

**RULES
OF
STATE BOARD OF EDUCATION**

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

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0520-01-09-.01 GENERAL REGULATIONS. ADOPTION BY REFERENCE.

The State Board of Education adopts by reference the Compilation of Federal Regulations at 34 C.F.R. Parts 300 and 301 in their entirety unless otherwise provided herein as the policies and procedures for administration of special education programs and services in the State. The regulations, evaluation procedures, and eligibility criteria are available from the Division of Special Education, Tennessee Department of Education, 710 James Robertson Parkway, Nashville, TN 37243, or on the internet by accessing the State Department of Education's website at <https://www.tn.gov/education/student-support/special-education.html>. ~~http://www.tn.gov/education/topic/special_education~~.

Authority: T.C.A. §§ 49-10-101 ~~and 34 C.F.R. Parts 300 and 301~~ ~~and 49-10-701~~. **Administrative History:** Original rule filed June 10, 1974. Amendment filed October 3, 1974; effective November 2, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed January 15, 1976; effective April 15, 1976. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed May 12, 1985; effective August 13, 1985. Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repealed and new rule filed August 18, 1993; effective December 29, 1993. Amendment filed June 21, 1995; effective October 27, 1995. Amendment filed August 7, 1995; effective December 29, 1995. Rule 0520-01-03-.09 removed and new Chapter 0520-01-09 filed per Tennessee State Board of Education letter dated and effective April 29, 1999. Amendment filed June 19, 2001; effective September 2, 2001. Amendment filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

0520-01-09-.02 DEFINITIONS.

~~(1) “Charter school” means a public charter school as defined at T.C.A. § 49-13-104.~~

(1) “Child with a Disability” means a child between three (3) and twenty-one (21) years of age, both inclusive, who has been evaluated and determined as having a state-identified disability of functional delay or intellectually gifted, or as having one (1) or more of the following disabilities as defined in 34 C.F.R. §§ 300.8: an intellectual disability; a hearing impairment, including deafness; a speech or language impairment; a visual impairment, including blindness; emotional disturbance; an orthopedic impairment; autism; traumatic brain injury; other health impairment; a specific learning disability; developmental delay; deaf-blindness; or multiple disabilities and who, by reason thereof, needs special education and related services. Any child with a disability who turns twenty-two (22) years of age between the commencement of the school year and the conclusion of the school year continues to be a child with a disability for the remainder of that school year.

“

(2) “Child with a Disability” means

~~A cChildren with disabilities and youth between three (3) and twenty-one (21) years of age, both inclusive, who have been evaluated and determined as having a state-identified disability of functional delay or intellectually gifted, or as having one (1) or more of the following disabilities as defined in accordance with 34 C.F.R. §§ 300.8304 through 300.311, T.C.A. § 49-10-102 and regulations of the State Board of Education. : an intellectual disability; a hearing impairment, including deafness; a speech or language impairment; a visual impairment, including blindness; emotional disturbance; an orthopedic impairment; autism; traumatic brain injury; other health impairment; a specific learning disability; developmental delay; deaf-blindness; or multiple disabilities, and who, by reason thereof, needs special education and related services. Any child with a disability who attains twentyturns twenty-two (22) years of age between subsequent to the commencement of thea school year and the conclusion of the school year continues to be a child with a disability for the remainder of that school year.~~

~~A child with intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, multiple disabilities, deaf-blindness, developmental delay, functional delay, and intellectually gifted and who, by reason thereof, needs special education and related services.~~

(23) “FAPE” means a free appropriate public education in compliance with the [Individuals with Disabilities Education Act \(“IDEA”\), 20 U.S.C. § 1400 et seq.;](#)

(34) “Individualized Education Program” or “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.;

(45) “IEP Tteam” means a group of individuals described in 34 CFR § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability;

(56) “LEA” means a local education agency;

(67) “Parent” means the natural or adoptive parent, legal guardian, person who has custody of the child, [a surrogate parent appointed in accordance with 34 CFR § 300.519 and this rule,](#) or person with caregiving authority for the child.

(a) [A foster parent may act as a parent if the biological or adoptive parent's authority to make educational decisions on the child's behalf has been terminated under Tennessee law; and](#)

(b) [The foster parent:](#)

(Rule 0520-01-09-.02, continued)

1. Has an ongoing relationship with the child for more than one (1) year in duration;
2. Is willing to make the educational decisions required of parents under the law; and
3. Has no interest that would conflict with the interest of the child.

(78) "Related services" means:

- (a) Transportation and such developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education, including speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; transition services, including job placement; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling with a focus on career development, employment preparation, achieving independence, and integration in the workplace and community of a child with a disability; orientation and mobility services; and medical services for diagnostic or evaluation purposes; or
- (b) School health services and school nurse services, social work services in schools, and parent counseling and training; ~~or.~~
- ~~(c) Other services that may be approved by the state board of education and outlined in these rules; and.~~

(89) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, home, hospitals, institutions, and other settings, and instruction in physical education.

Authority: T.C.A. §§ 49-10-101 and 34 C.F.R. Parts 300 and 301~~and 49-10-701~~. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed August 13, 2010; effective January 29, 2011. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

0520-01-09-.03 CONSENT-RECOGNIZED DISABILITY CATEGORIES.

(1) Autism.

- (a) "Autism" means a developmental disability, which significantly affects verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experience. ~~The term Autism~~ does not apply if a child's educational performance is adversely affected primarily because the child has an Emotional Disturbance, as defined in this ~~section~~Rule.
- ~~(b) The term of Eligibility for A~~autism also includes students who have been diagnosed

(Rule 0520-01-09-.02, continued)

with an Autism Spectrum Disorder such as Autism, a Pervasive Developmental Disorder, or Asperger's Syndrome when the child's educational performance is adversely affected. Autism may exist concurrently with other areas of disability.

(c) A child ~~could~~ may be found eligible as having Autism to be Autistic if the child manifests ~~these both (i.e. 1. And 2.) of the following~~ characteristics in early childhood (as social demands increase); ~~Children with Autism demonstrate both of the following characteristics (i.e., (a) and (b) below):~~

1. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by all of the following:

(i) Deficits in social-emotional reciprocity (e.g., abnormal social approach, failure of normal back and forth conversation, reduced sharing of interests, reduced sharing of emotions/affect, lack of initiation of social interaction, and poor social imitation);

(ii) Deficits in nonverbal communicative behaviors used for social interaction (e.g. impairments in social use of eye contact, use and understanding of body postures, use and understanding of gestures; abnormal volume, pitch, intonation, rate, rhythm, stress, prosody, and/or volume of speech; abnormal use and understanding affect, lack of coordinated verbal and nonverbal communication, and lack of coordination nonverbal communication); and

(iii) Deficits in developing and maintaining relationships appropriate to developmental level; ranging from difficulties adjusting behavior to social contexts, through difficulties in sharing imaginative play, to an apparent absence of interest in people; ~~and~~

~~and~~

2. Restricted, repetitive patterns of behavior, interests, or activities as manifested by at least two (2) of the following:

(i) Stereotyped or repetitive speech, motor movements, or use of objects (e.g., echolalia, repetitive use of objects, idiosyncratic language, simple motor stereotypies);

(ii) Excessive adherence to routines, ritualized patterns of verbal or nonverbal behavior, or excessive resistance to change (e.g., motor rituals, insistence on same route or food, repetitive questioning, or extreme distress at small changes);

(iii) Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests); or

(iv) Hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of environment (e.g., apparent indifference to pain/heat/cold, adverse response to sounds or textures, excessive smelling or touching of objects, fascination with lights or spinning objects).

(Rule 0520-01-09-.02, continued)

(2) Deaf-Blindness.

(a) "Deaf-Blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs by addressing any one of the impairments. A child may be found eligible as having with Deaf-bBlindness if the child: shall be:

1. A child who Mmeets criteria for Ddeafness or hHearing impairment and Visual Impairment; and
2. A child who is diagnosed with a degenerative condition or syndrome which will lead to Deaf-Blindness, and whose present level of functioning is adversely affected by both hearing and vision deficits; or
3. A child with Has severe multiple disabilities due to generalized central nervous system dysfunction, and who exhibits auditory and visual impairments or deficits which are not perceptual in nature.

(3) Deafness.

(a) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance. A child may be found eligible as having dDeafness if the child has one (1) or more-any of the following characteristics: The child has:

1. An inability to communicate effectively due to dDeafness; ~~and/or~~
2. An inability to perform academically on a level commensurate with the expected level because of dDeafness; or and/or
3. Delayed speech and/or language development due to dDeafness.

(4) Developmental Delay.

(a) "Developmental Delay" refers to children aged three years, zero months (3:0) through nine years, eleven months (9:11) who are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas:

1. pPhysical (gross motor and/or fine motor);₁₇
2. eCognitive;₁₇
3. eCommunication;₁₇
4. sSocial or emotional;₁₇ or
5. aAdaptive development that adversely affects a child's educational performance. Other disability categories shall be used if they are more-descriptive of a young child's strengths and needs.

(Rule 0520-01-09-.02, continued)

(b) Initial eligibility as Developmental Delay shall be determined before the child's seventh birthday.

(c) Other disability categories shall be used if they are more descriptive of the young child's strengths and needs-disability.

(d) The use of Developmental Delay as a disability category is optional for LEAs, local school systems.

(5) Emotional Disturbance.

(a) "Emotional Disturbance" ~~Emotional disturbance~~ means a condition exhibiting one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

1. Inability to learn which cannot be explained by intellectual, sensory, or health factors;

2. Inability to build or maintain satisfactory interpersonal relationships with peers and ~~school personnel~~ teachers;

3. Inappropriate types of behavior or feelings under normal circumstances;

4. ~~A G~~ A general pervasive mood of unhappiness or depression; or

5. ~~A t~~ A tendency to develop physical symptoms or fears associated with personal or school problems.

(b) Emotional Disturbance includes schizophrenia. ~~The term Emotional d~~ Disturbance does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(6) Functional Delay

(a) "Functional Delay" means a continuing significant disability in intellectual functioning and achievement that adversely affects the student's ability to progress in the general education program, but the student's adaptive behavior in the home or community is not significantly impaired and is at or near a level appropriate to the student's chronological age, including all (i.e. 1., 2., and 3.) of the following:- ~~Such disabilities include one (1) or more of the following:-~~

1. Significantly impaired intellectual functioning which is two (2) or more standard deviations below the mean, and difficulties in the following areas cannot be the primary reason for significantly impaired scores on measures of intellectual functioning:

(iA) Limited English proficiency;

(iiB) Cultural factors;

(iiiC) Medical conditions that impact school performance;

(Rule 0520-01-09-.02, continued)

(ivD) Environmental factors; ~~and~~

(vE) Communication, sensory or motor disabilities;

2. Deficient academic achievement which is at or below the fourth percentile in two (2) or more total or composite scores in the following areas:

(iA) Basic reading skills;

(iiB) Reading fluency skills;

(iiiC) Reading comprehension;

(ivD) Mathematics calculation;

(vE) Mathematics problem solving; or

(viF) Written expression; ~~or~~ and

3. Home or school adaptive behavior scores that fall above the level required for meeting Intellectual Disability eligibility standards.

~~Other disability categories shall be used if they are more descriptive of student strengths and needs.~~

(b) Prior to identification of ~~F~~functional ~~D~~elay ~~T~~the student's IEP team must determine that underachievement is not primarily the result of Visual, Motor, or Hearing Disability, Intellectual Disability, Speech or Language Impairment, or a Specific Learning Disability.

(c) ~~Other disability categories shall be used if they are more descriptive of student strengths and needs. T~~the young child's strengths and needs ~~disability~~.

(7) Hearing Impairment

(a) "Hearing Impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but does not include Deafness.

(b) ~~A child may be found eligible as having h~~Hearing ~~i~~mpairment ~~if the child has hearing-impaired child shall have~~ one (1) or more of the following characteristics:

1. Inability to communicate effectively due to a ~~h~~Hearing ~~i~~mpairment;

2. Inability to perform academically on a level commensurate with the expected level because of a ~~h~~Hearing ~~i~~mpairment; or

3. Delayed speech and/or language development due to a ~~h~~Hearing ~~i~~mpairment.

(8) Intellectually Gifted.

(a) "Intellectually Gifted" means a child whose intellectual abilities, creativity, and potential for achievement are so outstanding that the child's needs exceed differentiated general education programing, adversely affect educational

(Rule 0520-01-09-.02, continued)

performance, and requires specifically designed instruction or support services.

(b) Children from all populations (e.g., all cultural, racial, and ethnic groups, English Learners, all economic strata, twice-exceptional, etc.) can be found eligible for intellectually Gifted. to possess these abilities.

(c) Children identified as intellectually Gifted are exempted from the discipline procedures at 34 C.F.R. § 300.530-537. Children with a dual diagnosis that includes intellectually Gifted must be considered as children with a disability and may not be exempted from the discipline procedures at 34 C.F.R. § 300.530-537.

(9) Intellectual Disability.

(a) “Intellectual dDisability” means is characterized by significantly impaired intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(10) Multiple Disabilities.

(a) “Multiple Disabilities” means concomitant impairments (such as Intellectual disability- Deafness, Intellectual disability-Orthopedic Impairment), the combination of which causes such severe educational needs that they cannot be accommodated by addressing only one (1) of the impairments. Multiple Disabilities does not include Deaf-Blindness. is not considered a multiple disability. The term does not include Deaf-Blindness.

(11) Orthopedic Impairment.

(a) “Orthopedic Impairment” means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes, but is not limited to, impairments caused by congenital anomaly (e.g. club foot, absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g. cerebral palsy, amputations, and fractures or burns that cause contractures).

(12) Other Health Impairment.

(a) “Other Health Impairment” means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, Attention Deficit Hyperactivity Disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Syndrome that adversely affects a child's educational performance.

(b) A child is “Other Health Impaired” who has A child may be found eligible for as having an Oether Hhealth lmpairment if the child has a chronic or acute health problems that requires specially designed instruction due to:

1. Impaired organizational or work skills;
2. Inability to manage or complete tasks;

(Rule 0520-01-09-.02, continued)

3. Excessive health related absenteeism; or

4. Medications that affect cognitive functioning.

~~“Parent” means the natural or adoptive parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child.~~

(13) Specific Learning Disability.

(a) “Specific Learning Disability” means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, and that adversely affect a child’s educational performance. ~~Such term Specific Learning Disability~~ includes conditions such as ~~visual processing (perceptual) disabilities perceptual disabilities (e.g., visual processing)~~, brain injury that is not caused by an external physical force, minimal brain dysfunction, dyslexia, and developmental aphasia.

(b) Specific Learning Disability does not include a learning problem that is primarily the result of Visual Impairment, Hearing Impairment, Orthopedic Impairment, Intellectual ~~disability~~ Disability, Emotional Disturbance, Limited English Proficiency, or environmental ~~or cultural, or economic~~ disadvantage.

(14) Speech or Language Impairment.

(a) “Speech or Language Impairment” means a communication disorder, such as stuttering, impaired articulation, a language impairment, or voice impairment that adversely affects a child’s educational performance.

(b) Speech or Language Impairment includes demonstration of impairments in one (1) or more of the following areas: ~~of language, articulation, voice, or fluency:~~

1. Language Impairment. —A significant deficiency in comprehension and/or use of spoken language that may also impair written and/or other symbol systems and is negatively impacting the child’s ability to participate in the classroom environment. The impairment may involve any or a combination of the following: the form of language (phonology, morphology, and syntax), the content of language (semantics) and/or the use of language in communication (pragmatics) that is adversely affecting the child’s educational performance;

2. Articulation (Speech Sound Production) Impairment. – A significant deficiency in the ability to produce sounds in conversational speech not consistent with chronological age. This includes a significant atypical production of speech sounds characterized by substitutions, omissions, additions, or distortions that interfere with intelligibility in conversational speech and obstructs learning and successful verbal communication in the educational setting. Speech sound errors may be a result of impaired phonology, oral motor or other issues;

(Rule 0520-01-09-.02, continued)

3. Voice Impairment. —An excess or significant deficiency in pitch, intensity, resonance, or quality resulting from pathological conditions or inappropriate use of the vocal mechanism; or

4. Fluency Impairment. —Abnormal interruption in the flow of speech characterized by an atypical rate or rhythm, and/or repetitions in sounds, syllables, words, and phrases that significantly reduces the speaker's ability to participate within the learning environment.

(b) Speech or Language deficiencies identified cannot be attributed to characteristics of second language acquisition, cognitive referencing, and/or dialectic differences.

(15) Traumatic Brain Injury.

(a) "Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. ~~The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.~~

(b) Traumatic Brain Injury may include all of the following:

1. An insult to the brain caused by an external force that may produce a diminished or altered state of consciousness; and

2. The insult to the brain induces a partial or total functional disability and results in one (1) or more of the following:

(iA) Physical impairments such as, but not limited to:

(i) Speech, vision, hearing, and other sensory impairments;₅₇

(ii) Headaches;₅₇

(iii) Fatigue;₅₇

(iv) Lack of coordination;₅₇

(v) Spasticity of muscles;₅₇

(vi) Paralysis of one or both sides;₅₇ or

(vii) Seizure disorder.

(iiB) Cognitive impairments such as, but not limited to:

(i) Attention or concentration;₅₇

(ii) Ability to initiate, organize, or complete tasks;₅₇

(Rule 0520-01-09-.02, continued)

(III#) Ability to sequence, generalize, or plan₁₇(IViv) Flexibility in thinking, reasoning or problem solving₁₇(Vv) Abstract thinking₁₇(VIvi) Judgment or perception₁₇(VIIvii) Long-term or short-term memory, including confabulation₁₇(VIIIviii) Ability to acquire or retain new information₁₇ or(IXix) Ability to process information/processing speed.(iiiC) Psychosocial impairments such as, but not limited to:(i) Impaired ability to perceive, evaluate, or use social cues or context appropriately that affect peer or adult relationships₁₇(ii) Impaired ability to cope with over-stimulation environments and low frustration tolerance₁₇(IIIiii) Mood swings or emotional ability₁₇(IViv) Impaired ability to establish or maintain self-esteem₁₇(Vv) Lack of awareness of deficits affecting performance₁₇(VIvi) Difficulties with emotional adjustment to injury (anxiety, depression, anger, withdrawal, egocentricity, or dependence)₁₇(VIIvii) Impaired ability to demonstrate age-appropriate behavior₁₇(VIIIviii) Difficulty in relating to others₁₇(IXix) Impaired self-control (verbal or physical aggression, impulsivity)₁₇(Xx) Inappropriate sexual behavior or disinhibition₁₇(XIxi) Restlessness, limited motivation and initiation₁₇ or(XIIxii) Intensification of pre-existing maladaptive behaviors or disabilities.(c) Traumatic Brain Injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.(16) Visual Impairment.

(Rule 0520-01-09-.02, continued)

(a) "Visual Impairment," including either partial sight or -blindness, means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. A child may be found eligible as having a visualhearing impairment if the child has Visual Impairment includes at least one (1) of the following:

1. Visual acuity in the better eye or both eyes with best possible correction:

 (iA) Legal blindness – 20/200 or less at distance and/or near; or

 (iiB) Low vision – 20/70 or less at distance and/or near;;

2. Visual field restriction with both eyes:

 (iA) Legal blindness – remaining visual field of 20 degrees or less;

 (iiB) Low vision – remaining visual field of 60 degrees or less; or

 (iiiC) Medical and educational documentation of progressive loss of vision, which may in the future affect the student's ability to learn visually; or;

3. Other Visual Impairment, not perceptual in nature, resulting from a medically documented condition (For example, but not limited to;-e-, cortical visual impairment).

If a parent revokes consent, the revocation must be in writing and the revocation is not effective until it is received by the LEA to which consent was granted.

Authority: T.C.A. §§ 49-10-101 ~~and 49-10-102 et seq. and 49-10-701 and and 34 C.F.R. Parts 300 and 301.~~ **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

0520-01-09-.04 PARENT CONSENT.

 (1) Parental consent is required for the following:

 (a) Preplacement evaluations and reevaluations;

 (b) Initial placements; and

 (c) Functional behavior assessments.

 (2) Consent means:

 (a) The Pparent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;

 (b) The pParent understands and agrees in writing to the carrying out of the activity for

(Rule 0520-01-09-.02, continued)

which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c) The Parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

1. If a Parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). Revocation of consent shall be in writing and is not effective until received by the LEA to which the consent was granted.

2. If the Parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the LEA public local education agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

~~(1) A foster parent may act as a parent if the biological or adoptive parent's authority to make educational decisions on the child's behalf has been terminated under Tennessee law; and~~

~~(2) The foster parent:~~

~~(a) Has an ongoing relationship with the child for more than one (1) year in duration;~~

~~(b) Is willing to make the educational decisions required of parents under the law; and~~

~~(c) Has no interest that would conflict with the interest of the child.~~

Authority: T.C.A. §§ 49-10-10.1 *et seq.*, and 34 C.F.R. Parts 300 and 301 ~~49-10-102, and 49-10-701.~~

Administrative History: Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.05 CHILD FIND AND FREE APPROPRIATE PUBLIC EDUCATION.

(1) Child Find

(a) Every LEA shall develop and implement child find activities to identify, locate, and evaluate all children with disabilities, or who are suspected of having a disability, within its jurisdictional boundaries, ages three (3) through twenty-one (21), both inclusive, who need special education and related services, even though they are advancing from grade to grade. This includes but is not limited to including:

1. Children who are enrolled by their parents in a non-public school located within the jurisdictional boundaries of the LEA;

2. Children who are wards of the state; and

3. Children who are highly mobile (migrant and homeless).

~~LEAs shall develop and implement child find activities to ensure that all children—including highly mobile children (migrant and homeless children) and those children who are suspected of being a child with a~~

(Rule 0520-01-09-.02, continued)

~~disability, even though they are advancing from grade to grade—are identified, located and evaluated~~

- (b) Each ~~LEA~~Local Education Agency shall develop and implement procedures for creating public awareness of special education programs and services. ~~This includes a comprehensive system of child find activities for all children suspected of having a disability in public and private schools and facilities and who are homeless. Any child find activities shall be comparable for children in private schools and facilities.~~ A notice must be published or announced in newspapers, other media, (including the LEA's website), or both, with circulation adequate to notify parents of the activities conducted by the LEA.
- (c) Any child suspected of having a disability may be referred to the LEA. The LEA shall establish written procedures for accepting, processing and documenting receipt of each referral. The procedures shall be subject to review approved by the ~~state~~ department of education.
- (d) ~~As a component of child find activities, g~~General education programs within each LEA shall provide interventions implemented in the general education program.~~As a component of child find activities, general education programs within each LEA have specific responsibilities that include providing interventions and documentation prior to referral for special education evaluation. These intervention strategies should be implemented in the general education program.~~
- (e) ~~A Pparent or legal guardian may request that an the LEA in which the child resides~~conduct a full and individualized evaluation of the Pparent's or legal guardian's child to determine if the child has a disability and is eligible for special education and related services.
- (2) Free Appropriate Public Education (FAPE).
- (a) ~~A free appropriate public education (FAPE)-FAPE shall be made available to all children with disabilities, including children with disabilities between the ages of three (3) and through the school year the student turns twenty-onetwo (212), both inclusive, including those children who reach twenty-two (22) years of age during the school year and children who have been suspended or expelled from school for more than ten (10) school days in a school year.~~
- ~~(b)(b) —~~To meet theis obligations of FAPE, each LEA or charter school shall: Pprovide services that address all of a child's identified special education and related services needs, based on the child's unique needs and not on the child's disability.
- (c) ~~Charter schools shall provideensure education services for students with disabilities receive education services required by their IEP. LEAs shall be responsible for ensuring that children with disabilities attending a charter school authorized by the LEA are provided FAPE.~~
- ~~(de)~~ The Tennessee academic standards adopted by the State Board of Education shall serve as the basis for developing special education programs. Each LEA and charter school must-shall provide a variety of services, interventions, and programs to meet the educational needs of all students, including the needs of children with disabilities.

(Rule 0520-01-09-.02, continued)

~~(C) Children with disabilities who are convicted as adults under state law and incarcerated in adult prisons shall be entitled to their rights under IDEA with the following exceptions:~~

~~1. The following requirements do not apply:~~

~~(i) Participation of children with disabilities in general assessments; and~~

~~(B) Transition planning and transition services with respect to the students whose eligibility under IDEA Part B will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.~~

~~2. The IEP team may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The requirements of 34 C.F.R. § 300.320 relating to the definition of an IEP and the general requirements of 34 C.F.R. § 300.114 relating to least restrictive environment do not apply with respect to these modifications.~~

~~Identify, locate, and evaluate all children with disabilities;~~

~~Develop and implement child find activities to ensure that all children — including highly mobile children (migrant and homeless children) and those children who are suspected of being a child with a disability, even though they are advancing from grade to grade — are identified, located and evaluated; and~~

~~Provide services that address all of a child's identified special education and related services needs, based on the child's unique needs and not on the child's disability.~~

~~Facilities.~~

~~Facilities that serve children with disabilities must be comparable to facilities that serve children without disabilities.~~

~~Educational programs and facilities must be accessible where children with physical disabilities and children without disabilities are both in attendance.~~

~~Each LEA receiving federal funds shall comply with Section 504 of the Rehabilitation Act of 1973, including requirements regarding facility accessibility.~~

~~Entrance to and from the facility must be accessible. If access is not visible at the front of the facility, signs must be present to indicate where parking and access to the facility for children and other individuals with disabilities are available.~~

~~(f) Transportation. LEAs and charter schools. Local education agencies shall provide children with disabilities with special transportation, where necessary.~~

~~1. Children with disabilities shall, whenever appropriate, be provided~~

transportation along with children who ~~do not have disabilities are not disabled~~. Adaptations shall be made to meet the needs of children with disabilities rather than separate transportation whenever appropriate.

2. Travel time for children with disabilities shall not exceed the travel time for other children, provided that exceptions may be made ~~on~~ by the recommendation of an the IEP team.
3. Vehicles used to provide special transportation must meet the requirements established by the ~~state board of education~~ State Board's Pupil Transportation Rule 0520-01-05.
4. Operators and attendants of vehicles providing special transportation requirements established by the state board of education shall be given special training regarding the needs and special requirements of children with disabilities, except when parents are transporting children with disabilities. Special attendants shall be provided when an IEP team determines that such services are necessary.
5. ~~It is permissible to~~ LEAs may contract for special transportation provided that the operators, attendants, and vehicles used by a contractor meet the requirements established by the state board of education, except when parents are transporting children with disabilities.

(g) Children with disabilities who are convicted as adults under state law and incarcerated in adult prisons shall be entitled to their rights under IDEA with the following exceptions:

1. The following requirements do not apply:
 - (i) Participation of children with disabilities in general statewide assessments; and
 - (ii) Transition planning and transition services with respect to the students whose eligibility under IDEA Part B will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
2. The IEP team may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The requirements of 34 C.F.R. § 300.320 relating to the definition of an IEP and the general requirements of 34 C.F.R. § 300.114 relating to least restrictive environment do not apply with respect to these modifications.

~~FAPE requirements for children with disabilities in adult prisons.~~

~~The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:~~

~~The requirements relating to participation of children with disabilities in general assessments, and~~

~~The requirements relating to transition planning and transition services with respect to the students whose~~

~~eligibility under IDEA Part B will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.~~

~~Modifications of IEP or placement.~~

~~If a child with disabilities is convicted as an adult under Tennessee law and incarcerated in an adult prison, the IEP team may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.~~

~~The requirements of 34 C.F.R. § 300.320 relating to the definition of an IEP and the general requirements of 34 C.F.R. § 300.114 relating to least restrictive environment do not apply with respect to these modifications.~~

~~Charter schools. Charter schools must ensure compliance with the IDEA.~~

Authority: T.C.A. §§ 49-10-101 *et seq.*, ~~49-10-701~~, 49-13-11105, ~~and 49-13-126~~, and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Amendment filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

0520-01-09-.06 REPEALED CHILD FIND.

- ~~(1) Each Local Education Agency shall develop and implement procedures for creating public awareness of special education programs and services. This includes a comprehensive system of child find activities for all children suspected of having a disability in public and private schools and facilities and who are homeless. Any child find activities shall be comparable for children in private schools and facilities.~~
- ~~(2) A notice must be published or announced in newspapers, other media, or both, with circulation adequate to notify parents of the activities conducted by the LEA.~~
- ~~(3) Any child suspected of having a disability may be referred to the LEA. All referrals shall be in writing to the school principal or director of special education. The LEA shall establish written procedures for accepting, processing and documenting receipt of each referral. The procedures shall be approved by the state department of education.~~

Authority: T.C.A. §§ 49-10-101 ~~and 49-10-701~~. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

0520-01-09-.07 EDUCATIONAL HOMEBOUND PLACEMENTS FOR STUDENTS WITH DISABILITIES.

- ~~(1) A homebound placement is instruction provided at home, hospital or related site to children with disabilities who are eligible pursuant to IDEA and state regulations. Instruction provided to children with disabilities in homebound placements shall be provided by qualified personnel, pursuant to IDEA and state regulations.~~
- (1) Eligibility for Homebound Placements.
 - ~~(a)~~
 - (b)(a) An educational homebound placement for students with disabilities is made by an IEP team

when considering the full continuum of placement options made available pursuant to IDEA. The IEP team must document that a homebound placement is necessary, temporary and consistent with requirements for the provision of a free appropriate public education.

~~(c) — Eligibility for instruction as a child with a disability pursuant to IDEA and state regulations shall be established prior to implementation of homebound services. Children with medical conditions of a short duration or temporary nature, and not previously certified as eligible pursuant to IDEA and state regulations, shall not be eligible for homebound placements pursuant to this regulation, and special education funds shall not be used to fund homebound placements for such children.~~

~~(e) — The IEP team shall consider a medical homebound placement only upon certification by a person who is licensed under T.C.A. Title 63, Chapter 6; T.C.A. Title 63, Chapter 9; T.C.A. Title 63, Chapter 11; or T.C.A. § 63-23-105 or similar statute in another jurisdiction and who is the professional treating the student for the medical condition requiring homebound instruction a licensed doctor of medicine or osteopathy that a child with a disability needs a homebound placement, is expected to be absent from school due to a physical or mental condition for at least (10) consecutive school days and that the child can receive instruction in a homebound placement without endangering the health of personnel providing it.~~

~~(b) Medical Homebound decisions shall be in accordance with the State Board's Homebound Instruction Rule 0520-01-02-.10.~~

(2) Use of Educational Homebound Placement.

(a) Educational homebound instruction is provided at home, hospital or related site to children with disabilities who are eligible pursuant to IDEA and state regulations. Instruction provided to children with disabilities in educational homebound placements shall be provided by qualified personnel, pursuant to IDEA and state regulations.

~~(b)~~

~~(a) — Educational Homebound instruction is appropriate if the child's IEP team determines that the student cannot receive an educational benefit in a less restrictive setting. All educational homebound placements shall be temporary. Homebound placements shall not exceed thirty (30) school days duration. The IEP shall contain a goal of returning the child to a less restrictive environment within the school year, unless there is a medical necessity that requires extended homebound instruction, in which case additional homebound placements of thirty (30) school days or less may be instituted.~~

~~(b)(c)~~

(d) An IEP containing an educational homebound placement shall be reviewed at intervals of thirty (30) school days by the child's IEP team to ensure appropriateness of the provision of instruction and appropriateness of continuing the homebound placement.

~~(c) — Where behavioral and/or disciplinary issues cannot be safely addressed in any other educational setting, the IEP team may consider a homebound placement. Such changes in placement may be instituted strictly on an emergency basis and for a temporary period of time not to exceed thirty (30) school days to determine how to best address the child's needs. The IEP team must document that a homebound placement is necessary, temporary and consistent with requirements for the provision of a free appropriate public education.~~

~~(d)(e) The frequency and duration of instruction necessary to provide a free appropriate public education (FAPE) during a homebound placement will be determined by the IEP team.~~

~~(e)(f) IDEA Part B funds may be expended only for instruction in homebound placements of children with disabilities who are eligible for special education pursuant to IDEA and state~~

(Rule 0520-01-09-.09, continued)
regulations.

Authority: T.C.A. §§ 49-10-101 ~~et seq.~~ ~~and 34 C.F.R. Parts 300 and 301~~ ~~and 49-10-701~~. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.08 STATE ADVISORY PANEL.

The state shall establish an advisory council on the education of children with disabilities for special education as provided by T.C.A. § 49-10-105. The Governor shall appoint the members of the advisory council on the education of children with disabilities.

Authority: T.C.A. § 49-10-105. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Amendment filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.09 LEA ELIGIBILITY FOR FEDERAL IDEA PART B FUNDS.

- (1) Each LEA Local Education Agency (LEA) shall demonstrate to the satisfaction of the State Department of Education that it does the following:
 - (a) Complies with all state and federal requirements for child find; identifies, locates, and evaluates all children who are suspected of having disabilities, including children attending non-public schools, regardless of the severity of their disabilities, and who may be in need of special education and related services. These services may be provided to children with disabilities under early transition agreements who are not yet three (3) years of age. If the child's birthday falls during the summer months, the IEP team will determine when special education services begin but no later than the beginning of the next school year.
 - (b) Makes available a free appropriate public education to all children with disabilities; between the ages of three (3) through the school year, which shall be from August to August, in which they reach age and twenty-one (21), both inclusive including children with disabilities who reach twenty-two (22) years of age during the school year and children who have been suspended or expelled for more than ten (10) school days in a school year. Any child with disabilities who turns twenty-two (22) years of age between the commencement of the school year and the conclusion of the school year will continue to be a child with disabilities for the remainder of that school year.
 - (c) Includes children with disabilities in state and district-wide assessments, with appropriate accommodations and modifications where necessary, or in alternate assessments. The type of assessment must be determined by the IEP team consistent with the state guidelines for participation of students with disabilities in state or district-wide assessments.
 - (d) Ensures that children with disabilities participating in early intervention programs ~~shall~~ experience a smooth and effective transition to preschool programs and, that, by the child's third birthday, an IEP has been developed and implemented for the child. The LEA shall participate in the transition planning meeting no less than ninety (90) days prior to the third birthday of a child who may be a child with a disability.
 - (e) Ensures that children with disabilities who are enrolled in private schools or facilities by the LEA are provided special education and related services, in accordance with

(Rule 0520-01-09-.09, continued)

the IEP, at no cost to them or to their parents.

- (f) Ensures that children with disabilities who are enrolled in private schools by their parents have an opportunity for special education services and that the amount spent to provide those services is a proportionate amount of the federal funds made available to the ~~district~~LEA. No unilaterally placed private school child with a disability has an individual entitlement to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
- (g) Establishes and has in effect policies, procedures, and programs that are consistent with ~~this rulechapter 0520-01-09~~ for implementing the provision of special education and related services. Ensures compliance with applicable state and federal regulations including, but not limited to:
1. Free appropriate public education, including interagency agreements to ensure FAPE for all children;
 2. Child ~~f~~ind procedures;
 3. Evaluation, reevaluation and determination of eligibility procedures;
 4. IEP/~~IFSP~~ Individual Family Service Plan (IFSP) procedures;
 5. Confidentiality procedures;
 6. Private school services procedures;
 7. Goals for performance of children with disabilities through school improvement planning;
 8. Inclusion of children with disabilities in state and district-wide assessment programs with appropriate accommodations and modifications and the reporting of assessment data; and
 - ~~9. Interagency agreements to ensure FAPE for all children;~~
 - ~~910.~~ Maintenance of effort.
- (h) Supplements the provision of special education funds but does not commingle or supplant the provision of special education funding.
- (i) Publicizes annual information regarding its special education programs and services and child find activities.
- (j) Ensures that special education professionals and paraprofessionals are provided professional development collaboratively with general education personnel.
- (k) Ensures that school administrators have professional development, training and the resources to establish challenging expectations and provide access to the general education curriculum in the regular classroom to the maximum extent possible for all children including those eligible for special education.

(2) Each LEA shall annually submit to the department, at a minimum, the following information in accordance with the department's guidelines:

- (a) A census of children with disabilities showing the total number and distribution of children within the LEA's jurisdiction who are provided special education and related services;

(Rule 0520-01-09-.09, continued)

~~(b) An assurance that IDEA funds will be used to supplement, and not to supplant, state and local funds, and will be expended only for the excess cost of providing special education and related services to children with disabilities;~~

~~(c) An assurance that, to the maximum extent appropriate, children with disabilities are educated with children without disabilities;~~

~~(d) A detailed budget and end of the year report of expenditures of all funds available to provide special education and related services; and~~

~~(e) An assurance that a FAPE is available to all children with disabilities between the ages of three (3) and twenty-one (21), inclusive, including children who reach twenty-two (22) years of age during the school year and children who have been suspended or expelled for more than ten (10) school days in a school year. (f) Submits to the State Department of Education a comprehensive application annually on or before July 1 with program narratives and assurances for the provision of special education and related services including, but not limited to, the following:~~

~~1. A census of children with disabilities showing the total number and distribution of children within the LEA's jurisdiction who are provided special education and related services transportation;~~

~~An inventory of the personnel who provide instruction and other services to children with disabilities and a listing of facilities;~~

~~A description of the extent to which state department of education standards governing special education services will be met including a goal of providing full educational opportunity to all children with disabilities;~~

~~2. An assurance that IDEA funds will be used to supplement, and not to supplant, state and local funds, and will be expended only for the excess cost of providing special education and related services to children with disabilities;~~

~~3. An assurance that to the maximum extent appropriate, children with disabilities, including children in public and private facilities, are educated with children without disabilities. Special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in the general education classes with the use of supplementary aids and services cannot be achieved satisfactorily;~~

~~4. An assurance that a continuum of alternative placements and related services are available to meet the needs of children with disabilities;~~

~~5. A detailed budget and end of the year report of expenditures of all funds available to provide special education and related services is provided; and~~

~~6. An assurance that a free appropriate public education is available to all children with disabilities between from the ages of three (3) through the school year in which the student reaches and twenty onetwo (212) years of age, inclusive, including children who have been suspended or expelled for more than ten (10) school days in a school year.~~

~~Specific funding requirements:~~

~~For the purpose of entitlement to academic program funds from the Basic Education Program (BEP), children with disabilities shall be counted in the same manner as children without~~

(Rule 0520-01-09-.09, continued)

~~disabilities. To supplement the academic program funds earned and paid from the BEP, special education funds from the BEP shall be paid to LEAs and other entities entitled by the laws of this state to receive funds local education agencies for the purpose of providing special education and related services to children with disabilities.~~

~~Subject to the availability of federal funds, the department shall establish a process for LEAs to request reimbursement for high-cost children with disabilities.~~

~~An LEA shall include qualifying services provided to children with disabilities in each public school in the LEA, including charter schools authorized by the LEA, in the LEA's annual request for high-cost reimbursement.~~

~~An LEA shall coordinate with charter schools authorized by the LEA in the same manner that the LEA coordinates with its other public schools in requesting reimbursement for high-cost children with disabilities.~~

~~An LEA shall provide to charter schools authorized by the LEA applicable high-cost reimbursement funds received by the LEA for any qualifying special education expenditures incurred directly by the charter school.~~

~~Special education funds from the BEP shall be allocated to each LEA in an amount to be determined by applying the prescribed formula to the number of children with disabilities identified and served during the preceding school year.~~

~~Has reached the age at which the obligation of the Agency to provide FAPE to the child has terminated; or~~

~~No longer needs the program of special education.~~

~~The termination of costly expenditures for long-term high-cost purchases.~~

~~Each LEA shall establish appropriate policies and procedures for the administration of IDEA and preschool funds and shall maintain appropriate records and reports to be used in planning and evaluating special education programs and services. The State Department of Education shall notify each LEA of its allocation of federal funds annually.~~

~~Two (2) or more local education agencies may submit a consolidated annual comprehensive plan, with the approval of the State Department of Education, under the conditions of federal law:~~

~~Those participating in a consolidated plan will be jointly responsible for implementing a free-appropriate public education program in the participating LEA; and~~

~~The consolidated plan must designate one (1) of the local education agencies as the fiscal agent for the plan.~~

~~Local education agencies shall use IDEA funds for the excess costs of providing special education and related services to children with disabilities. IDEA funds received by the LEA must not be commingled with state funds.~~

~~Local education agencies must maintain records that demonstrate compliance with the excess-cost, non-supplanting, and comparability requirements for at least three (3) years after completion of the project described in the application.~~

~~For children with disabilities unilaterally placed in private schools, the same proportionate amount that is spent on public school children with disabilities from IDEA and preschool grants is allocated for the number of private school children with disabilities within the LEA's jurisdiction. The preceding December 1 census count is used in calculating private and public school ratios to determine the proportionate amount.~~

(2) ~~The academic standards curriculum adopted by the State Board of Education shall serve as the basis for developing educational programs. Each LEA must provide a variety of services,~~

(Rule 0520-01-09-.09, continued)

~~interventions and programs to meet the educational needs of all students including the needs of children with disabilities.~~

~~(a) Alternative programs must be provided when appropriate educational goals cannot be met in the general education program.~~

~~School improvement plans must include LEAs must provide a continuum of educational services, programs and interventions to address the educational needs of all students, including the needs of children with disabilities.~~

~~(b) As a component of child find activities, general education programs within each LEA have specific responsibilities that include providing interventions and documentation prior to referral for special education evaluation. These intervention strategies should be implemented in the general education program.~~

~~(a) the following:~~

- ~~1. Systematic screening of all children in specific grade levels residing within its jurisdiction;~~
- ~~2. Reviewing the educational performance of children who are high risk;~~
- ~~3. Providing interventions and documentation prior to referral for special education evaluation. These intervention strategies should be implemented in the general education program.~~

~~(c) The State Department of Education shall make available to the public reports on assessments of all children with the same frequency and in the same detail as it reports on the assessment of children without disabilities, to include:~~

~~4. The number of children with disabilities participating in:~~

- ~~(i) Regular assessments; and~~
- ~~(ii) Alternate assessments.~~

~~5. Reports to the public must include:~~

- ~~(i) The performance results of children with disabilities if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children;~~
- ~~(ii) Aggregated data that include the performance of children with disabilities together with all other children; and~~
- ~~(iii) Disaggregated data on the performance of children with disabilities.~~

~~(3) Each LEA shall maintain an accurate record of all children with disabilities between the ages of three (3) through the school year a student turns twenty and twenty one (21) and twenty two (22), both inclusive, including children who reach twenty two (22) years of age during the school year who are residing within its jurisdiction. The census shall be taken on December 1 of each year and at other times as required by the Department.~~

~~(4) LEAs shall Local education agencies shall evaluate their special education programs and related services according to federal and state evaluative evaluation criteria. issued by federal and state authorities.~~

(Rule 0520-01-09-.09, continued)

- (5) LEAs~~Local education agencies~~, state agencies, and private schools shall be monitored on a periodic basis by the State~~State~~ Department of Education to determine the extent to which special education and related services are being implemented in the least restrictive environment and to assure compliance with applicable laws and regulations. The state~~state~~ Department of Education shall provide technical assistance in self-evaluation, program planning, and implementation of any necessary corrective action plans.
- (6) The Department shall annually report on the department's website, at a minimum, the following information:
- (a) The number and percentage of children with disabilities in this state;
- (b) The number and percentage of children with disabilities, disaggregated by disability category;
- (c) The participation and performance of children with disabilities on state assessments; and
- (d) Other performance indicators for children with disabilities.

Authority: T.C.A. §§ 49-10-101 ~~and 34 C.F.R. Parts 300 and 301 and 49-10-701~~. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

0520-01-09-.10 FUNDING REQUIREMENTS. REPEALED.

- (1) For purposes of the Basic Education Program (BEP), children with disabilities shall be counted in the same manner as children without disabilities. ~~To supplement the academic program funds earned and paid from the BEP, special education funds from the BEP shall be paid to LEAs and other entities entitled by the laws of this state to receive funds local education agencies for the purpose of providing special education and related services to children with disabilities.~~
- (2) BEP funds shall be allocated to each LEA in an amount to be determined by applying the prescribed formula to the number of children with disabilities identified and served during the preceding school year.
- (3) In accordance with T.C.A. § 49-10-109, if an LEA is found by the commissioner of education to have failed to provide a FAPE to all children with disabilities who by law are entitled to receive a FAPE from the LEA, then the commissioner may withhold all or any portion of the basic education program (BEP) funding for the LEA as, in the commissioner's judgment, is warranted.
- (4) Maintenance of effort shall be met if the LEA budgets at least the same total or per-capita amount from the combination of state and local funds as the LEA spent for that purpose from the prior year. The LEA may reduce the level of expenditures below the level for the preceding year if the reduction is attributable to the following:
1. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower salaried staff;
 2. A decrease in the enrollment of children with disabilities;
 3. The termination of the obligation of the LEA, consistent with this part, to provide a

(Rule 0520-01-09-.09, continued)

program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the state department of education, because the child:

(i) Has left the jurisdiction of the LEA;

(ii) Has reached the age at which the obligation of the LEA to provide FAPE to the child has terminated; or

(iii) No longer needs the program of special education;

4. The termination of costly expenditures for long-term high cost purchases.

(5) Each LEA shall establish appropriate policies and procedures for the administration of IDEA and preschool funds and shall maintain appropriate records and reports to be used in planning and evaluating special education programs and services. The Department of Education shall notify each LEA of its allocation of federal funds annually.

(6) LEAs shall use IDEA funds for the excess costs of providing special education and related services to children with disabilities. IDEA funds received by the LEA must not be commingled with state funds.

(7) LEAs must maintain records that demonstrate compliance with the excess cost, non-supplanting, and comparability requirements for at least three (3) years after completion of the project described in the application.

(8) Subject to the availability of federal funds, the Department of Education shall establish a process for LEAs to request reimbursement for high-cost children with disabilities.

1. An LEA shall include qualifying services provided to children with disabilities in each public school in the LEA, including charter schools authorized by the LEA, in the LEA's annual request for high-cost reimbursement.

2. An LEA shall coordinate with charter schools authorized by the LEA in the same manner that the LEA coordinates with its other public schools in requesting reimbursement for high-cost children with disabilities.

3. An LEA shall provide to charter schools authorized by the LEA applicable high-cost reimbursement funds received by the LEA for any qualifying special education expenditures incurred directly by the charter school.

(9) Two (2) or more LEAs local education agencies may submit a consolidated annual comprehensive plan, with the approval of the Department of Education, under the conditions of federal law:

1. Those participating in a consolidated plan will be jointly responsible for implementing a free appropriate public education program in the participating LEA; and

2. The consolidated plan must designate one (1) of the ~~LEA~~ local education agencies as the fiscal agent for the plan.

(10) For children with disabilities unilaterally placed in private schools, the same proportionate amount that is spent on public school children with disabilities from IDEA and preschool grants is allocated for the number of private school children with disabilities within the LEA's jurisdiction. The preceding December 1st census count is used in calculating private and public school ratios to determine the proportionate amount.

(Rule 0520-01-09-.09, continued)

Authority: T.C.A. §§ 49-10-101 ~~et seq. and 34 C.F.R. Parts 300 and 301 and 49-10-701~~. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004.

Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed August 13, 2010 to be effective January 29, 2011; rule was withdrawn by the State Board of Education on October 15, 2010. Repeal filed August 29, 2013; effective January 29, 2014.

0520-01-09-.11 EVALUATION PROCEDURES.

~~The Department of Education, in consultation with a task force within the disability category and the Advisory Council for the Education of Students with Disabilities and other stakeholders with expertise in each disability category, the Department of Education shall will establish Guidelines and standards will be established for determining program eligibility criteria, evaluation procedures, and evaluation participants. Revisions to the eligibility criteria must be recommended by a task force within the disability category. Upon recommendations from the Advisory Council for the Education of Students with Disabilities, the assistant commissioner for special education The Department of Education shall will submit the standards to the State Board of Education for final review and approval. These standards shall be submitted by the Department of Education to the State Board for final review and approval and shall be defined in State Board Policy X.XXX3.500.~~

Authority: T.C.A. §§ 49-10-101 ~~et seq. and 49-10-701~~. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.12 DEFINITION OF INDIVIDUALIZED EDUCATION PROGRAM (IEP) REQUIREMENTS.

- (1) ~~Special education and related services must be determined by the child's individualized education program (IEP) team based on the individual needs of the child.~~
- (2) ~~Except when a written explanation to the contrary is included, the IEP of a child with a disability must include:~~
 - (a) ~~Pre-vocational assessments for students in kindergarten through grade six (K-6), inclusive, or students of comparable chronological age; and~~
 - (b) ~~Age-appropriate transition assessments to include, at a minimum, education, training, and employment for students age fourteen (14) and older.~~
- (3) ~~The IEP shall be implemented as soon as possible after development of the IEP. However, if agreement was not reached on the IEP, no change in the child's IEP or eligibility status shall be made for fourteen (14) days, in order to afford a parent time to request a due process hearing.~~
- (4) ~~Upon written request of any member, the IEP team shall be convened within ten (10) school days or on a mutually agreed upon date and time. to review or revise the IEP or consider the child's placement.~~

~~Prior to the ninth (9th) grade or age fourteen (14) (or younger, if determined appropriate by the IEP team), all eligible students with a disability will develop an initial four (4)-year plan of focused and purposeful high school study. The plan will be reviewed annually and amended as necessary and will connect the student's goals for high school including, the courses and/or training and/or skills necessary to meet their potential after high school. This required plan will include identifying possible transition service needs of the student under the applicable components of the student's IEP. This plan may be developed through a process in general education but a copy must be in the student's IEP after approval by the IEP team.~~

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Authority: T.C.A. §§ 49-10-101 ~~et seq. and 34 C.F.R. Parts 300 and 301~~ ~~and 49-10-701~~. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004.

Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed October 23, 2013; effective March 31, 2014. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

0520-01-09-.13 ~~WHEN IEPS MUST BE IN EFFECT. REPEALED~~

~~The IEP must be implemented as soon as possible after completion. If agreement was not reached, no change in the child's IEP or eligibility status will be made for fourteen (14) days, in order to afford a parent time to request a due process hearing.~~

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.14 ~~REVIEW AND REVISION OF THE IEP. REPEALED.~~

~~Upon written request of any member, the IEP team shall be convened within ten (10) school days to review or revise the IEP or consider the child's placement.~~

Authority: T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.15 PARENT PARTICIPATION IN IEP MEETINGS.

- (1) ~~An~~The LEA must notify the parents of a child with a disability at least ten (10) calendar days before an IEP meeting to ensure that ~~the parent has a parent(s) will have~~ an opportunity to attend.
- (2) ~~If an LEA creates a draft IEP prior to an IEP meeting, a copy of the draft IEP shall be provided to the parent at least forty-eight (48) hours prior to the scheduled meeting time unless the parent provides written notice to the LEA more than forty-eight (48) hours prior to the scheduled meeting declining his or her right to receive a copy of the draft IEP. The parent meeting notification shall advise the parent that they may decline their right to receive a copy of the draft IEP.~~
 - (a) ~~If a draft IEP is provided it shall become the property of the parent(s).~~
 - (b) ~~An LEA shall not have the final IEP completed before an IEP meeting and the LEA shall make it clear to the parent at the outset of the meeting that the ~~IEP~~services proposed by the LEA are preliminary recommendations for review and discussion with the parent.~~
- (3) ~~An LEA must notify a parent at least twenty-four (24) hours prior to a manifestation determination review meeting conducted pursuant to 34 C.F.R. § 300.530(e).~~
- (4) ~~Written notice must be given to the parents of a child suspected to have a disability or a child with a disability within at least ten (10) school days of the following:~~
 - (a) ~~Proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or~~
 - (b) ~~Refusal to initiate or change the identification, evaluation, or educational placement~~

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of the child or the provision of FAPE to the child.

~~may be conducted on at least twenty-four (24) hours' notice to the parent(s);~~

~~_____ Draft IEPs.~~

~~If the LEA develops a draft IEP:-~~

- ~~— The parent meeting notification shall advise the parent(s) that they may decline their right to receive a copy of the draft IEP if one is developed.~~
 - ~~— Unless a parent provides written notice to the LEA more than forty-eight (48) hours prior to the scheduled meeting declining his or her right to receive a copy of the draft IEP, a copy of the draft IEP shall be provided to the parent(s) at least forty-eight (48) hours prior to the scheduled meeting time.~~
 - ~~— The copy of the draft IEP shall become the property of the parent(s). If the LEA prepares a draft IEP prior to the IEP team meeting,~~
 - ~~— The LEA shall make it clear to the parent(s) at the outset of the meeting that the services proposed by the LEA are preliminary recommendations for review and discussion with the parent(s).~~
- ~~○ It is not permissible for the LEA to have the final IEP completed before an IEP Team meeting begins.~~

Authority: T.C.A. §§ 49-10-101 *et seq.* and 34 C.F.R. Parts 300 and 301 *and 49-10-704*. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed December 12, 2018; effective March 12, 2019.

0520-01-09-.16 REPEALED. PRIOR NOTICE BY LEA.

~~Written notice must be given to the parents of a child suspected to have a disability or a child with a disability within (S) at least ten (10) school days after an (S) prior to a LEA either proposes (S)ing or refuses (S)ing to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.~~

Authority: T.C.A. §§ 49-10-101 *and 49-10-704*. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

0520-01-09-.17 MEDIATION.

All special education mediations shall be conducted by mediators listed by the Alternative Dispute Resolution Commission as general civil or family mediators pursuant to Tennessee Supreme Court Rule 31 and employed by or contracted by the secretary of state. The administrative office of the courts shall provide legal training in special education law to the mediators who conduct special education mediations. All parties shall participate in mediation in good faith.

Authority: T.C.A. §§ 49-10-101 *et seq.*, 49-10-601 *et seq.* and 34 C.F.R. Parts 300 and 301 *and 49-10-704*. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.18 IMPARTIAL DUE PROCESS HEARING.

- (1) Special education due process cases shall be heard by administrative law judges employed by the secretary of state. Administrative law judges shall have jurisdiction to hear complaints arising under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, *et seq.*, as from time to time amended, and Rules of the State Board of Education. The administrative office of the courts shall provide legal training in special education law to the administrative law judges assigned to hear special education due process cases sufficient to comport with the

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requirements of 20 U.S.C. § 1415, as from time to time amended.

- (2) When a hearing is requested, the LEA director of schools shall immediately contact the Department of Education Division of Special Education.
- (3) The LEA shall be responsible for providing an appropriate meeting place, a stenographic record of the hearing and a typed transcript of the hearing proceedings, and shall bear the administrative costs of the hearing, with the exception of the services of the hearing officer.
- (4) Expenses, up to \$5,000, for the services of a court reporter, the original copy of the transcript for the hearing officer and one copy for the parents will be reimbursed upon submission of appropriate documentation to the Office of General Counsel within the Department of Education Division of Special Education.

Authority: T.C.A. §§ 49-10-101 *et seq.*, 49-10-601 *et seq.* and 34 C.F.R. Parts 300 and 301 ~~and 49-10-704~~. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

0520-01-09-.19 CIVIL ACTION.

Any party aggrieved by the findings and decision of an impartial due process hearing has the right to bring a civil action with respect to the complaint presented. The action may be brought in any state court of competent jurisdiction in accordance with Tenn. Code Ann. § 4-5-322 and Tenn. Code Ann. § 49-10-601 or in a district court of the United States without regard to the amount in controversy.

Authority: T.C.A. §§ 49-10-101 *et seq.*, 49-10-601 *et seq.* and 34 C.F.R. Parts 300 and 301 ~~and 49-10-704~~. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.20 SURROGATE PARENTS.

- (1) Each LEA shall have written policies and procedures for the recruitment, training and appointment of surrogate parents.
- (2) Each LEA shall appoint a surrogate parent to represent the child in all matters relating to the identification, assessment, educational placement, and the provision of a free appropriate public education, including meetings concerning the individualized education program, and any mediation and due process hearings pertaining to the child when it determines that:
 - (a) No parent can be identified;
 - (b) It is unable to locate a biological parent or legal guardian by calls, visits and by sending a letter by certified mail (return receipt requested) to the last known address of the biological parent or the guardian and allowing thirty (30) days for a response of the intention to appoint a surrogate parent;
 - (c) If the child is a ward of the State (including a ward of the court or a state agency); or
 - ~~(e)~~(d) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).
 - ~~(d) — The educational rights of the parents or guardians regarding participation in the student's education have been terminated or transferred.~~
- (3) If the health or safety of the child or other persons would be endangered by delaying the change in placement, due to the unavailability of a surrogate, the change in educational placement may be made sooner, but without prejudice to any rights that the child and parent may have.

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- (4) The surrogate parent shall continue to represent the child until one (1) of the following occurs:
- (a) The child is determined by the IEP team to no longer be eligible for, or in need of special education or related services, except when termination from such programs is being contested;
 - (b) The parent or guardian, who was previously unknown, or whose whereabouts were previously unknown, becomes known;
 - (c) The legal guardianship of the child is transferred to a person who is able to fulfill the role of the parent;
 - (d) The LEA determines that the appointed surrogate parent no longer has the knowledge and skills that ensure adequate representation s of the child;
 - (e) The child attains eighteen (18) years of age.
- (5) Criteria for selection of surrogate parents.
- (a) A person selected as a surrogate parent may not be an employee of the Department of Education state education agency, the LEA, or any other agency that is involved in the education or care of the child.
 - 1. A person is not considered to be an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.
 - 2. A person is not considered to be an employee of the State solely because he or she is paid by the State to serve as a foster parent.
 - (b) A public agency An LEA may select a surrogate parent to represent the child for educational purposes. The selected person may be an employee of a nonpublic agency that only provides non-educational care for the child provided they are able to meet the standards and perform the responsibilities of a surrogate parent.
 - (c) Foster parents, selected by a state agency as the custodian for a child, who have had a foster child or children with disabilities for less than one (1) calendar year, may be appointed by a LEA to serve as surrogate parents for their foster child or children and may represent the child for educational purposes, provided that they perform the responsibilities of a surrogate parent. Foster parents selected by a state agency as the custodian for a child, who have had a foster child or children with disabilities for one (1) calendar year or more may act as a parent for their foster child if they meet the definition of a parent as defined in section 0520-01-09-.01.
- (6) Responsibilities of a surrogate parent.
- (a) A surrogate parent must have no interest that would conflict with the interests of the child to be represented;
 - (b) A surrogate parent must have knowledge and skills that ensure adequate representation of the child, including a functional understanding of the educational rights of children with disabilities;
 - (c) A surrogate parent must participate in whatever training program might be offered to ensure that they will have knowledge and skills to provide adequate representation of the child;
 - (d) A surrogate parent must represent the child throughout the special education decision making process of identification, evaluation, program development, initial placement,

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review of placement, and reevaluation, as appropriate;

- (e) A surrogate parent must be acquainted with the child and his or her educational needs;
- (f) A surrogate parent must attempt to ascertain the child's educational needs and concerns;
- (g) A surrogate parent must respect the confidentiality of all records and information;
- (h) A surrogate parent must become familiar with the assistance provided by other human service agencies in the community that affects the child or that might be helpful resources; and
- (i) A surrogate parent must monitor the child's educational program and placement.

Authority: T.C.A. §§ 49-10-101 et seq and 34 C.F.R. Parts 300 and 301 ~~and 49-10-704~~. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

0520-01-09-.21 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.

The procedure for determining whether a child with a disability who has attained eighteen (18) years of age is competent to make educational decisions is provided at Tenn. Code Ann. §§ 34-1-101 et seq. and §§ 34-3-101 et seq. Unless the child has been adjudicated incompetent, all rights vest in the child when the child attains eighteen (18) years of age.

Authority: T.C.A. §§ 49-10-101 et seq. ~~and 49-10-704~~. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

0520-01-09-.22 AMENDMENT OF RECORDS AT PARENT'S REQUEST.

The LEA, upon receiving a request from a parent pursuant to 34 C.F.R. § 300.618, shall decide, within fourteen (14) calendar days of receipt of the request, whether to amend the information as requested. ~~ten (10) business school days of its receipt of the request, whether to amend the information as requested.~~

Authority: T.C.A. §§ 49-10-101 et seq. and 34 C.F.R. Parts 300 and 301 ~~and 49-10-704~~. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

0520-01-09-.23 ISOLATION AND RESTRAINT FOR STUDENTS RECEIVING SPECIAL EDUCATION SERVICES.

- (1) Definitions:
 - (a) "Extended isolation" means isolation which lasts longer than one (1) minute per year of the student's age or isolation which lasts longer than the time provided in the child's individualized education program (IEP).
 - (b) "Extended restraint" means a physical holding restraint lasting longer than five (5) minutes or a physical holding a restraint which lasts longer than the time provided in the child's IEP.
 - (c) "Noxious substance" means a substance released in proximity to the student's face or sensitive area of the body for the purpose of limiting a student's freedom of movement or action, including but not limited to Mace and other defense sprays.

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- (2) ~~Local education agencies-LEAs~~ are authorized to develop and implement training programs that include:
- (a) Use of positive behavioral interventions and supports;
 - (b) Nonviolent crisis prevention and de-escalation;
 - (c) Safe administration of isolation and restraint; and
 - (d) Documentation and reporting requirements.
- (3) ~~Local education agencies-LEAs~~ are authorized to determine an appropriate level of training commensurate with the job descriptions and responsibilities of school personnel.
- (4) ~~Local education agencies-LEAs~~ shall develop policies and procedures governing:
- (a) Personnel authorized to use isolation and restraint;
 - (b) Training requirements; and
 - (c) Incident reporting procedures.
- (5) ~~If school personnel impose restraints or isolation, the school personnel shall immediately contact the school principal, or the principal's designee. The principal, the principal's designee, or the school nurse shall see and evaluate the student's condition within a reasonable time after the intervention and the student's parent or guardian shall be notified, orally or by written or printed communication, the same day the isolation or restraint was used. Only the principal, or the principal's designee, may authorize the use of isolation or restraint in the case of emergency or by IEP signature.~~
- (6) When the use of restraint or isolation is proposed at an IEP meeting, ~~the parents/guardians~~ shall be advised of the provisions of T.C.A. §§ 49-10-1301, et seq., this rule and the IDEA procedural safeguards.

(7) An IEP team meeting ~~must~~shall be held within ten (10) days of use of restraint if:

- (a) The student's IEP does not provide for the use of restraint;
- (b) The student's IEP does not provide for the use of restraint for the behavior precipitating such action; or
- (c) If school personnel are required to use physical holding restraint ~~that~~:
 - 1. Last~~ings~~ longer than five (5) minutes; or
 - 2. Last~~ing~~ longer than the time provided in the child's IEP.

(8) An IEP team meeting ~~must~~shall be held within ten (10) days of use of isolation if:

- (a) The student's IEP does not provide for the use of isolation;
- (b) The student's IEP does not provide for the use of isolation for the behavior precipitating such action; or
- (c) If school personnel are required to use isolation:
 - 1. Which lasts longer than one (1) minute per year of the student's age; or

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2. Which lasts longer than the time provided in the child's IEP.

~~(7) An IEP meeting convened pursuant to T.C.A. § 49-10-1304 shall be conducted within ten (10) calendar days and may be conducted on at least twenty-four (24) hours' notice to the parents/guardian/surrogate/parent.~~

(9) State agencies providing educational services within a residential therapeutic setting to children in their legal and physical custody shall develop and adhere to isolation and restraint policies in such educational settings which conform to the ~~TDMHDD~~ (Tennessee Department of Mental Health and Developmental Disabilities ~~(TDMHDD)~~) state standards as applicable and at least one (1) of the following national standards: ~~ACA~~ (American Correctional Association ~~(ACA)~~), ~~COA~~ (Council on Accreditation ~~(COA)~~), ~~CMS~~ (Centers for Medicare & Medicaid Services ~~(CMS)~~), ~~JCAHO~~ (Joint Commission for Accreditation of Healthcare Organizations ~~(JCAHO)~~), ~~CARF~~ (Commission on Accreditation of Rehabilitation Facilities ~~(CARF)~~), as they apply in the educational environment. Development of, and adherence to, such policies shall be overseen by a licensed qualified physician or licensed doctoral level psychologist.

(10) Reports.

School personnel who must isolate or restrain a student shall report ~~the each individual~~ incident of restraint or isolation or restraint to the school principal or the principal's designee. The Department of Education shall develop a report form, which shall be used by school personnel when reporting isolation or restraint to the school principal or the principal's designee.

(a) The report form shall be submitted for each individual incident and shall include the following information:

1. Student's name, age and disability;
2. Student's school and grade level;
3. Date, time and location of the isolation or restraint;
4. Length of time student was isolated or restrained;
5. Names, job titles and signatures of the personnel who administered the isolation or restraint;
6. Whether the personnel who administered the isolation or restraint were certified for completing a behavior intervention training program;
7. Names and job titles of other personnel who observed or witnessed the isolation or restraint;
8. Name of the principal or designee who was notified following the isolation or restraint and time of notification;
9. Description of the antecedents that immediately preceded the use of isolation or restraint and the specific behavior being addressed;
10. A certification that any space used for isolation is at least forty (40) square feet;
11. A certification that school personnel are in continuous direct visual contact at all times with a student who is isolated;
12. How the isolation or restraint ended, including the student's demeanor at the

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cessation of the isolation or restraint;

13. Physical injury or death to the student, school personnel or both during the isolation or restraint;

14. Medical care provided to the student, school personnel or both during the isolation or restraint;

15. Description of property damage, if relevant; ~~and~~

16. Date, time and method of parent notification; ~~;~~

17. ~~A determination w~~Whether an Individualized Education Program (IEP) Team meeting is required ~~must be convened~~ pursuant to T.C.A. § 49-10-1304;
~~and ;~~

18. A determination whether the student has a functional behavior assessment and behavior intervention plan for the behavior precipitating the use of isolation or restraint.

(b) A copy of the report must be submitted to the Department of Education within five (5) calendar days of incident.

~~(b) A copy of the report form must be provided to the LEA's director of special education who shall determine whether an Individualized Education Program (IEP) Team meeting must be convened pursuant to T.C.A. § 49-10-1304.~~

Authority: T.C.A. § 49-10-130~~1~~ et seq.**6.** **Administrative History:** Original rule filed October 20, 2009; effective January 18, 2010. Amendments filed March 21, 2012; effective August 29, 2012. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.