



BILL LEE
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
NINTH FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

LIZZETTE REYNOLDS
COMMISSIONER

Via Electronic Mail

August 23, 2023

Dr. James Sullivan, Director of Schools
Rutherford County Schools
2240 Southpark Boulevard
Murfreesboro, TN 37128

Re: Waiver for English as a Second Language (ESL) Programs

Dear Director Sullivan:

I am in receipt of your August 14, 2023 waiver request of State Board of Education Rule 0520-01-19 as it relates to providing English as a Second Language (ESL) students a minimum of one (1) hour of direct ESL services per day.

You have requested a waiver of this rule due to the limited time in the school day for students who are dually served through special education and ESL programs to meet the required amount of instructional time for both programs. You have requested that Rutherford County Schools be allowed to tailor services provided to dually served students to provide less than one (1) hour of direct ESL instruction per school day in order to meet the greatest needs of these individual students.

Tenn. Code Ann. § 49-1-201(d) grants the commissioner the authority to “waive any state board rule or statute that inhibits or hinders the LEA’s ability to meet its goals or comply with its mission.” On the condition that Rutherford County Schools continues to monitor these dually served students as required by the State Board of Education Rule and increase ESL instructional time as needed, your request is hereby granted for the 2023-24 school year.

Please do not hesitate to contact me if you have further questions.

Sincerely,

Lizzette Reynolds
Commissioner



Local Education Agency Waiver Request

Pursuant to Tennessee Code Annotated § 49-1-201(d), upon application by the local education agency (LEA) for one or more of its schools, the commissioner of education may waive any state board rule or statute that inhibits or hinders the LEA's ability to meet its goals or comply with its mission. Please submit completed forms to Commissioner.Education@tn.gov. Following review by the commissioner, the LEA will be notified in writing if the waiver request is approved or denied. Unless otherwise stated, all waivers granted by the commissioner shall be granted for one-year terms.

Waivers may **not** be granted by the commissioner for regulatory or statutory requirements related to:

- (A) Federal and state civil rights;
- (B) Federal, state and local health and safety;
- (C) Federal and state public records;
- (D) Immunizations;
- (E) Possession of weapons on school grounds;
- (F) Background checks and fingerprinting of personnel;
- (G) Federal and state special education services;
- (H) Student due process;
- (I) Parental rights;
- (J) Federal and state student assessment and accountability;
- (K) Open meetings;
- (L) Educators' due process rights;
- (M) Reductions in teachers' salaries;
- (N) Employee rights, salaries and benefits; and
- (O) Licensure of employees.

Local Education Agency:

Rutherford County Schools

School Information (if applicable):

School Name:

n/a

Street:

City:

Zip Code:

Please list the statute(s) and/or state board rule(s) for which waiver is being requested:

attached

Explanation of how the statute(s) and/or state board rule(s) inhibits or hinders the local education agency's ability to meet its goals or comply with its mission:

attached

Expected duration of the condition necessitating this waiver request:

attached

Director of Schools (Signature)



Print Name James Sullivan

Date 8-14-23

Please list the statute(s) and/or state board rule(s) for which waiver is being requested:

RULES OF THE STATE BOARD OF EDUCATION CHAPTER 0520-01-19 ENGLISH AS A SECOND LANGUAGE PROGRAMS 0520-01-19-.03 IDENTIFICATION, SCREENING, AND SERVICE DELIVERY

Explanation of how the statute(s) and/or state board rule(s) inhibits or hinders the local education agency's ability to meet its goals or comply with its mission:

Due to the limited time in the school day for students dually served through Special Education and ESL to meet the required minutes of both programs, a waiver is being requested for Rutherford County Schools to be allowed to tailor the services provided to those students, including providing less than one (1) hour of direct ESL Service per day.

With a LEA of 50 schools, there are currently 491 students that are served through both special education and ESL in Rutherford County. The request is for the schools to have the ability to tailor ESL service times to meet the greatest needs of the individual students.

While there are hundreds of dual served students that might qualify for tailored services, here are three examples of students affected by required special education and ESL service time:

- A third-grade special education and ESL student has the following required minutes stated in his IEP:
 - 60 minutes SPED reading intervention
 - 30 minutes inclusion reading
 - 60 minutes SPED math intervention
 - 30 minutes inclusion math
 - Occupation therapy 3 times per month for 30 minutes
 - Speech therapy 10 times per month for 10 minutes

As an ESL student with a composite score of 1.9, he is also required to receive 60 minutes of ESL instruction. The request is for his ESL time to be tailored to allow the required special education service minutes as stated in his IEP take precedence as that is the greatest need for the student. He will be quarterly monitored through ESL.

- A 7th grade special education and ESL student is required to have one period of math intervention and one period of reading intervention. The math intervention is completed during his exploratory period, and the reading intervention is completed during the school-wide intervention time. The request is for his ESL time to be tailored to allow the ESL teacher to pull the student from his ELA class for ESL services when it does not interfere with tier one instruction thus not meeting the daily class period of service requirement.
- A 10th grade student who is intellectually disabled and ESL spends his day in a special education setting with additional vision and hearing services in the special education classroom. He cannot engage in long periods of instruction due to his disabilities. Some of his IEP goals include:

- measure calendar time by days, weeks, months, and years with 80% accuracy on 4 or more consecutive data collection entries
- answer “what”, “who” and “where” questions in American Sign Language with 80% accuracy on 4/5 trials as evidenced by a data collection tool
- correctly rote count to 30 with 1 or fewer prompts in 4 consecutive data collection entries.

The request is for his ESL time to be tailored to allow for an appropriate number of ESL instructional minutes due to his severe disabilities.

If a dual served student receives tailored services, they must be a student with an IEP and qualify for ESL. The parent, special education case manager, ESL teacher, and LEA representative must make a collaborative decision about the number of service minutes that best meets the needs of the individual student. If the dual served students ESL minutes are allowed to be tailored, then the minutes of ESL service may be under the required 60 minutes for elementary students or the 45-minute class period for middle or high school students.

Dual served students will continue to be monitored quarterly as required by ESL rule with the ability to increase ESL service time if the quarterly monitoring shows a need.

The goal is to maximize instructional time for students with unique learning needs such as students who qualify for both special education and ESL. With the ability to tailor ESL service times for these specific students, the LEA can focus on meeting their individual needs.

Expected duration of the condition necessitating this waiver request:

The remainder of the 2023-2024 school year