

**Department of State
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: _____
Notice ID(s): _____
File Date: _____

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:	Amy Owen
Address:	500 James Robertson Parkway, 5 th Floor, Nashville, TN 37243
Phone:	615 741-2966
Email:	Amy.Owen@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:	Amy Owen
Address:	500 James Robertson Parkway, 5 th Floor, Nashville, TN 37243
Phone:	615 741-2966
Email:	Amy.Owen@tn.gov

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

Address 1:	Tennessee Board of Regents, 1 st Floor Conference Room		
Address 2:	1 Bridgestone Park		
City:	Nashville, TN		
Zip:	37214		
Hearing Date :	10/01/2019		
Hearing Time:	1:00 pm	<input checked="" type="checkbox"/> _X_ CST/CDT	<input type="checkbox"/> _EST/EDT

Additional Hearing Information:

Please bring identification so that you may be checked into the building by security.

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.)

Chapter Number	Chapter Title
0520-01-16	Education Savings Accounts
Rule Number	Rule Title
0520-01-16-.01	Purpose

Rule Number	Rule Title
0520-01-16-.02	Definitions
0520-01-16-.03	Application and Admission
0520-01-16-.04	Agreement and Funds Transfer
0520-01-16-.05	Use of Funds
0520-01-16-.06	Term of the ESA
0520-01-16-.07	Monitoring and Compliance
0520-01-16-.08	Participating Schools
0520-01-16-.09	Providers and Postsecondary Institutions
0520-01-16-.10	Return to Local Education Agency
0520-01-16-.11	Appeal Procedures
0520-01-11-.12	Conflict of Interest

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

**RULES
OF
STATE BOARD OF EDUCATION
CHAPTER 0520-01-16
EDUCATION SAVINGS ACCOUNTS**

TABLE OF CONTENTS

0520-01-16-.01	Purpose	0520-01-16-.07	Monitoring and Compliance
0520-01-16-.02	Definitions	0520-01-16-.08	Participating Schools
0520-01-16-.03	Application and Admission	0520-01-16-.09	Providers and Postsecondary Institutions
0520-01-16-.04	Agreement and Funds Transfer		
0520-01-16-.05	Use of Funds	0520-01-16-.10	Return to Local Education Agency
0520-01-16-.06	Term of the ESA	0520-01-16-.11	Appeal Procedures
		0520-01-11-.12	Conflict of Interest

0520-01-16-.01 PURPOSE.

The purpose of these rules is to effectuate the Tennessee Education Savings Account Program as required by T.C.A. § 49-6-2601, *et seq.* Pursuant to T.C.A. § 49-6-2605, The Department may contract with a non-profit organization for some or all portions of the Program. If the Department contracts for some or all portions of the Program, any reference to the Department herein may be assigned to the contractor.

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

0520-01-16-.02 DEFINITIONS.

- (1) "Account Holder" means a parent as defined in paragraph (13) of this section or a student who has attained the age of majority who is approved by the Department to participate in the Program and signs the ESA agreement, is the Account Holder for the ESA funds, and is responsible for complying with all of the requirements of the ESA Program.
- (2) "Agreement" means a document signed by a parent of an eligible student or an eligible student who has attained the age of majority and a designee of the Department, which qualifies the parent or student who has attained the age of majority to participate in the Program.
- (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 fair market value through a participating school, private school, or provider.
- (4) "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 (21) of this section and employers of

(Rule, continued)

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.

- (5) "Department" means the Tennessee Department of Education
- (6) "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.
- (7) "Educational therapy services" means individualized services designed to develop or improve academic performance through instructional and therapeutic techniques, and provided by therapists that meet the requirements set by the Department.
- (8) "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 of Education.
- (9) "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 of Education for a Category I, II, or III private school, and applies to the Department to participate in the Program.
- (10) "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; or
 - 3. Received an ESA in the previous school year;
 - (b) Is zoned to attend a school in Shelby County Schools, Metro Nashville Public 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..

(Rule, continued)

- (11) "ESA" mean a Tennessee Education Savings Account.
- (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 family member, parent or participating student in accordance with the conflict of interest provisions set forth in these rules.
- (13) "IEP" means an Individualized Education Program developed by a public school pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1400, et seq.
- (14) "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.
- (15) "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.
- (16) "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.
- (17) "Participating 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 of Education for a Category I, II, or III private school, and that seeks to enroll eligible students.
- (18) "Participating student" means an eligible student who is seventeen (17) years of age or younger and whose parent is participating in the ESA Program or an eligible student who has attained the age of majority and is participating in the ESA Program.
- (19) "Private or non-profit financial management organization" means an institution selected by the Department to administer the education savings accounts.
- (20) "Program" means the Education Savings Account (ESA) Program created in T.C.A. § 49-6-2602, et seq.
- (21) "Provider" means an individual or business that provides educational services and is approved by the Department, including tutors, tutoring services, educational therapy services and educational therapists.
- (22) "State Board" means the Tennessee State Board of Education.
- (23) "Summer education programs and specialized afterschool education programs" means an educational program approved by the Department that is operated outside of the regular school day or school year, which do not include afterschool childcare.

(Rule, continued)

- (24) "Technology fees" means fees charged by a participating school, private school, or provider for the use of technology or technological devices.
- (25) "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.
- (26) "Tutoring services" means educational services provided by a tutor who is approved by the Department.
- (27) "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 attained the age of majority, must submit a completed application through the Department's website or through the Department's office 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 attained the age of majority, 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. A federal income tax return from the previous year; or
 - 2. Proof of eligibility for enrollment in the state's Temporary Assistance for Needy Families (TANF) program.
 - (b) The Department may require additional information to verify household income.
 - (c) Students identified as "at-risk" as defined in T.C.A. § 49-3-307(a)(6) 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;

(Rule, continued)

- (b) Eligible students zoned to attend a priority school as defined by the state's accountability system pursuant to § 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 attained the age of majority shall complete the enrollment procedures set by the Department to become enrolled in the Program, including execution of an Agreement to participate in the Program.

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

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 attained the age of majority 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 State Board approved Category I, II, or III private school;
 - (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 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 ESA Program;
 - (d) Not enroll the participating student in the Individualized Education Account (IEA) Program during the time the student is enrolled in the ESA Program;
 - (e) 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 ESA Program. 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; and
 - (f) Comply with the acceptable uses of ESA funds and the responsibilities of the parent of an eligible student or eligible student who has attained the age of majority.
- (2) The Agreement and any additional information required by the Department, shall be submitted and received by the Department by the deadline set by the Department before the first ESA payment is disbursed.

(Rule, continued)

- (3) The Agreement shall be signed by the parent of an eligible student or by the eligible student who has attained the age of majority and a designee of the Department to be effective.
- (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 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) 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 basic education program (BEP) for the LEA in which the participating student resides, or the statewide per pupil average of required state and local BEP funds, whichever amount is less.
- (7) 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 basis.
- (8) 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.
- (9) 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 ESA 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.
- (10) If the Department determines that ESA funds have been misspent, the Department shall notify the Account Holder, and the Account Holder shall repay the misspent amount in the manner and within the timeframe set by the Department. 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 the terms of the state laws, rules, procedures or the Agreement, if the student returns to the LEA, or if funds were deposited into the account in error. An Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.

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

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. Any tuition or fees charged by a participating school that exceeds the ESA amount shall be the responsibility of the Account Holder;

(Rule, continued)

- (b) Textbooks required by a participating school;
 - (c) Tutoring services provided by an individual tutor, including a licensed Tennessee educator who meets the requirements set by the Department, or 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 participating schools and educational providers, including non-participating Category I, II, or III private schools, tutors or tutoring services, and educational therapists;
 - (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 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 for participating students provided by a therapist who has been approved by the Department;
 - (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 tuition and fees, computer hardware or other technological devices, tutoring services, educational therapy services, summer education programs and specialized afterschool education programs, and any other expenses identified by the Department. 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.

(Rule continued)

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

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 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 the LEA in which the student resided when the student began participating in the program;
 - (d) Is suspended or terminated from the participating in the Program in accordance with T.C.A. § 49-6-2808;
 - (e) Graduates or withdraws from high school;
 - (f) 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; or
 - (g) No longer meets or fails to verify that the participating student's household income meets the requirements 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) The Account Holder may transfer the student from one Category I, II, or III private school to another Category I, II, or III private school in accordance with procedures set by the Department.
- (4) 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.
- (5) 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 the expenditures are determined to be qualifying expenses.

(Rule continued)

- (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 Basic Education Program (BEP) account of 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.
- (6) Account Holders are not required to spend the entire sum each year, however, a portion of the funds must be used each year on approved expenses for the benefit of the student enrolled in the ESA Program and overall spending must equal fifty (50) percent of the annual award by the deadline for submission of the last expense report of the contract year.
 - (a) If overall spending does not equal fifty (50) percent by the deadline for submission of the last expense report and if the ESA is renewed for the following year, the Department shall subtract the difference from the payments in the next contract year.
- (7) 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 to be placed in the Basic Education Program (BEP) account of the education trust fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (8) The Department shall provide parents of participating students or participating students who have reached the age of majority 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 majority regarding ESA funds. The Department shall also provide parents of participating students or participating students who have reached the age of majority 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:**

0520-01-16-.07 MONITORING AND COMPLIANCE.

- (1) The Department shall conduct fiscal and program compliance reviews of all ESAs pursuant to procedures developed by the Department.
- (2) The Department may conduct or contract for random, quarterly, or annual review of ESAs.
- (3) The Department shall establish or contract for the establishment of an online anonymous fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify

(Rule continued)

the Department of any alleged violation by an Account Holder or participating school(s) of state laws, rules, or procedures relating to the Program. The Department shall conduct an inquiry of any report of fraud, or make a referral to the appropriate agency for an investigation.

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

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 include, but not be limited to:
 1. The maximum number of students receiving ESAs the school has the capacity to enroll;
 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 the amount of IEA funds expected to be paid during the school year. The school may comply with this requirement by filing a surety bond payable to the state from a surety, and in an amount determined by the Department; and
 3. The school's academic calendar, the school's admission policy, and the school's tuition and fees 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 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;

(Rule continued)

2. Ensuring participating students in grades three through eleven (3-11) are administered the TCAP tests in math and English language arts 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 nonpublic 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 suspended or terminated by the Department;
 - (g) Comply with T.C.A. § 49-5-202;
 - (h) Conduct criminal background checks on employees; and
 - (i) 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.
- (3) The funds in an ESA may be used only 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 participating students 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 funds from an ESA with a parent of a participating student or a participating student.
- (6) Participating schools shall notify the Department of any participating student that withdraws from the participating schools within five (5) business days of notification of 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.

(Rule continued)

- (9) The Department may suspend or terminate a participating school from participating in the Program if the Department determines the school has failed to comply with the requirements of the Act, these rules, or the procedures set by the Department.
- (a) If the Department suspends or terminates a school's participation, the Department shall notify the affected participating students, parents of affected participating students, and the participating school of the decision. If a participating school is suspended or terminated or if a participating school withdraws from the Program, affected participating students remain eligible to participate in the Program.
- (b) A participating school may appeal the Department's decision pursuant to the appeals procedures set forth in these rules.
- (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:
- (a) Failure of participating students to make academic progress as demonstrated by performance measures from the TCAP tests or any nationally normed assessment utilized by the school.
- (11) Participating schools are prohibited from sending ESAs to collections in order to settle unpaid debts. All contracts entered into are the responsibility of the private parties involved.

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

0520-01-16-.09 PROVIDERS AND POSTSECONDARY INSTITUTIONS.

- (1) In order to receive pre-approval as required by T.C.A. § 49-6-2607(b), providers, at a minimum, shall:
- (a) Maintain documentation that any person providing services to participating students has 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.
- (b) Maintain documentation of the provider's credentials demonstrating the provider meets the qualifications set by the Department.
- (2) Providers and eligible postsecondary institutions shall provide Account Holders with a receipt for all expenses paid to the provider or eligible postsecondary institution using ESA funds.
- (3) Providers and eligible postsecondary institutions shall not, in any manner, refund, rebate, or share funds from an ESA with a parent of a participating student or a participating student.
- (4) The Department may suspend or terminate a provider from participating in the Program if the Department determines the provider has failed to comply with the requirements of the Act, these rules, or the procedures set by the Department.

(Rule continued)

- (a) If the Department suspends or terminates a provider's participation, the Department shall notify the affected participating students, parents of affected participating students, and the provider of the decision. If a provider is suspended or terminated or if a provider withdraws from the Program, affected participating students remain eligible to participate in the Program.
 - (b) A provider may appeal the Department's decision pursuant to the appeals procedures set forth in these rules.
- (5) Providers and eligible postsecondary institutions are prohibited from sending ESAs to collections in order to settle unpaid debts. All contracts entered into are the responsibility of the private parties involved.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, 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 student enrolls in an LEA the parent of a participating student or the participating student who has attained the age of majority shall notify the Department in accordance with the procedures and timelines set by the Department.

(Rule continued)

- (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 Basic Education Program (BEP) Account of the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (4) Upon a student's termination from the Program, the participating school shall send all educational records of the participating student to the LEA where the student has enrolled.
- (5) Upon enrollment in the LEA, if the parent or student who has attained the age of majority requests, in writing, an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

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

0520-01-16-.11 APPEAL PROCEDURES.

- (1) Participating schools or providers may appeal the denial, suspension, or termination of the participating school's or provider's participation in the ESA Program, and a parent of a student or a student who has attained the age of majority may appeal an, application denial, suspension, termination, or removal of the student from the ESA Program pursuant to the following two (2) step appeal process:
 - (a) Step one (1): The appeal shall be on the form provided by the Department and shall be submitted to the commissioner of education, or the commissioner's designee within ten (10) business days of receipt of the notice of application denial, suspension, termination, and/or removal. Notice of application denial, suspension, termination, and/or removal shall be provided to the electronically and via first-class USPS mail and shall be deemed to be received three (3) business days after the date of postmark. The appeal shall be reviewed by the commissioner of education, or the commissioner's designee, and a decision shall be issued within forty-five (45) calendar days of receipt of the appeal.
 - (b) Step two (2): The parent of a student or student who has attained the age of majority, provider or participating school that submitted the appeal shall be notified of the commissioner's or commissioner's designee's decision in the step one (1) appeal electronically and via first-class USPS. Such notice shall be deemed received three (3) business days after the date of postmark. An appeal of the commissioner's or commissioner's designee's decision in step one (1) shall be filed with the commissioner by the applicant, Account Holder, or participating school within thirty calendar (30) days and shall be heard as a contested case hearing pursuant to the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).

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

0520-01-16-.12 CONFLICT OF INTEREST.

- (1) Use of ESA funds must be for the sole benefit of the participating student for which the ESA is established. ESA funds shall only be used by the Account Holder on qualifying expenses.
- (2) It is a conflict of interest and is considered a misuse of ESA funds and a violation of ESA Program rules and procedures for a family member of a participating student, including a spouse, parent, parent-in-law,

(Rule continued)

child, son-in-law, daughter-in-law, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, or any person who resides in the same household as a participating student to derive any financial benefit from the ESA Program.

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

(Rule continued)

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: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Department of State Use Only

Filed with the Department of State on: _____

Tre Hargett
Secretary of State