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Sequence
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Notice of Rulemaking Hearing

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

Agency/Board/Commission:	State Board of Education
Division:	N/A
Contact Person:	Angie Sanders
Address:	500 James Robertson Parkway, 5 th Floor, Nashville, TN 37243
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

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

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

Address 1:	500 James Robertson Parkway		
Address 2:	Davy Crockett Building, Conference Room 1C, 1 st Floor		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	01/30/2023		
Hearing Time:	10:00 am	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

<p>**Anyone wishing to participate electronically may access the hearing using the following information:**</p> <p>Link: https://tn.webex.com/tn/j.php?MTID=m49077d67542746e7dd0067207db372d9 Password: SBERules Meeting Number: 2305 182 4615 Dial-In: 415-655-0001</p> <p>Please check the State Board's website at https://www.tn.gov/sbe/meetings.html for any additional information regarding this rulemaking hearing.</p>

Oral comments are invited at the hearing.
 In addition, written comments may be submitted via email at angela.c.sanders@tn.gov or mailed to:
 Tennessee State Board of Education
 Attention: Angie Sanders
 Davy Crockett Tower, 5th Floor
 500 James Robertson Parkway
 Nashville, Tennessee 37243

Written comments must be received by **4:00 PM CT on February 2, 2023** in order to ensure consideration.

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

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

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

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0520-01-02	District and School Operations
Rule Number	Rule Title
0520-01-02-.01	Approval of Local Education Agencies (LEAS)
0520-01-02-.09	Alternative Education
0520-01-02-.10	Homebound Instruction
0520-01-02-.13	Fiscal Accountability Standards

Chapter Number	Chapter Title
0520-01-12	Education of Incarcerated Students
Rule Number	Rule Title
0520-01-12-.03	Notifications and Transfer of Records
0520-01-12-.05	Calculation of Funds

Chapter Number	Chapter Title
0520-01-13	School and Student Health Policies
Rule Number	Rule Title
0520-01-13-.01	School Health Policies

Chapter Number	Chapter Title
0520-01-15	Court-Ordered Day Treatment Facilities

Rule Number	Rule Title
0520-01-15-.05	Calculation of Funds

Chapter Number	Chapter Title
0520-01-16	Education Savings Accounts
Rule Number	Rule Title
0520-01-16-.04	Agreement and Funds Transfer
0520-01-16-.06	Term of the ESA
0520-01-16-.10	Return to Local Education Agency

Chapter Number	Chapter Title
0520-01-17	Continuous Learning Plans
Rule Number	Rule Title
0520-01-17-.02	Purpose of the CLP

Chapter Number	Chapter Title
0520-01-20	Residential Mental Health Facilities
Rule Number	Rule Title
0520-01-20-.02	Definitions
0520-01-20-.05	Compliance and Monitoring
0520-01-20-.06	Calculation of Funds

**RULES
OF
THE TENNESSEE DEPARTMENT OF EDUCATION
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-02
DISTRICT AND SCHOOL OPERATIONS**

0520-01-02-.01 APPROVAL OF LOCAL EDUCATION AGENCIES (LEAS).

- (1) A public school is the basic administrative unit of a state, county, city, or special district school system, consisting of one (1) or more grade groups, one (1) or more teachers to give instruction, and one (1) principal, which school shall be subject to the statutes of the State of Tennessee, and to the rules, regulations, and minimum standards of the State Board of Education (State Board).
- (2) The Department of Education (Department) shall make periodic inspections of the Local Education Agencies (LEAs) under its control. These inspections shall be made to determine the extent to which LEAs operate in compliance with State Board rules and regulations and to verify the information received on reports from local school officials. The Department shall develop and annually notify LEAs of the inspection criteria.
 - (a) Each LEA shall be classified as approved, conditionally approved, or non-approved based on the inspection of the Department. LEAs classified as conditionally approved by the Commissioner of Education shall receive a written explanation of the reasons for such classification and shall be afforded the opportunity to respond. The Commissioner's notification shall include a time by which corrective action shall be completed by the LEA. If such corrective action is not taken within the time specified, the LEA shall be classified as non-approved and the Commissioner shall impose sanctions on the LEA which may, in the Commissioner's discretion, include withholding part or all of funds generated by the state's K-12 funding formula to the non-approved LEA.
 - (b) The Department shall make an annual report to the State Board regarding each LEA's compliance with State Board rules and regulations. The report shall include the approval status of each LEA, deficiencies identified by the Department in the approval process, an assessment of action needed to attain approval, LEA response, and sanctions imposed upon LEAs which do not comply.
- (3) The Department shall maintain an internal audit function which shall assist the Department in the inspection of schools. Internal audit reports shall be presented to the Commissioner of Education and the State Board.

Authority: T.C.A. §§ 49-1-201, 49-1-302, and 49-3-353. **Administrative History:** Original rule certified June 10, 1974. Amendment filed August 20, 1984; effective November 13, 1984. Amendment filed September 26, 1985; effective December 14, 1985. Amendment filed September 20, 1987; effective December 22, 1987. Amendment filed October 18, 1988; effective January 29, 1989. New rule filed February 16, 1989; effective April 2, 1989. Amendment filed July 11, 1990; effective October 29, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repeal and new rule filed December 5, 2011; effective May 30, 2012. Amendments filed August 20, 2020; effective November 18, 2020.

0520-01-02-.09 ALTERNATIVE EDUCATION.

- (1) Alternative education is a non-traditional, short-term academic program or school designed to meet the student's educational, behavioral, and social needs. Alternative education includes alternative schools and alternative programs.
- (2) Alternative school means a short-term intervention program designed to provide educational services outside of the regular school program for students who have been suspended or expelled. Alternative schools are located in a separate facility from the regular school program.
- (3) Alternative program means a short-term intervention program designed to provide educational services outside of the regular school program for students who have been suspended or expelled. Alternative programs may be located within the regular school or be a self-contained program within a school. Alternative programs include, but are not limited to, night schools or in-school suspension.
- (4) Pursuant to T.C.A. § 49-6-3402, local boards of education may establish alternative schools for students in grades one (1) through six (6) who have been suspended or expelled from the regular school program.
- (5) Attendance in an alternative school or alternative program shall be voluntary for students in grades one through six (1-6) who have been suspended or expelled from the regular school program, unless the local board of education adopts a policy mandating attendance in either instance.
- (6) A local board of education shall establish at least one (1) alternative school for students in grades seven (7) through twelve (12) who have been suspended or expelled. Attendance in an alternative school or program is mandatory for students in grades seven through twelve (7-12) who have been suspended for more than ten (10) days or expelled from the regular school program if space and staff are available. Space and staff availability shall be determined by the LEA at the time the disciplinary decision is rendered.
 - (a) Attendance in an alternative school or alternative program is not mandatory for students in grades seven through twelve (7-12) who have been expelled from the regular school program for committing a zero-tolerance offense. However, this does not prohibit a director of schools, or a director's designee, from assigning a student who has been expelled from the regular school program for committing a zero-tolerance offense to an alternative school or alternative program.
- (7) Students in pre-Kindergarten or Kindergarten shall not be assigned to an alternative school or program.
- (8) Each local board of education shall adopt a policy regarding alternative education that is aligned to this rule and the State Board's Alternative Education Policy 2.302.
- (9) Requirements for alternative education:
 - (a) The instruction shall proceed as nearly as practicable in accordance with the instructional program in the student's regular school. Instruction shall be based on the academic standards adopted by the State Board.
 - (b) All course work and credits earned shall be transferred and recorded in the student's home school, which shall grant credit earned and progress thereon as if earned in the home school.
 - (c) Students shall participate in all required state assessments at sites determined by school officials and in accordance with established guidelines regarding student grade levels and eligibility. State assessment results shall be reported in the LEA where the student was enrolled prior to his or her placement in the alternative school.
 - (d) Each alternative school or program shall comply with class size requirements established in T.C.A. § 49-1-104 and instructional and planning time requirements established by the State Board. Nothing shall prohibit an LEA from establishing a lower class size ratio in an alternative school or program.

- (e) The minimum length of the school day for alternative schools and programs shall be six and one-half (6½) hours.
- (f) LEAs shall monitor and regularly evaluate the academic progress of each student enrolled in an alternative school.
- (g) Students are subject to all rules pertaining to the alternative school or alternative program.
 - 1. The director of schools, or the director's designee, may remove a student from the alternative school or alternative program if the director, or the director's designee, determines that:
 - (i) The student has violated the rules of the alternative school or alternative program; or
 - (ii) The student is not benefiting from the student's assignment to the alternative school or alternative program, and all interventions available to help the student to succeed in the alternative school or alternative program have been exhausted unsuccessfully.
 - 2. A student's removal from the alternative school or alternative program shall not constitute grounds for extending the length of original suspension or expulsion.
 - 3. The director of schools, or the director's designee, shall make the final decision on removal.
- (h) If a student has an active Individualized Education Program (IEP), a 504 plan, or is suspected of having a disability, all state and federal laws and rules relating to students with disabilities and special education shall be followed.
- (i) Prior to the assignment of a student to an alternative school or program, the LEA shall provide written notice, which includes the reason for the student's placement, to the student's parent or guardian. Reasons for placement in an alternative school must be documented. End of year reports must be made to the regular school for each student.
- (j) Each teacher providing instruction to students in an alternative education school or program shall be licensed to teach in Tennessee and shall meet the qualifications to teach in compliance with the rules and regulations of the State Board.
- (k) Alternative schools shall have an appropriately licensed administrator assigned to supervise the school.
- (l) Support services such as counseling and psychological services must be accessible.
- (m) Each LEA shall develop and implement formal transition plans for the integration of students from a traditional school to an alternative school or from an alternative school back to a traditional school. Transition plans shall be targeted to improve communication between a traditional school and an alternative school staff and should address any barriers that would prohibit students from successfully transitioning. Transition plans shall include aligning of curricula, in-take procedures for students returning to traditional school, professional development opportunities for traditional and alternative school staff, educational and behavioral supports, follow-up for students returning to traditional school, and the development of graduation and postsecondary goals.
- (n) All alternative school classrooms shall have working two-way communication systems that make it possible for teachers or other employees to notify a principal, supervisor, or other administrator that there is an emergency.

- (o) It is the responsibility of the director of schools to ensure that all alternative school teachers and other employees have been trained to use the two-way communication system and are notified of emergency procedures prior to the beginning of classes for any school year and when changes are made in the emergency procedures and/or personnel. Such emergency procedures shall be linked to the school and school system emergency preparedness plan.
- (p) LEAs shall submit an annual alternative education survey to the Department that provides the following information:
 - 1. Alternative schools or programs currently in operation in the LEA;
 - 2. Number and grade level of students served;
 - 3. Primary reason for student assignment;
 - 4. Number of faculty and staff; and
 - 5. Information required by T.C.A. § 49-6-3405.
- (10) Funding:
 - (a) Students attending an alternative school shall continue to earn funding through the state's K-12 education funding formula for the LEA in which the student is enrolled.
- (11) Facilities:
 - (a) A local board of education may not contract or otherwise affiliate with an alternative school program which requires an order of a court as a precondition of placement in such alternative school.
 - (b) A local board of education may contract with independent contractors to provide alternative school facilities and other appropriate services consistent with T.C.A. § 49-2-203.
 - (c) A local board of education may establish its own facility.
 - (d) Two or more boards may join together and establish an alternative school attended by students from any such LEA.
 - (e) Through a mutually accepted agreement with another local board of education, a board may send its suspended or expelled students to an alternative school already existing in another LEA.

Authority: T.C.A. §§ 49-6-3401, 49-6-3402, and 49-6-3405. **Administrative History:** Original rule certified June 10, 1974. 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 28, 1984; effective September 11, 1984. Amendment filed January 2, 1986; effective April 15, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed April 24, 1987; effective June 8, 1987. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed June 24, 1992; effective September 28, 1992. Amendment filed April 18, 1997; effective August 28, 1997. Amendment filed April 27, 1998; effective August 28, 1998. Amendments filed August 20, 2020; effective November 18, 2020.

0520-01-02-.10 HOMEBOUND INSTRUCTION.

- (1) Definitions. As used in this rule:
 - (a) "Homebound Instruction Period" means the number of school days that the medical homebound instruction program shall be provided to the student.

- (b) "Individualized Education Program (IEP) team" means a group of individuals described in 34 C.F.R. § 300.321 that is responsible for developing, reviewing, and/or revising an IEP for a child with a disability.
- (c) "Medical Condition" means a physical or mental condition, illness, or disorder that prevents a student from attending regular classes and is certified in writing by the student's treating physician.
- (d) "Medical Homebound Instruction Program" means an instruction program provided at home, hospital, or other related locations to all students, including students with disabilities, who are enrolled in a public school but are unable to attend regular classes due to a medical condition.
- (e) "Regular Classes" means the classes to which the student has been assigned by the school where the student is enrolled.
- (f) "Review Team" means Local Education Agency ("LEA") staff and/or school staff, including the student's 504 team or IEP team if applicable, who are familiar with the health and educational needs of the student for whom a medical homebound instruction program is being requested.
- (g) "Student" means a child enrolled in a Tennessee public school in grades kindergarten through grade twelve (K-12).
- (h) "Treating Physician" means 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 medical homebound instruction.

(2) Medical Homebound Qualification and Placement.

- (a) Each LEA shall establish a medical homebound instruction program for each student enrolled in the LEA who qualifies. A student qualifies for a medical homebound instruction program if the student's treating physician certifies in writing that the student has a medical condition that prevents the student from attending regular classes. A student is prevented from attending regular classes if the student will miss more than ten (10) consecutive instructional days over the period of the school year due to the medical condition. An LEA may also create a policy that allows students who miss an aggregate number of instructional days over the period of the school year due to a medical condition to be eligible for a medical homebound instruction program.
- (b) Once a student has qualified for a medical homebound instruction program, the homebound instruction period shall be determined by the student's review team on a case-by-case basis and shall take into consideration the recommendations of the student's treating physician, if available. Educational decisions regarding the student's medical homebound instruction program shall be determined by the student's review team on a case-by-case basis.
- (c) Decisions regarding students with disabilities who require instruction in the home, hospital, or related site pursuant to an IEP team's determination that the home, hospital, or related site is the child's least restrictive environment are governed by the requirements set forth in the Individuals with Disabilities Education Act (34 C.F.R. § 300.39; 34 C.F.R. § 300.115) and State Board Rule 0520-01-09-.07 regarding educational homebound placements.

(3) Medical Homebound Instructional Requirements.

- (a) A medical homebound instruction program shall consist of a minimum of three (3) hours of instruction per week while school is in session for the homebound instruction period determined by the student's review team.

- (b) For students receiving special education and related services, the frequency and duration of instruction necessary to provide a free appropriate public education for a student with a disability during a medical homebound instruction program placement shall be determined by the student's IEP team, but shall not be less than the minimum of three (3) hours per week.
 - (c) The student's review team shall consider the student's grade level, academic status, physical abilities, individual academic needs, homebound instruction period, and similar factors when determining the amount of instructional time per week provided to the student under a medical homebound instruction program.
 - (d) The minimum of three (3) hours of instruction per week shall not include travel to and from the student or preparation time. Homebound instruction is measured by the amount of time that the student and the homebound teacher are working together; or, if a student is enrolled in an LEA's virtual program, homebound instruction is only the actual time that the student is engaging in instruction via the virtual program.
 - (e) Homebound instruction shall be provided by a teacher holding a valid Tennessee teacher license as provided in T.C.A. Title 49, Chapter 5.
 - (f) An adult, other than the homebound teacher/instructor, shall be present during the homebound instruction period.
 - (g) The LEA may provide the homebound instruction program by sending a teacher to the student's home, hospital, or related site, by contracting with a hospital or related site to provide educational services to the student in compliance with this rule, or via the LEA's own online or virtual program, if the review team deems it appropriate for the student. The LEA shall verify that the student has all the necessary equipment, access, and training for working via the internet at no additional cost to the student.
- (4) Recertification for Medical Homebound.
- (a) A medical homebound instruction program for longer than the initial medical homebound instruction period shall only be provided to a student who is recertified in writing by his or her treating physician as having a medical condition that, in the student's treating physician's judgment, continues to prevent the student from returning to regular classes.
 - (b) The initial medical homebound instruction period and any additional medical homebound instruction period shall be for the number of school days certified by the student's review team.
 - (c) Recertification must be obtained upon the expiration of each additional medical homebound instruction period if medical homebound instruction is to be continued beyond the initial medical homebound instruction period.
- (5) Reentry.
- (a) Prior to the expiration of the medical homebound instruction period, the review team shall develop a transition plan for the student's reentry into the school environment.
- (6) Attendance and Funding.
- (a) LEAs are responsible for ensuring the provision of medical homebound instruction to students enrolled in the LEA. Such students shall not be counted absent from school and shall continue to earn funding through the state's K-12 education funding formula for the LEA in which the student is enrolled.

- (b) IDEA Part B funds may be expended only for instruction of students with disabilities who are placed in a homebound instruction program.

Authority: T.C.A. §§ 49-10-1101, 49-10-1102, and 49-10-1103; 34 C.F.R. § 300.39; and 34 C.F.R. § 300.115.
Administrative History: Original rule certified June 10, 1974. Amendment filed June 10, 1974; effective July 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. 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. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repeal and new rule filed May 20, 2019; effective August 18, 2019. Amendments filed April 7, 2021; effective July 6, 2021.

0520-01-02-.13 FISCAL ACCOUNTABILITY STANDARDS.

(1) Data Collection

- (a) The Commissioner of Education, in consultation with the Comptroller of the Treasury, shall prescribe a system of school fiscal accounting for all LEAs which ensures that the expenditure of funds is properly accounted for and safeguarded in accordance with current law and State Board of Education rules, regulations, and minimum standards. The Commissioner shall require such reports from LEAs as are required by federal or state law, State Board of Education rules, or as are otherwise necessary for ensuring fiscal accountability standards.
- (b) To ensure proper financial reporting of revenue and expenditures for all public school purposes, the system of school fiscal accounting shall include a standard chart of accounts and audit procedures. The standard chart of accounts shall be the basis for the Annual Public School Budget Document, which shall contain the account codes necessary to ensure the capability for meaningful comparisons of school systems. At a minimum, the Budget Document shall be designed to facilitate year-to-year and agency-to-agency comparison, as well as adequately indicating the sources and uses of all funds received by each LEA, and sufficient revenue account codes to differentiate between federal, state and local revenue.
- (c) The report of actual expenditures shall be the Annual Public School Financial Report and shall include sufficient information to allow a LEA by LEA comparison of budgeted and actual expenditures. The Financial Report shall, at a minimum, be designed to facilitate year-to-year and agency-to-agency comparison, as well as adequately indicating the sources and uses of all funds received by each LEA, and shall differentiate between federal, state and local revenue when reporting actual revenue for the prior year and estimated revenue for budget purposes.
- (d) The Department of Education shall establish procedures for collecting and verifying required data inputs for use in determining allocations through the state's K-12 education funding formula.

(2) Reports & Documents

- (a) Within thirty (30) days after the beginning of each fiscal year, each LEA shall submit to the Commissioner of Education, on a form provided by the Department of Education, a complete and certified copy of its entire school budget for the current school year.
- (b) On or before October 1 of each year, each LEA shall submit to the Commissioner a correct and accurate financial report of public school revenues and expenditures for the school year ending on June 30. The Commissioner of Education shall require such reports and maintain such documents as will allow a comparison of the state's K-12 education funding allocations with actual expenditures for each school system.
- (c) The Commissioner shall provide to the State Board of Education on or before October 1 of each year a report of ADM for each LEA for the previous school year.

- (d) The Department of Education shall prepare and report to the State Board of Education final allocations of the state's K-12 education funding formula for each LEA prior to the start of the school year.
- (3) Review and Verification
- (a) The budget submitted by each LEA will be reviewed by the Department of Education to ensure that state funds are not being used to supplant local funds and that each school system has appropriated funds sufficient to fund its local share of the state's K-12 education funding formula.
 - (b) Revenue derived from local sources must equal or exceed prior year actual revenues - excluding capital outlay and debt service, and adjusted for decline in average daily membership (ADM).
 - (c) The Department of Education shall verify that funds generated in the state's K-12 education funding formula are being budgeted for eligible expenses, inclusive of any legal requirements that restrict fund usage. The Commissioner shall advise the State Board of Education of all LEAs which fail to meet these minimum standards.
 - (d) Each LEA shall provide to the Commissioner of Education or a designated representative copies of all LEA related audit reports, including those made by governmental or independent public accountants.
 - (e) The Department of Education shall conduct review and follow-up procedures to ensure that audit exceptions are evaluated and appropriate actions are taken. The Commissioner shall notify the State Board of Education of any material and significant findings which reflect on the ability of the LEA to provide a quality education or which indicate that progress toward satisfactory resolution is not being made.
- (4) Audit
- (a) An Internal Audit Section will be maintained in the Department of Education for the purpose of testing and evaluating LEA administrative and accounting controls, compliance, and financial and program accountability for state and federally funded programs, and for compliance with State Board of Education rules, regulations, and minimum standards. The Internal Audit Section shall make such full and limited scope audits as it deems necessary under the circumstances, and special audits as requested by responsible government officials. The audits will be performed in accordance with standards for the professional practice of internal auditing and with generally accepted governmental auditing standards.
 - (b) To provide reasonable assurance that attendance and financial reports are reliable and accurate, the Internal Audit Section shall conduct audit procedures for the review and testing of the attendance accounting system. The Internal Audit Section shall review such programs as necessary to provide reasonable assurance that funds are properly accounted for and safeguarded in accordance with current law, applicable federal standards, and State Board of Education rules, regulations, and minimum standards. Audits shall include evaluating program objectives, grant performance and accountability to determine that each LEA has a system in place to ensure compliance with program regulations and guidelines.
 - (c) The Commissioner of Education shall be advised of all audits, including a summary of the scope of the audit, the findings, recommendations, management comments, and conclusions including a determination as to the adequacy of corrective action planned or implemented. The State Board of Education, Director of Schools, and representatives of the Comptroller's Office shall be provided copies of all audits conducted.

Authority: T.C.A. §§ 49-1-201, 49-1-210, 49-1-302, 49-3-316, and Public Chapter 966 of the Public Acts of 2022. **Administrative History:** Original rule filed November 3, 1993; effective March 30, 1994. Amendment filed June 30, 1995; effective October 27, 1995. Amendments filed August 11, 2017; effective November 9, 2017.

**RULES
OF
THE STATE BOARD OF EDUCATION**

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

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

- (1) Once a student has been held in a Center outside of their home LEA for seventy-two (72) hours, the Center shall notify in writing the home LEA, the receiving LEA, and the Department and provide the name of the student incarcerated, the location of incarceration, and the date the student was incarcerated.
- (2) Students held in a Center outside of their home LEA shall remain enrolled in the home LEA for the purpose of generating funding through the state's K-12 education funding formula pursuant to guidelines developed by the Department.
- (3) Once a student has been held in a Center outside of his or her home LEA for five (5) instructional days, the receiving LEA shall request the student's transcripts from the home LEA.
- (4) The home LEA shall ensure the student's educational records are received by the receiving LEA no later than the student's tenth (10th) instructional day at the Center.
- (5) No later than the student's fifteenth (15th) instructional day in the Center, the receiving LEA shall work with the home LEA to develop an ESP for the student.
- (6) No later than the student's twentieth (20th) instructional day in the Center, the receiving LEA shall ensure that the student begins receiving educational services in accordance with the ESP.
- (7) When a student receiving general educational services is transferred out of the Center, the Center shall notify the Department and provide the number of instructional days the student was held.
- (8) The Department shall transfer an amount equal to the per pupil state and local funds received by the home LEA from the home LEA to the receiving LEA for the length of instructional days a student was held.
- (9) Upon a student's return to his or her home LEA, the receiving LEA shall return all educational records back to the home LEA.
- (10) If a student held in a Center is enrolled in a charter school, the authorizing LEA shall be the home LEA. The charter school shall work with the home LEA to ensure all requirements regarding the transfer of records and funding are met.

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

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

- (1) The Department shall calculate the daily rate of funds to be transferred from the home LEA to the receiving LEA to be used for the student's education. The funds shall be allocated on a prorated daily basis for the length of the student's incarceration. The funds shall be calculated as follows:

- (a) Per pupil state and local funds generated through the state's K-12 education funding formula and

additional local funds received by the LEA in the prior fiscal year divided by the average daily membership (ADM) from the prior fiscal year to equal the per pupil state and local funding;

- (b) The per pupil state and local funding is then divided by the one hundred eighty (180) days to equal the total daily rate.

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

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-13
SCHOOL AND STUDENT HEALTH SERVICES**

0520-01-13-.01 SCHOOL HEALTH POLICIES.

- (1) Each local board of education shall develop and adopt standards and policies for school health services. The school health services program shall include, at a minimum, the following:
 - (a) A policy providing for a physical examination of every child entering school for the first time and every student participating in interscholastic athletics, performed by a doctor of medicine, osteopathic physician, physician assistant, certified nurse practitioner, or a properly trained public health nurse.
 - (b) Procedures for verifying proof of immunization for all students, except those who are exempt by statute as provided in T.C.A. § 49-6-5001.
 - (c) A policy for excluding students with communicable diseases and for readmitting them following recovery in accordance with the Department of Health's Communicable and Environmental Diseases Rule 1200-14-01.
 - (d) A Drug Free Schools Policy that addresses drug and alcohol related medical emergencies, guidelines for reporting drug and alcohol related incidents and referral of students.
 1. Local boards of education may implement a drug testing program, however before a drug testing program is implemented the local board of education shall establish policies procedures and guidelines on drug testing. Local boards of education may adopt the State Board's Model Drug Testing Policy 4.201.
 - (e) Procedures for reporting suspected cases of child abuse and neglect as required by T.C.A. § 37-1-403.
- (2) Each LEA shall adopt a coordinated school health policy in accordance with the State Board's Coordinated School Health Program Policy 4.204.

Authority: T.C.A. §§ 49-1-302, and 49-6-5001. **Administrative History:** Original rules filed May 3, 2018; effective August 1, 2018. Repeal and new rule filed January 7, 2021; effective April 7, 2021. Emergency rule filed July 9, 2021; effective through January 5, 2022. Emergency rule expired effective January 6, 2022, and the rule reverted to its previous status. Amendments filed November 22, 2021; effective February 20, 2022.

**RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-15
COURT-ORDERED DAY TREATMENT FACILITIES**

0520-01-15-.05 CALCULATION OF FUNDS

- (1) The LEA shall allocate funding to the facility in an amount equal to the per pupil state and local funds received by the LEA on a prorated daily basis for the student's length of stay, provided that the student meets the requirements of this Rule.
- (2) The daily rates shall be calculated by the Department each school year.
- (3) The Department shall calculate the daily rate of funds to be transferred from the LEA to the facility as follows:
 - (a) Per pupil state and local funds generated through the state's K-12 education funding formula and additional local funds received by the LEA in the prior fiscal year divided by the average daily membership (ADM) from the prior fiscal year to equal the per pupil state and local funding;
 - (b) The per pupil state and local funding is then divided by the 180 day school year to equal the total daily rate.
- (4) The facility shall be eligible to receive funds based on the LEA's school calendar and only for days in which the student is served during the regular school year.
- (5) The funding specified in this chapter shall be in addition to funds allocated pursuant to federal law and regulation, including, but not limited to, Title I and ESEA funds.

Authority: *T.C.A. § 49-3-308. Administrative History: Original rule filed July 31, 2019; effective October 29, 2019.*

**RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-16
EDUCATION SAVINGS ACCOUNTS**

0520-01-16-.04 AGREEMENT AND FUNDS TRANSFER.

- (1) Upon notification by the Department that an ESA may be established, a parent of an eligible student or an eligible student who has reached the age of eighteen (18) shall sign an Agreement to:
 - (a) Ensure the provision of an education for the participating student that satisfies the compulsory school attendance requirement provided in T.C.A. § 49-6-3001(c)(1) through enrollment in a Category I, II, or III private school as defined by the State Board;
 - (b) Comply with the requirement that participating students in grades three through eleven (3-11) participate in the Tennessee comprehensive assessment program ("TCAP") tests for Math and English Language Arts, or successor tests authorized by the State Board, each year of enrollment in the Program;
 - (c) Not enroll the participating student in a public school during the time the student is enrolled in the Program;
 - (d) Not enroll the participating student in the Individualized Education Account (IEA) Program during the time the student is enrolled in the Program;
 - (e) Release the LEA in which the participating student resides and the school for which the participating student is zoned to attend from all obligations to educate the participating student during the time the participating student is enrolled in the Program;
 - (f) Acknowledge that participation in the Program has the same effect as parental refusal to consent to the receipt of services under the Individuals with Disabilities Education Act at 20 U.S.C. § 1414; and
 - (g) Comply with the acceptable uses of ESA funds and the responsibilities of the parent of a participating student or participating student who has reached the age of eighteen (18).
- (2) The Agreement and any additional information required by the Department shall be submitted to and received by the Department by the deadlines set by the Department before the first ESA payment is disbursed.
- (3) The Agreement shall be signed by the parent of an eligible student or by the eligible student who has reached the age of eighteen (18) and a designee of the Department to be effective.
- (4) The Department shall establish procedures to effectuate the ESA funds transfer process and dates on which each ESA payment shall be disbursed.

- (5) Prior to the first disbursement of ESA funds, the Account Holder must provide proof of enrollment in a Category I, II, or III private school. No funds shall be disbursed to an ESA account without proof of enrollment in a Category I, II, or III private school.
- (6) ESA funds may not be used for tuition at a non-participating school.
- (7) The maximum annual amount to which a participating student is entitled under the Program shall be equal to the amount representing the per pupil state and local funds generated and required through the state's K-12 education funding formula for the LEA in which the participating student resides, or the statewide per pupil average of required state and local funds as determined through the state's K-12 education funding formula, whichever amount is less.
- (8) If a participating student enrolls in the Program for less than an entire school year, the ESA amount for that school year shall be reduced on a prorated daily basis.
- (9) After the initial and each subsequent payment to the ESA, the Account Holder shall submit expense reports and receipts for all ESA funds expended in accordance with the procedures set by the Department before the next ESA payment is disbursed.
- (10) In accordance with the procedures set by the Department, the Department may remove any Account Holder from eligibility for an ESA if the Account Holder fails to comply with the terms of the Agreement or applicable laws, rules or procedures, or misuses funds. The Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.
- (11) If the Department determines that ESA funds have been misused, the Department shall notify the Account Holder, and the Account Holder shall repay the misused amount in the manner and within the timeframe set by the Department. Additionally, the Department is authorized to freeze or withdraw funding directly from the student's ESA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with state laws, rules, procedures or the Agreement, the participating student's return to the LEA, or the funds having been deposited into the account in error. An Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601 et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.06 TERM OF THE ESA.

- (1) For purposes of continuity of educational attainment, a participating student shall remain eligible to participate in the Program until the participating student meets one (1) of the following, whichever occurs first:
 - (a) Enrolls in a public school;
 - (b) Enrolls in a Category IV or V private school or a private school not approved under the rules of the State Board;
 - (c) Ceases to be a resident of Shelby or Davidson Counties;

- (d) Is suspended or terminated from participating in the Program in accordance with T.C.A. § 49-6-2808;
 - (e) Graduates or withdraws from high school with no funds remaining in an open ESA account;
 - (f) Reaches twenty-two (22) years of age with no funds remaining in an open ESA account. However, if the participating student reaches the age of twenty-two (22) with funds remaining in an open ESA account after the commencement of the school year, the participating student may remain in the Program until the conclusion of that school year; or
 - (g) No longer meets or fails to verify that the participating student's household income meets the requirements of T.C.A. § 49-6-2602(3)(D) and this rule according to the schedule and income-verification process developed by the Department.
- (2) A participating student may voluntarily withdraw from the Program at any time. The Account Holder shall complete the procedures for withdrawal from the Program as set by the Department.
 - (3) If a participating student becomes ineligible to participate in the Program for any reason or withdraws from the Program, the participating student's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
 - (4) The Account Holder may transfer the participating student from the participating school to another participating school in accordance with procedures set by the Department.
 - (5) In order for a participating student to continue in the Program, the Account Holder shall annually apply to renew the ESA by following the procedures developed by the Department and posted on the Department's website.
 - (6) If a participating student graduates high school or reaches twenty-two (22) years of age while enrolled in high school pursuant to T.C.A. § 49-6-2603(d)(1), and has funds remaining in the participating student's open ESA, the participating student shall become a Legacy Student.
 - (a) A Legacy Student may use ESA funds to attend or take courses from an eligible postsecondary institution and those expenditures are determined to be qualifying expenses.
 - (b) A Legacy Student's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358, after the first of the following events:
 - 1. Upon a Legacy Student's graduation from an eligible postsecondary institution;
 - 2. After four (4) consecutive years elapse immediately after a Legacy Student enrolls in an eligible postsecondary institution; or
 - 3. After a Legacy Student is not enrolled in an eligible postsecondary institution for twelve (12) consecutive months.
 - (7) Account Holders are not required to spend the entire sum each year, however, a portion of the funds must be used each year on approved expenses for the benefit of the student enrolled in the Program.

- (8) The Department shall provide parents of participating students or participating students who have reached the age of eighteen (18) with a written explanation of the allowable uses of ESA funds and the responsibilities of parents of participating students and participating students who have reached the age of eighteen (18) regarding ESA funds. The Department shall also provide parents of participating students or participating students who have reached the age of eighteen (18) with a written explanation of the Department's duties regarding ESA funds, eligible students, participating students, and legacy students.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.10 RETURN TO LOCAL EDUCATION AGENCY.

- (1) A participating student who is otherwise eligible to return to the student's LEA may return to the LEA at any time after enrolling in the Program. Upon enrollment in an LEA, the student's participation in the Program shall be terminated.
- (2) If a participating student enrolls in an LEA, the parent of a participating student or the participating student who has reached the age of eighteen (18) shall notify the Department in accordance with the procedures and timelines set by the Department.
- (3) Upon termination of a student's participation in the Program, the Department shall close the participating student's ESA and any remaining funds shall be returned to the state treasurer to be placed in the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (4) Upon enrollment in the LEA, if the parent or student who has reached the age of eighteen (18) requests an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-17
CONTINUOUS LEARNING PLANS**

0520-01-17-.02 PURPOSE OF THE CLP

- (1) An LEA or Public Charter School that continues instruction during a disruption to school operations in compliance with the requirements of this chapter and the LEA's or Public Charter School's approved CLP, shall be credited with an instructional day for all days in which the Public Charter School, LEA, or individual schools within the LEA, operated under the approved CLP.
- (2) An LEA or Public Charter School that continues instruction during a disruption to school operations in compliance with the requirements of this chapter and the LEA's or Public Charter School's approved CLP shall continue to receive funding through the state's K-12 education funding formula as outlined in T.C.A. §§ 49-3-101, *et. seq.* for any school days that the approved CLP was implemented.

Authority: T.C.A. §§ 49-1-104(h), 49-1-102, 49-1-302, 49-6-3002, 49-6-3004, 49-13-111. **Administrative History:** New rules filed April 22, 2021; effective July 21, 2021.

**RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-20
RESIDENTIAL MENTAL HEALTH FACILITIES**

0520-01-20-.02 DEFINITIONS.

- (1) "Active IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR §§ 300.320 through 300.324 and was being implemented in the LEA at the time the student was admitted to the out-of-state Residential Mental Health Facility.
- (2) "Applicant" means an out-of-state Residential Mental Health Facility that seeks to receive LEA per pupil state and local funds on a prorated daily basis for the length of a Tennessee student's stay.
- (3) "Capacity" means a bed available in a Tennessee Residential Mental Health Facility to deliver the appropriate mental health treatment to the Student at the time the Student is admitted to the out-of-state Facility.
- (4) "Category 1-Special Purpose School" means a non-public school approved individually by the Tennessee Department of Education that addresses a student's education while receiving short term medical or transient care.
- (5) "Department" means Tennessee Department of Education.
- (6) "Duplicated Count" means a student is counted towards the annual total of students served by the facility each time the student is admitted to the facility.
- (7) "Facility" or "Residential Mental Health Facility" means a facility which provides twenty-four (24) hour residential treatment and habilitation. The focus of the program may be on short-term stabilization or longer-term treatment and habilitation. The program must provide or arrange for an education component in compliance with this Chapter.
- (8) "FAPE" means a free appropriate public education in compliance with the Individuals with Disabilities Act ("IDEA"), 20 U.S.C. § 1400 et seq.
- (9) "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.
- (10) "IEP Team" 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.
- (11) "LEA" means a Tennessee Local Education Agency and has the same meaning given in T.C.A. § 49-1-103(2).
- (12) "Physician Attestation Form" means a form signed and dated by the Qualified Physician that contains the patient's name and the dates of admission.
- (13) "Qualified Physician" means a person who is licensed under T.C.A. Title 63, Chapter 6 or T.C.A. Title 63, Chapter 9 or similar statute in another jurisdiction and who is the professional treating the student for the medical condition requiring admittance to a Residential Mental Health Facility.
- (14) "School Year" means July 1 to June 30 for the purposes of determining enrollment.

- (15) "Standard Initial Application Form" means a document whereby an out-of-state Facility may seek to receive approval by the Department to receive LEA per pupil state and local funds on a prorated daily basis for the length of a Tennessee student's stay.
- (16) "Standard Application Renewal Form" means a document whereby an approved out-of-state Facility may seek to receive continued approval by the Department to receive LEA per pupil state and local funds on a prorated daily basis for the length of a Tennessee student's stay.
- (17) "Student" means a child enrolled in a Tennessee public school, grades Kindergarten through grade twelve (K-12), and who is admitted to the Facility pursuant to this Chapter.

Authority: T.C.A. § 49-3-370. **Administrative History:** New rules filed February 23, 2022; effective May 24, 2022.

0520-01-20-.05 COMPLIANCE AND MONITORING.

- (1) The LEA and out-of-state Facility in which the Student enrolls shall establish a placement agreement outlining the responsibilities of the LEA and the responsibilities of the out-of-state Facility regarding the student's FAPE and special education and related services pursuant to the Student's IEP. At minimum, the placement agreement shall certify the Facility intends to meet the following requirements when providing services to an admitted Student:
 - (a) Provides a minimum of sixteen and one-half (16 ½) hours per week of educational instructional services to admitted Students, unless the Student's IEP provides otherwise;
 - (b) Implements the Student's IEP as written at the time of the medical placement decision, and as subsequently amended by the Student's IEP team during the Student's stay at the Facility; and
 - (c) Has a sufficient number of teachers with an endorsement in special education or a certification that the Department determines to be equivalent to an endorsement in special education in Tennessee to comply with the Student's IEP as written at the time of the medical placement decision, or as revised by the IEP team as appropriate per 34 CFR §§ 300.324(b). The out-of-state Facility shall have the capacity to implement all special education and related services by the endorsed service provider as stated and required in the Student's IEP and to offer FAPE.
- (2) The out-of-state Facility shall consult with the Student's LEA to determine how the Facility will best provide core instruction in, at a minimum, English Language Arts and Mathematics for the Student, as well as arranging for required Tennessee state assessments when applicable.
 - (a) The out-of-state Facility staff shall participate in the Student's IEP team meetings to inform the instructional programming needs of the Student.
- (3) The out-of-state Facility shall report the attendance of each admitted Student to the public school in the LEA in which the Student is enrolled.
- (4) If an LEA allocates funds to an out-of-state Facility pursuant to this Chapter, then the LEA shall report any non-compliance of the Facility to the Department, including, but not limited to:
 - (a) The Facility failed to implement the Student's IEP including all applicable state and federal laws related to special education services; or
 - (b) The Facility failed to report daily attendance to the public school in the LEA in which the Student is enrolled.

- (5) Additionally, if the Department determines the out-of-state Facility has failed to comply with the requirements of T.C.A. § 49-3-370(b), this Chapter, or all other applicable state and federal laws then the LEA shall cease the allocation of funding as provided in this Chapter.
 - (a) The Department shall notify the out-of-state Facility of noncompliance within five (5) business days of discovery of noncompliance. The notification shall state reasons for noncompliance and that the Facility is no longer approved and not eligible to receive LEA per pupil state and local funds until the noncompliance is corrected.
 - (b) A Facility that has been notified by the Department of noncompliance shall lose its approval from the Department until the noncompliance is corrected.
- (6) If the out-of-state Facility loses its approval from the Department due to noncompliance, the Facility may file an appeal to the Department. Appeals shall be filed pursuant to the following two (2) step appeal process:
 - (a) Step one (1): The appeal shall be on the form provided by the Department and shall be submitted to the Department within ten (10) business days of receipt of the notice of loss of approval. Notice shall be provided electronically and is deemed received at the time the Department sends the email notification. The appeal shall be reviewed by the Commissioner of Education, or the Commissioner's designee, and a decision shall be issued within forty-five (45) calendar days of receipt of the completed appeal form by the Department. The Applicant shall be notified of the Commissioner's decision in the step one (1) appeal electronically. Such notice shall be deemed received at the time the Department sends the email to the Applicant.
 - (b) Step two (2): An appeal of the Commissioner's or the Commissioner's designee's decision in step one (1) shall be filed with the Department by the Applicant within thirty (30) calendar days of notice of the step one (1) decision. Step two (2) appeals shall be heard before an administrative law judge via an administrative contested case hearing governed by the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5) .
 - (c) A party who is aggrieved by a final decision in a Step two (2) contested case hearing is entitled to judicial review pursuant to T.C.A. § 4-5-322.

Authority: T.C.A. § 49-3-370. **Administrative History:** New rules filed February 23, 2022; effective May 24, 2022.

0520-01-20-.06 CALCULATION OF FUNDS.

- (1) The LEA shall allocate funding to the out-of-state Facility in an amount equal to the per pupil state and local funds received by the LEA on a prorated daily basis for the Student's length of stay, provided that the Facility and Student meets the requirements of this Chapter.
- (2) The daily rates shall be calculated by the Department each School Year.
- (3) The Department shall calculate the daily rate of funds to be transferred from the LEA to the Facility as follows:
 - (a) Per pupil state and local funds generated through the state's K-12 education funding formula and additional local funds received by the LEA in the prior fiscal year divided by the average daily membership (ADM) from the prior fiscal year to equal the per pupil state and local funding;

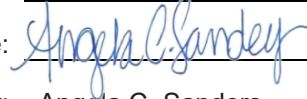
- (b) The per pupil state and local funding is then divided by the one hundred eighty (180) days to equal the total daily rate.
- (4) An approved Facility shall receive funds only for the days during which the Student is served during the regular one hundred eighty (180)-day school year.
- (5) The funding specified in this chapter shall be in addition to funds allocated pursuant to federal law and regulation, including, but not limited to, Title I and Elementary and Secondary Education Act (ESEA) funds.
- (6) The calculation of funds as specified in this rule also applies to funding for Students admitted to a Tennessee state-licensed Residential Mental Health Facility pursuant to T.C.A. § 49-3-370(a).

Authority: T.C.A. § 49-3-370. **Administrative History:** New rules filed February 23, 2022; effective May 24, 2022

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

Date: 12/08/22

Signature: _____



Name of Officer: Angela C. Sanders

Title of Officer: General Counsel

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Tre Hargett
Secretary of State

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