the vacant position.
 - (d) The director of schools or charter school leader shall recommend the individual for an occupational teaching permit.
 - (e) The recommended individual shall hold a minimum of a high school diploma; and either:
 1. An active industry certification for the area of endorsement, as defined by the Department; or
 2. A minimum of five (5) years of relevant work experience, completed within the last ten (10) years, or three (3) years of relevant work experience, completed within the last five (5) years, in the endorsement area or equivalent educational attainment, as defined by the Department.
 - (f) If an individual indicates an affirmative answer on the personal affirmation section of the application for an occupational permit, the individual shall show cause why the permit should be issued despite the individual's affirmative answers. The permit application of any individual who indicates an affirmative answer on the personal affirmation section of the application shall be sent to the State Board for review in accordance with State Board Rule 0520-02-03-.09 for a determination of whether the permit may be issued by the Commissioner.
 - (g) If an individual teaching on an occupational permit issued by the Commissioner is reported to the State Board by a Director as described in State Board Rule 0520-02-03-.09 and the misconduct, if substantiated, would warrant disciplinary action under State Board Rule

0520-02-03-.09, the State Board may direct the Commissioner not to issue any subsequent permit to the individual upon expiration of the individual's current occupational permit.

- (h) In reviewing an occupational permit application for approval, the Commissioner may consider, but is not limited to, the following:
 - 1. The individual's previous work experience;
 - 2. The individual's postsecondary coursework and degrees held;
 - 3. The individual's relevant experience in the subject area where the individual is seeking to teach; and
 - 4. The individual's progress toward obtaining a Tennessee educator license.
- (i) An occupational permit issued by the Commissioner shall be valid only until June 30 following the date of issuance.
- (j) An individual may only be issued one (1) occupational permit. An occupational permit shall not be re-issued by the Commissioner.
- (k) A local board of education or governing body of a charter school may employ an individual holding an occupational permit, but not holding a valid license, only for such period of time for which the local board of education or the governing body of the charter school is unable to secure a qualified occupational teacher with a valid license for the type and kind of school. The occupational permit issued to an unlicensed individual is only valid for the school and LEA identified in the permit application submitted to the Department and shall not be used for any other purpose.
- (l) If an individual has had an occupational permit application denied by the Commissioner pursuant to paragraph (3)(f) or if the State Board has directed the Commissioner not to issue the individual any subsequent temporary permits pursuant to paragraph (3)(g) of this Rule, the individual must indicate such on any future application for an educator license or temporary permit in Tennessee.

Authority: T.C.A. §§ 49-1-302, 49-5-106, 49-5-108, 49-5-403, and Public Chapter 284 of the Public Acts of 2023.
Administrative History: Original rule filed November 16, 1989; effective February 29, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed May 28, 1999; effective September 28, 1999. Repeal and new rules filed December 18, 2014; effective March 18, 2015. A stay of the rules was filed January 28, 2015; new effective date June 1, 2015. Emergency rules filed August 27, 2015; effective through February 23, 2016. Repeal filed October 27, 2015; effective January 25, 2016. New rules filed August 16, 2019; effective November 14, 2019. Amendments filed November 30, 2020; effective February 28, 2021. Amendments filed August 5, 2021; effective November 3, 2021.

AMENDMENT

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 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 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.
- (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.
- (18) "Non-public Online Learning Program or Course" means online programs or courses that meet the requirements set by the Department.
- (19) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child.
- (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.
- (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.

- (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.
- (23) "Program" means the Individualized Education Account (IEA) Program created in T.C.A. §§ 49-10-1401, et seq.
- (24) "Provider" means an individual or business that meets the requirements set by the State Board of Education and the Tennessee Department of Education.
- (25) "Standard Application Form" means a document whereby an Applicant may seek to establish an Individualized Education Account (IEA).
- (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 . 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 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.
- (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 Parent.
- (5) The LEA shall enroll the student and provide instruction in the general education curriculum.
- (6) 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 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.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 08/11/2023

Signature: 

Name of Officer: Angela C. Sanders

Title of Officer: General Counsel

Department of State Use Only

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Tre Hargett
Secretary of State

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