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# Notice of Rulemaking Hearing

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

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	N/A
<b>Contact Person:</b>	Angie Sanders
<b>Address:</b>	500 James Robertson Parkway, 5 <sup>th</sup> Floor, Nashville, TN 37243
<b>Phone:</b>	(615) 253-5707
<b>Email:</b>	Angela.C.Sanders@tn.gov

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

<b>ADA Contact:</b>	Angie Sanders
<b>Address:</b>	500 James Robertson Parkway, 5 <sup>th</sup> Floor, Nashville, TN 37243
<b>Phone:</b>	(615) 253-5707
<b>Email:</b>	Angela.C.Sanders@tn.gov

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

Address 1:	500 James Robertson Parkway		
Address 2:	Davy Crockett Building, Conference Room 1C, 1 <sup>st</sup> Floor		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	12/18/2020		
Hearing Time:	10:00 AM	<input checked="" type="checkbox"/> _X_ CST/CDT	<input type="checkbox"/> _EST/EDT

**Additional Hearing Information:**

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

**URL:** <https://tngov.webex.com/tngov/j.php?MTID=m5e8f420f91113fd3e3611a648649c2ae>

**Password:** SBERules

**Phone:** 1-415-655-0003

**Access Code:** 171 086 1044

Please check the State Board's website at <https://www.tn.gov/sbe/meetings.html> for any additional information regarding this rulemaking hearing. **If prohibitions on in-person gatherings due to COVID-19 prevent this**

**hearing from occurring in-person, such information will be posted on the State Board's website and all attendees will utilize the above information to participate electronically.**

Oral comments are invited at the hearing.

In addition, written comments may be submitted via email at [angela.c.sanders@tn.gov](mailto:angela.c.sanders@tn.gov) or mailed to:

Tennessee State Board of Education  
 Attention: Angie Sanders  
 Davy Crockett Tower, 5<sup>th</sup> Floor  
 500 James Robertson Parkway  
 Nashville, Tennessee 37243.

Written comments must be received by 4:30 PM CT on December 23, 2020 in order to ensure consideration. For further information, please contact Angie Sanders at the above address or by e-mail at [angela.c.sanders@tn.gov](mailto:angela.c.sanders@tn.gov).

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

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0520-04-03	Administrative Rules State Special Schools
Rule Number	Rule Title
0520-04-03-.01	Standards of Eligibility for Admission to the Tennessee School for the Blind
0520-04-03-.02	Standards of Eligibility for Admission to the Tennessee School for the Deaf and West Tennessee School for the Deaf

Chapter Number	Chapter Title
0520-01-19	English as a Second Language Programs
Rule Number	Rule Title
0520-01-19-.01	Definitions
0520-01-19-.02	Anti-Discrimination Policies and Practices
0520-01-19-.03	Identification, Screening, and Service Delivery
0520-01-19-.04	Parental Notification and Rights
0520-01-19-.05	Staffing
0520-01-19-.06	Exit Process

**AMENDMENT/NEW**  
**RULES**  
**OF**  
**THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-04-03**  
**ADMINISTRATIVE RULES**  
**STATE SPECIAL SCHOOLS**

**0520-04-03-.01 STANDARDS OF ELIGIBILITY FOR ADMISSION TO THE TENNESSEE SCHOOL FOR THE BLIND.**

- (1) Students ages three (3) through twenty-one (21) who are residents of the state of Tennessee and who have a visual impairment, including either partial sight or blindness, even with correction, that adversely affects the student's educational performance shall be eligible for admission to the Tennessee School for the Blind.
- (2) A student who meets one (1) or more of the following visual impairments shall be eligible for admission to the Tennessee School for the Blind:
  - (a) Visual acuity in the better eye or both with best possible correction:
    1. Legal blindness – 20/200 or less at distance and/or near; or
    2. Low vision – 20/70 or less at distance and/or near.
  - (b) Visual field restriction with both eyes:
    1. Legal blindness – remaining visual field of 20 degrees or less;
    2. Low vision – remaining visual field of 60 degrees or less; or
    3. Medical and educational documentation of progressive loss of vision, which may in the future affect the student's ability to learn visually.
  - (c) Other visual impairment, not perceptual in nature, resulting from a medically documented condition. (For example, but not limited to cortical visual impairment)
- (3) Students who have disabilities in addition to visual impairment shall be eligible for admission to the Tennessee School for the Blind.

- (4) The Director of Schools for the Tennessee School for the Blind shall admit students who meet the eligibility criteria, provided:
  - (a) The student has been evaluated and referred by his or her Individual Education Program (IEP) team, that includes a representative from the Tennessee School for the Blind, upon the IEP team's determination that the Tennessee School for the Blind will provide the student a free appropriate public education in the student's least restrictive environment;
  - (b) A complete ophthalmological report for the student has been submitted; and
  - (c) The student meets the criteria in Tennessee School for the Blind Policy 6.2030, School Admissions and Enrollment.
- (5) The student's district of origin and the Tennessee School for the Blind shall annually sign a placement agreement outlining the responsibilities of the district of origin and the responsibilities of Tennessee School for the Blind regarding the student's free and appropriate public education and services provided pursuant to the student's IEP.
- (6) Student admittance to the Tennessee School for the Blind residential program shall be based on the school's Policy 3.7000, Residential Program.

**Authority:** T.C.A. §§ 49-50-1001 et seq.. **Administrative History:** Original rule filed August 26, 1986; effective November 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendments filed April 4, 2018; effective July 3, 2018.

**0520-04-03-.02 STANDARDS OF ELIGIBILITY FOR ADMISSION TO THE TENNESSEE SCHOOL FOR THE DEAF AND WEST TENNESSEE SCHOOL FOR THE DEAF.**

- (1) Students ages three (3) through twenty-one (21) who are residents of Tennessee and who have a hearing impairment that is so significant that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance, shall be eligible for admission to the Tennessee School for the Deaf and West Tennessee School for the Deaf.
- (2) A student who meets one (1) or more of the following hearing impairments shall be eligible for admission to the Tennessee School for the Deaf or West Tennessee School for the Deaf:
  - (a) A permanent or fluctuating hearing threshold level evidenced by:
    - 1. An unaided hearing threshold level of 30 dB or greater based on the pure tone average of 500, 1000, and 2000 Hz in the better ear;
    - 2. A high frequency hearing threshold level of 30 dB or greater based on the pure tone average of 1000, 2000 and 3000 Hz;
    - 3. An unilateral hearing threshold level of 30 dB or greater, based on the pure tone average of 500, 1000, and 2000 Hz unaided; or

4. An auditory evoked potential response evidencing permanent hearing loss at multiple frequencies equivalent to or in excess of the decibel hearing loss threshold criteria for pure tone audiometric testing specified above.
  - (b) A hearing threshold that interferes with progress in developmental skills or academic performance, social-emotional development, or linguistic and communicative skills.
  - (c) An inability to discriminate speech within the normal range, or a medical condition that prevents the child from processing spoken language auditorially in spite of normal hearing.
  - (d) Evidence of genetic deafness history in the student's family and early identification of progressive hearing loss.
- (3) Students with disabilities in addition to a hearing impairment shall be eligible for admission to the Tennessee School for the Deaf and West Tennessee School for the Deaf. The Director of Schools for the Tennessee School for the Deaf and West Tennessee School for the Deaf shall admit students who meet the eligibility criteria, provided:
  - (a) The student has been evaluated and referred by his or her Individual Education Program (IEP) team, that includes a representative from the Tennessee School for the Deaf or West Tennessee School for the Deaf, upon the IEP team's determination that the Tennessee School for the Deaf or West Tennessee School for the Deaf will provide the student a free appropriate public education in the student's least restrictive environment; and
  - (b) The student meets the criteria in the Tennessee Schools for the Deaf Policy 6.2030, School Admissions and Enrollment.
- (4) The student's district of origin and the Tennessee School for the Deaf or West Tennessee School for the Deaf shall annually sign a placement agreement that outlines the responsibilities of the district of origin and Tennessee School for the Deaf or West Tennessee School for the Deaf regarding the student's free and appropriate public education and services provided pursuant to the student's IEP.
- (5) Student admittance to the Tennessee School for the Deaf residential program shall be based on the school's Policy 3.7000, Residential Program.

**Authority:** T.C.A. §§ 49-50-1101 et seq. **Administrative History:** Original rule filed August 26, 1986; effective November 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendments filed April 4, 2018; effective July 3, 2018.

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-19  
ENGLISH AS A SECOND LANGUAGE PROGRAMS**

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**0520-01-19-.01 DEFINITIONS**

(1) The following definitions shall only be applicable to this chapter:

- (a) "NELB Student" means a Non-English Language Background Student whose parent(s) or guardian(s) list a language other than English in response to any question on the home language survey. A NELB student may or may not qualify for ESL services.
- (b) "English Learner (EL)" means an NELB student who qualifies for ESL services via a Department of Education approved English Language Proficiency screener.
- (c) "ILP" means an individual learning plan that describes the academic and language needs and goals for an EL student.
- (d) "Direct ESL Services" means English as a Second Language services designed for speakers of other languages and provided pursuant to an ILP by a teacher with an ESL endorsement to EL students for at least one (1) hour per day.
- (e) "Indirect ESL Services" means English as a Second Language services that provide linguistically appropriate accommodations and scaffolding pursuant to an ILP provided by a general education teacher in the general education classroom to EL students whose parent(s) or guardians waive Direct ESL Services. Indirect ESL Services include providing scaffolding to ensure EL Students can access instructional materials in English.
- (f) "Fluent English Proficient (FEP)" means an EL Student who meets the proficiency requirements of the English language proficiency screener upon initial enrollment or a student who initially qualified as an EL Student and has met the approved exit criteria for Direct or Indirect ESL Services.
- (g) "Home Language Survey" means a survey delivered to parents or guardians within thirty (30) days of a student's initial enrollment in public school to identify NELB Students who may be eligible for Direct or Indirect Direct ESL Services.
- (h) "RAEL" means a Recently Arrived English Learner.

- (i) "Transitional EL Student" means an EL student who has met the exit criteria for Direct or Indirect ESL Services.
- (j) "ILP Team" means a team at the LEA or school level that that creates the ILP for an EL student. At a minimum, the team shall include the current and/or former general education teacher and current and/or former ESL teacher, in addition to parents/guardians, school counselors, and other staff best suited to assess the language goals and needs of each EL student.

**0520-01-19-.02 ANTI-DISCRIMINATION POLICIES AND PRACTICES**

- (1) LEAs shall have anti-discriminatory policies that preclude denial of equal education opportunities to individuals based on race, color, or national origin. In addition, LEAs shall ensure that EL students can meaningfully participate in their educational programs and services. LEA practices shall not result in the inappropriate placement of EL students in or the exclusion from special programs or activities based on English language proficiency or national origin.
- (2) LEAs shall not deny enrollment to a student on the basis of the students' or their parents' or guardians' actual or perceived citizenship or immigration status.

**0520-01-19-.03 IDENTIFICATION, SCREENING, AND SERVICE DELIVERY**

- (1) Each LEA shall administer a Home Language Survey (HLS) within thirty (30) days of initial enrollment to identify NELB Students. A HLS shall be completed only once in a student's educational career. If the student has previously attended another LEA, the receiving school or LEA shall attempt to obtain the original HLS from the sending LEA. If the receiving LEA cannot obtain the original HLS after reasonable attempts to do so, it may re-administer the HLS, but shall mark it as a secondary HLS. If the original is found, it shall replace the duplicate in the student's file.
  - (a) The HLS shall not require parents or guardians to answer questions about student immunization or student or familial immigration status.
  - (b) The HLS shall include, but not necessarily be limited to, questions that require the parent(s) or guardian(s) to address the following three (3) topics:
    - 1. The first language the student learned to speak;
    - 2. The language the student speaks most often at home; and
    - 3. The language that is most often spoken to the student at home.
  - (c) If the parent(s) or guardian(s) list a language other than English for any question above, the student shall be classified as an NELB Student. Parents or guardians shall be interviewed to clarify any discrepancies in the HLS.
- (2) LEAs shall also screen all NELB Students with an English language proficiency screener within thirty (30) days of initial enrollment to determine whether the student qualifies for ESL Services, unless an NELB Student has documentation from a previous state or LEA that he or she met the definition of fluent English proficient (FEP). The English language proficiency screener shall be administered in addition to the HLS within the thirty (30) day time period.

- (a) NELB Students who are screened in their first semester of Kindergarten or their first semester of first grade shall be screened with the W-APT screener. If a student scores a 27 or below on any of the four (4) domains in the W-APT screener (speaking, listening, reading, or writing), the student shall be identified as an EL student and receive Direct ESL Services pursuant to paragraph (6) and (8) of this rule, unless a parent and or guardian chooses to waive service.
  - (b) NELB Students who are screened in their second semester of Kindergarten shall be screened with the W-APT screener. If a student scores a 27 or below on the Speaking or Listening domain, a 14 or below on the reading domain, or a 17 or below on the writing domain, the student shall be identified as an EL student and receive Direct ESL Services pursuant to paragraph (6) and (8) of this rule, unless a parent and or guardian chooses to waive service.
  - (c) NELB Students who are screened in their second semester of first grade, or at any point in grades two (2) through twelve (12), shall be screened using the WIDA screener. Students who score below a 4.5 on the WIDA screener shall be identified as an EL student and shall qualify to receive Direct ESL Services pursuant to paragraphs (6) and (8) of this rule, unless a parent and or guardian chooses to waive service.
- (3) All EL students shall have an ILP that contains, but is not limited to:
- (a) Assessment data from the English language proficiency assessment, achievement assessments, and any meaningful benchmark data;
  - (b) Short-term goals that help the student proceed to the next level in the four (4) domains of language: reading, writing, speaking, and listening;
  - (c) Growth trajectories for English language proficiency based on individual student data; and
  - (d) Strategies, accommodations, and scaffolding used in the delivery of Indirect ESL Services
- (4) Each LEA shall have an oversight plan for the development, implementation, and monitoring of ILPs for EL students.
- (5) Teachers shall monitor the academic and English language proficiency growth of EL students through benchmarking, formative assessments, and/or summative assessments at least every four and one-half (4.5) weeks. If an EL student is not meeting the growth expectations identified in his or her ILP, the student shall receive differentiated support so that he or she may advance more rapidly toward English language proficiency. Supports shall be implemented promptly after the ILP Team has determined the student is not on the expected growth trajectory.
- (6) EL students identified for ESL service via an English Language Proficiency screener described herein shall receive a minimum of one (1) hour of Direct ESL Service each school day from a teacher who holds an ESL endorsement, until the student achieves a sufficient score on a summative assessment pursuant to State Board rule 0520-01-19- .08.
- (a) Parents or guardians of EL students shall be informed of the right to refuse placement of their children in ESL programs, and each LEA shall provide the parent(s) or guardian(s) the option to waive Direct ESL Services before services are provided, or at any time during the course of the school year.
  - (b) If the parent(s) or guardian(s) waives Direct ESL Services for the student, the general education classroom teacher shall be responsible for providing Indirect ESL Services in the form of linguistically



appropriate accommodations and scaffolding within the general education setting as described in the student's ILP.

- (7) LEAs shall ensure that all teachers who provide Direct or Indirect ESL Services are annually trained on delivering ESL instruction. At a minimum, this training shall include, but not be limited to:
  - (a) The Tennessee English language development (ELD) standards;
  - (b) Appropriate ESL instructional methods to use with grade-level academic content standards in English language arts, mathematics, science and social studies;
  - (c) English language acquisition training for general education teachers to understand the process of acquiring a second or subsequent language; and
  - (d) Strategies for collaboration between teachers serving EL students so that ILPs are developed and implemented by all educators.
- (8) EL students shall be assessed annually using either the W-APT or WIDA ACCESS to determine if the Direct or Indirect ESL services provided may be modified by the ILP Team.
  - (a) EL students in Kindergarten shall be assessed using the W-APT screener. For these students who score between 20 and 27 on any domain, LEAs may tailor the service provided to those students, including providing less than one (1) hour of Direct ESL Service per day based on their ILP.
  - (b) EL students in grades one through twelve (1-12) shall be assessed using WIDA ACCESS. For these students who score 3.5 or higher on the reading, writing, and either speaking or listening domain, LEAs may tailor the services provided to those students, including providing less than one (1) hour of Direct ESL Service per day based on their ILP.
- (9) An ESL Program may be provided through various service delivery models. Direct ESL Services shall be provided utilizing one or more of the following approved service delivery models:
  - (a) Sheltered English Instruction;
  - (b) Structured English Immersion;
  - (c) Specially Designed Academic Instruction in English (SDAIE);
  - (d) Content-Based Instruction (CBI);
  - (e) Heritage Language;
  - (f) Virtual ESL classes;
  - (g) Pull-out instruction; or
  - (h) Another model approved by the Department.
- (10) Service delivery models shall meet the following criteria:
  - (a) All models used by LEAs shall be evidence-based and effective;

- (b) All models shall address how academic deficits that are the result of students' limited English proficiency will be remediated;
  - (c) All service models shall be aligned to the Tennessee English language development standards and based on evidence-based educational practices. These service delivery models may be used in ESL classrooms, general education classrooms, or in newcomer centers for recently arrived ELs (RAELs).
- (11) LEAs shall ensure that all EL students who may have a disability are located, identified, and evaluated for special education and related services in a timely manner, in accordance with the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and T.C.A. § 49-10-101, et seq.
- (a) When conducting special education and/or Section 504 evaluations, LEAs shall consider the English language proficiency of EL students in determining the appropriate assessments and other evaluation materials to be used. EL students shall not be identified as students with disabilities solely because of their limited English language proficiency.
  - (b) LEAs shall provide EL students with disabilities with both the language assistance and disability-related services to which they are entitled under federal law.
  - (c) Neither Response to Instruction and Intervention (RTI<sup>2</sup>) nor special education services shall be used in place of ESL Direct Services.
- (12) Two (2) high school ESL courses shall be counted toward the four (4) English credits required for graduation. At least one (1) of the ESL courses counted toward graduation credit shall be counted toward credit in an English course with an end-of-course assessment. Additional high school ESL courses shall be counted as elective humanities credits.

**0520-01-19-.04 PARENTAL NOTIFICATION AND RIGHTS**

- (1) LEAs shall communicate information related to identification, screening, and service delivery to the parent(s) or guardian(s) of EL students in the language and method that the parent(s) or guardian(s) can understand, to the extent practicable. Parent(s) or guardian(s) shall be informed of the ESL program type to be used, length of time expected for completion of ESL services, how the EL student was assessed for entrance to services, and options related to program types, if available.
- (2) Parents or guardians of EL students shall be informed:
  - (a) Of their right to waive placement of their child in ESL programs;
  - (b) Of their right to remove their student from Direct ESL Service at any time;
  - (c) Of the scaffolding and accommodations to be provided in the general education setting via Indirect ESL Services if the parent(s) or guardian(s) waive Direct ESL Services.

**0520-01-19-.05 STAFFING RATIOS**

- (1) Appropriate staffing of ESL programs shall be based on the following criteria:

- (a) LEAs shall provide adequate ESL staff to implement the chosen service delivery model effectively, as documented by the progress in English language proficiency and academic content of their EL students.
  - (b) LEAs shall adequately staff their ESL programs to meet state and federal requirements. This includes, but is not limited to, having sufficient staff to ensure meaningful communication or guardians of EL students with limited English proficiency, to identify EL students, and to monitor transitional EL students.
- (2) To meet the two (2) criteria of effective and compliant ESL programs, LEAs shall implement ESL programs based on the following staffing ratio standards:
- (a) ESL class sizes shall not exceed state-mandated grade-level class size requirements; and
  - (b) The LEA-wide ESL program staffing ratio shall be based on an average of no more than thirty-five (35) identified EL students per full-time equivalent ESL teacher unless an alternate staffing ratio is approved by the Department.
- (3) An alternative staffing ratio may only be approved when the LEA can show adequate academic growth and proficiency with the EL student population and can prove that EL students are receiving the recommended hours of service. LEAs seeking approval for a waiver for an alternate LEA-wide staffing ratio shall provide the following information upon application and, if approved, annually to the Department of Education:
- (a) The number of EL students served;
  - (b) The proficiency levels of EL students;
  - (c) The academic growth of EL students;
  - (d) Evidence that no school in the LEA is an Additional Targeted Support and Intervention (ATSI) school based on the EL student accountability subgroup;
  - (e) The most recent analysis for the EL student subgroup for achievement assessments in reading/language arts, mathematics, and science;
  - (f) The proposed staffing ratio that will be used in place of the recommended thirty-five (35) to one (1) ratio; and
  - (g) The justification for the alternate staffing ratio.

**0520-01-19-.06 EXIT PROCESS**

- (1) EL students who score 4.4 composite or higher and 4.2 or higher for literacy on the WIDA ACCESS shall be exited from Direct or Indirect ESL Services. Students who exit Direct or Indirect ESL Services shall be considered transitional EL students for four (4) school years.
- (2) EL students in the first (1<sup>st</sup>) and second (2<sup>nd</sup>) years of transition are referred to as T1 and T2 respectively. EL students in the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) years of transition are referred to as T3 and T4 respectively. During this transition period, Direct or Indirect ESL Services are not required for T3 and T4 students. However, T3 and T4 students shall be included in the LEA's EL student subgroup with T1 and T2 students for accountability purposes.

- (3) Transitional EL students shall be served in the general education classroom. T1 and T2 EL students shall be monitored for two (2) years.
  - (a) If a transitional student demonstrates difficulty in the general education classroom or fails to meet ILP benchmarks, academic interventions should be provided by a general classroom teacher or teacher with an ESL endorsement pursuant to an ILP.
- (4) Each LEA shall have a written reclassification procedure to be used for exited EL Students who require reentry into the ESL program. The LEA shall apply its reclassification procedure if academic or non-academic interventions are unsuccessful.
- (5) EL students who take alternate exams for TNReady, as determined by their IEP team shall be considered for exit from ESL services through the WIDA ALT ACCESS assessment. EL students who achieve a P1 composite or higher and P1 literacy or higher on the WIDA ALT ACCESS assessment shall be exited from Direct ESL Services.
- (6) If a student was exited from ESL services by another state, the exit shall stand as valid.

**Authority:** T.C.A. 49-1-302; 42 U.S.C. § 2000d; 20 U.S.C. § 1703. **Administrative History:**

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

Date: 10/26/20

Signature: \_\_\_\_\_

*Angela C. Sanders*

Name of Officer: Angela C. Sanders

Title of Officer: General Counsel

**Department of State Use Only**

Filed with the Department of State on: 10/26/2020

*Tre Hargett*

Tre Hargett  
Secretary of State

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