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Sequence Number: 01-18-24
 Rule ID(s): 10008
 File Date: 1/24/2024
 Effective Date: 4/23/2024

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: State Board of Education
Division: N/A
Contact Person: Angie Sanders
Address: 500 James Robertson Parkway, 8th Floor
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Revision Type (check all that apply):

Amendment Content based on previous emergency rule filed on _____
 New Content is identical to the emergency rule
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0520-01-11	Individualized Education Accounts
Rule Number	Rule Title
0520-01-11-.02	Definitions
0520-01-11-.04	Term of the IEA
0520-01-11-.05	Agreement and Funds Transfer
0520-01-11-.09	Return to Local Education Agency

AMENDMENT

AMEND the rules of the State Board of Education Chapter 0520-01-11 Individualized Education Accounts, Sections .02, .04, .05 and .09, so that, as amended, the revised Rule Sections .02, .04, .05 and .09 shall read:

RULES OF STATE BOARD OF EDUCATION

CHAPTER 0520-01-11 INDIVIDUALIZED EDUCATION ACCOUNTS

0520-01-11-.02 DEFINITIONS.

- (1) "Account Holder" means a parent as defined in subsection (18) of this section or a participating student who has attained the age of majority who signs the IEA contract, is the Account Holder for the IEA funds, and is responsible for complying with all of the requirements of the IEA Program.
- (2) "Act" means the Individualized Education Act.
- (3) "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 that is being implemented on the date the application window for the IEA program closes.
- (4) "Agreement" means a document signed by an applicant and a designee of the Department, which qualifies the parent or student who has attained the age of majority to participate in the Program.
- (5) "Applicant" means the parent or legal guardian of a student, or student who has attained the age of majority, who has completed the Standard Application Form.
- (6) "Computer Hardware or Other Technological Devices" means computer hardware or technological devices approved by the Department or a licensed treating physician that is used for the student's educational needs. Computer hardware and technological devices shall meet one (1) of the following criteria:
 - (a) Is a required device for communication or for physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA, or
 - (b) Allows a student to access instruction or instructional content.
- (7) "Criminal Background Check" at a minimum shall include, but not be limited to, a check of the following: Tennessee's Sex Offender Registry and the Abuse Registry of the Tennessee Department of Health. All providers as defined in subsection (23) of this section and employers of providers shall maintain documentation that any persons providing services to participating students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation (FBI) for processing pursuant to the National Child Protection Act. All participating schools shall maintain documentation that all persons working on school grounds when students are present and/or providing services to students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act. Individual contractors not employed by an organization shall fulfill the background check requirements by completing a fingerprint- based criminal history records check conducted by the FBI.

- (8) "Department" means the Tennessee Department of Education.
- (9) "Educational Therapies" means:
- (a) Individualized services designed to develop or improve academic performance through instructional and therapeutic techniques, and provided by licensed therapists who meet the requirements set by the Department and the State Board of Education as further defined in the Department's IEA handbook or by therapist assistants who meet the requirements set by the Department and the State Board of Education as further defined in the Department's IEA handbook and who provide the services under the direct supervision of a licensed therapist; or
 - (b) Tactile manipulatives recommended by the licensed therapist for the participating student pursuant to guidelines set forth by the Department.
- (10) "Eligible Postsecondary Institution" means a Tennessee public community college, college of applied technology, or university of the University of Tennessee system or a locally governed state university within the Tennessee Board of Regents systems, or an accredited private postsecondary institution accredited by one (1) of the following: any accreditation division of Cognia (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).
- (11) "Eligible Student" means:
- (a) A resident of this state in grades kindergarten through twelve (K-12) with an Active Individualized Education Program (IEP) in accordance with 34 C.F.R §§ 300 et seq., T.C.A. § 49-10-102, and regulations of the State Board of Education with one (1) of the following qualifying disabilities as defined by the rules of the State Board of Education 0520-01-09-.02 as the primary or secondary disability in effect at the time the Department receives the request for participation in the Program. For purposes of this Chapter, the Department receives the request for participation in the Program on the date the application window for the IEA program closes. Qualifying disabilities for eligible students include the following:
 - 1. Autism;
 - 2. Deaf-blindness;
 - 3. Developmental delay;
 - 4. Hearing impairments;
 - 5. Intellectual disability;
 - 6. Multiple disabilities;
 - 7. Orthopedic impairments;
 - 8. Specific learning disability;
 - 9. Traumatic brain injury; or
 - 10. Visual impairments; and
 - (b) Meets at least one (1) of the following requirements:

1. Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year in which the student receives an Individualized Education Account (IEA). For the purposes of these rules, one (1) full school year means that the student was counted in the enrollment figures for the LEA(s) for the entire school year as reported in the state's student information system;
 2. Has not previously attended a K-12 school in Tennessee, but is currently eligible to enroll in a kindergarten program in a public school in this state. Students meeting this eligibility requirement shall inform the LEA in which they reside of the student's intent to participate in the program prior to July 1 of the year in which they are enrolled in the IEA Program;
 3. Has not previously attended a school in Tennessee for the duration of one (1) full school year immediately preceding the school year in which the student receives an IEA, and moved to Tennessee less than one (1) year prior to the date of enrollment in the IEA Program; or
 4. Received an IEA in the previous school year.
- (12) "Fee-for-Service Transportation Provider" means a commercial transportation provider including a taxi or bus service. It does not include private transportation by a parent or participating student in accordance with the conflict of interest provision in these rules.
 - (13) "Financial Institution" or "Private Financial Management Firm" means an institution selected by the Department to administer the individualized education accounts.
 - (14) "IEA" means a Tennessee Individualized Education Account.
 - (15) "Inclusive Educational Setting" means that the Participating School provides a setting that meets the following two (2) criteria:
 - (a) Students with disabilities are educated with students who do not have disabilities; and
 - (b) No more than fifty percent (50%) of the students in an individual classroom or setting are students with disabilities.
 - (16) "ISP" means an Individualized Service Plan and is a written statement that describes the special education and related services to be provided by an LEA to a student who is eligible under Individuals with Disabilities Education Act at 20 U.S.C. §§ 1400, et seq., but has been enrolled in a non-public school or independent home school by the student's Parent.
 - (17) "Local Education Agency (LEA)," "School System," "Public School System," "Local School System," "School District," or "Local School District" means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.
 - (18) "Non-public Online Learning Program or Course" means online programs or courses that meet the requirements set by the Department.
 - (19) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child.
 - (20) "Participating School" means a non-public school that meets the requirements established in T.C.A. §§ 49-10-1401, et seq. and seeks to enroll eligible students.
 - (21) "Participating Student" means an eligible student whose parent is participating in the IEA Program or an eligible student who has attained the age of majority and is participating in the IEA Program.

- (22) "Physician" means a person licensed under T.C.A. Title 63, Chapter 3, Chapter 4, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 9, Chapter 10, Chapter 11, Chapter 14, Chapter 16, Chapter 17, Chapter 19, Chapter 22, Chapter 23, Chapter 24, or Chapter 25.
- (23) "Program" means the Individualized Education Account (IEA) Program created in T.C.A. §§ 49-10-1401, et seq.
- (24) "Provider" means an individual or business that meets the requirements set by the State Board of Education and the Tennessee Department of Education.
- (25) "Standard Application Form" means a document whereby an Applicant may seek to establish an Individualized Education Account (IEA).
- (26) "Tutoring Services" means services provided by a tutor who meets the requirements set by the Department.

Authority: T.C.A. §§ 49-1-302 and 49-10-1401, et seq. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019. Amendments filed January 22, 2020; to have become effective April 21, 2020. However, the State Board of Education filed a 34-day stay of the effective date of the rules; new effective date May 25, 2020. Amendments filed December 27, 2021; effective March 27, 2022.

0520-01-11-.04 TERM OF THE IEA.

- (1) For purposes of continuity of educational attainment, a student who enrolls in the Program shall remain eligible until the Participating Student meets one (1) of the following, whichever occurs first:
 - (a) Enrolls full-time in a public school;
 - (b) Graduates from high school. The student may continue in the Program until such time as he or she receives a high school diploma, or receives a high school equivalency credential approved by the State Board of Education. Certificates of attendance do not constitute graduation from high school for the purpose of this Program; or
 - (c) Reaches twenty-two (22) years of age. The student may complete the school year in which he or she reaches the age of twenty-two (22), provided a student shall not be enrolled in the Program past August 15 of the next school year after they have reached twenty-two (22) years of age.
- (2) The Account Holder may remove the Participating Student from the non-public school and place the student in a public school. The Account Holder shall complete the procedures for withdrawal from the IEA Program set by the Department.
- (3) The Account Holder may move the student from one (1) non-public school to another non-public school in accordance with procedures set by the Department.
- (4) In order for students to continue in the Program, the Account Holder shall annually renew the IEA by following the procedures posted on the Department's website.
- (5) After graduating from high school or reaching twenty-two (22) years of age, unused funds in an IEA from prior years can be used in subsequent years, up to four (4) consecutive years after a student has exited the Program, provided the student attends or takes courses from an Eligible Postsecondary Institution and the expenditures are determined to be qualifying expenses.

- (6) Account Holders are not required to spend the entire sum each year, however, a portion of the funds shall be used each year on approved expenses for the benefit of the student enrolled in the IEA Program and overall spending shall equal fifty (50) percent of the annual award by the deadline for submission of the last expense report of the contract year.
- (a) If overall spending does not equal fifty (50) percent by the deadline for submission of the last expense report and if the IEA is renewed for the following year, the Department shall subtract the difference from the payments in the next contract year. If a student withdraws from the IEA Program or if the IEA is not renewed, the IEA shall be closed, and any remaining funds shall be returned to the state treasurer pursuant to T.C.A. § 49-10-1403.
- (7) All benefits and obligations established by participation in the Program, including the right to continue participation in the IEA Program, vest in the Participating Student when the student attains eighteen (18) years of age, unless the student's educational and financial decision-making rights have been transferred to his or her parent or guardian through a power of attorney, created in accordance with T.C.A. §§ 34-6-101 et seq., or a conservatorship, created in accordance with §§ 34-3-101 et seq.

Authority: T.C.A. §§ 34-3-101, et seq.; 34-6-101, et seq.; 49-1-302; and 49-10-1401, et seq. Administrative History: Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019. Amendments filed January 22, 2020; to have become effective April 21, 2020. However, the State Board of Education filed a 34-day stay of the effective date of the rules; new effective date May 25, 2020. Amendments filed December 27, 2021; effective March 27, 2022. Amendments filed January 26, 2023; effective April 26, 2023.

0520-01-11-.05 AGREEMENT AND FUNDS TRANSFER.

- (1) Upon notification by the Department that an IEA may be established, the applicant shall sign an Agreement outlining the Account Holder's contractual obligations upon enrolling in the Program, including the acceptable uses of IEA funds and expense reporting requirements. In the Agreement, the Account Holder shall:
- (a) Agree to provide an education for the Participating Student in at least the subjects of English language arts, mathematics, social studies, and science;
- (b) Agree to not enroll the Participating Student in a public school during the time the student is enrolled in the IEA Program;
- (c) Agree to release the LEA in which the student resides and the school for which the student is zoned to attend from all obligations to educate the student during the time the student is enrolled in the IEA Program;
- (d) 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. Participating Students will no longer be entitled to a free appropriate public education (FAPE) provided through an IEP but instead will be entitled to equitable services through an ISP. Account holders acknowledge that students with an ISP are only entitled to receive some special education and related services, not all of the services that are required for a student with an IEP to receive FAPE. Participating Students who previously held IEPs should engage with the LEA to develop an ISP through the consultation process, as defined in 34 C.F.R. §§ 300.134 and 300.137.
- (2) The Agreement shall:

- (a) Be submitted to the Department, along with all required information, by the date set by the Department before the first IEA payment is disbursed; and
 - (b) Be signed by the Account Holder and a designee of the Department prior to becoming effective.
- (3) After the Agreement is fully executed by the Account Holder and the Department, the Department shall remit the first payment to the IEA. IEA funds shall be remitted to the IEA thereafter until termination of the Agreement.
 - (4) The Department shall establish procedures to effectuate the funds transfer process and dates on which each IEA payment shall be disbursed.

Authority: T.C.A. §§ 49-1-302 and 49-10-1401, et seq. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019. Amendments filed January 22, 2020; to have become effective April 21, 2020. However, the State Board of Education filed a 34-day stay of the effective date of the rules; new effective date May 25, 2020. Amendments filed December 27, 2021; effective March 27, 2022.

0520-01-11-.09 RETURN TO LOCAL EDUCATION AGENCY.

- (1) A Participating Student may return to the LEA upon termination of the student's participation in the Program.
- (2) If the Participating Student transfers from a nonpublic school and enrolls in the LEA, the Account Holder shall notify the Department and the LEA in which the student resides, by following the procedures and timeline set by the Department.
- (3) Upon termination of a student's participation in the Program, the Department shall close the Participating Student's IEA.
- (4) Upon a student's withdrawal from the nonpublic school, Participating Schools shall send all educational records of the Participating Student to the LEA or other nonpublic school identified by the Parent.
- (5) The LEA shall enroll the student and provide instruction in the general education curriculum.
- (6) Upon enrollment in the LEA, students previously eligible for an IEP as set forth in State Board Chapter 0520-01-09 remain eligible for special education and related services unless the LEA conducts a reevaluation and determines that the student is no longer eligible for special education and related services.

Authority: T.C.A. §§ 49-1-302 and 49-10-1403. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019. Amendments filed January 22, 2020; to have become effective April 21, 2020. However, the State Board of Education filed a 34-day stay of the effective date of the rules; new effective date May 25, 2020. Amendments filed December 27, 2021; effective March 27, 2022.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Jordan Mollenhour	X				
Bob Eby	X				
Ryan Holt	X				
Warren Wells	X				
Lillian Hartgrove	X				
Nate Morrow	X				
Darrell Cobbins	X				
Larry Jensen	X				
Krissi McInturff	X				
Laurel Cox				X	
Victoria Harpool, designee for Steven Gentile, Interim Executive Director, Tennessee Higher Education Commission Non-Voting Ex-Officio					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education on 11/03/2023, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/11/2023

Rulemaking Hearing(s) Conducted on: (add more dates). 10/02/2023

Date: 1/22/2024

Signature: 


Name of Officer: Angie Sanders

Title of Officer: General Counsel

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-01-11

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


 Jonathan Skrmetti
 Attorney General and Reporter
January 23, 2024
 Date

Department of State Use Only

Filed with the Department of State on: 1/24/2024

Effective on: 4/23/2024



Tre Hargett
Secretary of State

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Jan 24 2024, 4:28 pm

Secretary of State
Division of Publications

Public Hearing Comments

The Tennessee State Board of Education held a public rulemaking hearing on Rules 0520-01-11-.02, -.04,- .05 and -.09 on October 2, 2023, at 500 James Robertson Parkway, Nashville, TN and via Webex. No public comments were submitted at the hearing regarding this rule.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule does not affect small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

This rule has no fiscal impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The Individualized Education Account (IEA) Program is a school choice program for eligible students with disabilities, created by the Individualized Education Act (T.C.A. §§ 49-10-1401 through 1406). The State Board has promulgated rules at Chapter 0520-01-11 to effectuate the Individualized Education Act and to guide administration of the IEA Program.

The United States Department of Education Office of Special Education and Rehabilitative Services (OSEP) revised guidance related to "state-funded school voucher and scholarship programs" in February 2022. Specifically, the guidance clarifies that a child with a disability who received a state's school choice voucher or scholarship retains the identification upon re-enrollment in a public school without undergoing any additional psychoeducational testing. Revisions to these rules are proposed to align with this guidance.

To further align with OSEP guidance, revisions were made to clarify when a student has a right to a free appropriate public education (FAPE), waiving of accommodations under an individualized education program (IEP) and development of an individual service plan (ISP) to meet a student's special education needs.

Revisions were also made to remove a reference in the rule to the GED and HiSET in Section -.04 to align with Chapter 114 of the Public Acts of 2023, and to include clarifying language noting the IEA program is for grades kindergarten through twelve (K-12).

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Individualized Education Account (IEA) Program is a school choice program for eligible students with disabilities, created by the Individualized Education Act (codified at T.C.A. §§ 49-10-1401 through 1406). The State Board was authorized by Public Chapter 431 of 2015 (establishing the Individualized Education Act) to promulgate rules to effectuate the Act.

Public Chapter 114 of 2023 removed specific references to the GED or HiSET assessments throughout Tennessee Code Annotated to refer instead to a high school equivalency credential approved by the State Board of Education.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule has a direct effect on the State Board and Department of Education and both urge adoption. These rules also have a direct effect on students enrolled in the IEA program. The State Board did not hear from any participating or eligible students urging adoption or rejection of the rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two

percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Angie Sanders (State Board of Education)
Angela.C.Sanders@tn.gov

Nathan James (State Board of Education)
Nathan.James@tn.gov

Robin Yeh (Department of Education)
Robin.Yeh@tn.gov

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Angie Sanders (State Board of Education)
Angela.C.Sanders@tn.gov

Nathan James (State Board of Education)
Nathan.James@tn.gov

Robin Yeh (Department of Education)
Robin.Yeh@tn.gov

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

(Rule 0520-01-11-.03, continued)

**RULES
OF
STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-11
INDIVIDUALIZED EDUCATION ACCOUNTS**

0520-01-11-.02 DEFINITIONS.

- (1) "Account Holder" means a parent as defined in subsection (18) of this section or a participating student who has attained the age of majority who signs the IEA contract, is the Account Holder for the IEA funds, and is responsible for complying with all of the requirements of the IEA Program.
- (2) "Act" means the Individualized Education Act.
- (3) "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 that is being implemented on the date the application window for the IEA program closes.
- (4) "Agreement" means a document signed by an applicant and a designee of the Department, which qualifies the parent or student who has attained the age of majority to participate in the Program.
- (5) "Applicant" means the parent or legal guardian of a student, or student who has attained the age of majority, who has completed the Standard Application Form.
- (6) "Computer Hardware or Other Technological Devices" means computer hardware or technological devices approved by the Department or a licensed treating physician that is used for the student's educational needs. Computer hardware and technological devices shall meet one (1) of the following criteria:
 - (a) Is a required device for communication or for physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA, or
 - (b) Allows a student to access instruction or instructional content.
- (7) "Criminal Background Check" at a minimum shall include, but not be limited to, a check of the following: Tennessee's Sex Offender Registry and the Abuse Registry of the Tennessee Department of Health. All providers as defined in subsection (23) of this section and employers of providers shall maintain documentation that any persons providing services to participating students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation (FBI) for processing pursuant to the National Child Protection Act. All participating schools shall maintain documentation that all persons working on school grounds when students are present and/or providing services to students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act. Individual contractors not employed by an organization shall fulfill the background check requirements by completing a fingerprint-based criminal history records check conducted by the FBI.
- (8) "Department" means the Tennessee Department of Education.
- (9) "Educational Therapies" means:
 - (a) Individualized services designed to develop or improve academic performance through instructional and therapeutic techniques, and provided by licensed therapists who meet the

(Rule 0520-01-11-.03, continued)

requirements set by the Department and the State Board of Education as further defined in the Department's IEA handbook or by therapist assistants who meet the requirements set by the Department and the State Board of Education as further defined in the Department's IEA handbook and who provide the services under the direct supervision of a licensed therapist; or

- (b) Tactile manipulatives recommended by the licensed therapist for the participating student pursuant to guidelines set forth by the Department.

(10) "Eligible Postsecondary Institution" means a Tennessee public community college, college of applied technology, or university of the University of Tennessee system or a locally governed state university within the Tennessee Board of Regents systems, or an accredited private postsecondary institution accredited by one (1) of the following: any accreditation division of Cognia (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).

(11) "Eligible Student" means:

- (a) A resident of this state in grades kindergarten through twelve (K-12) with an Active Individualized Education Program (IEP) in accordance with 34 C.F.R §§ 300 et seq., T.C.A. § 49-10-102, and regulations of the State Board of Education with one (1) of the following qualifying disabilities as defined by the rules of the State Board of Education 0520-01-09-02 as the primary or secondary disability in effect at the time the Department receives the request for participation in the Program. For purposes of this Chapter, the Department receives the request for participation in the Program on the date the application window for the IEA program closes. Qualifying disabilities for eligible students include the following:

1. Autism;
2. Deaf-blindness;
3. Developmental delay;
4. Hearing impairments;
5. Intellectual disability;
6. Multiple disabilities;
7. Orthopedic impairments;
8. Specific learning disability;
9. Traumatic brain injury; or
10. Visual impairments; and

(b) Meets at least one (1) of the following requirements:

1. Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year in which the student receives an Individualized Education Account (IEA). For the purposes of these rules, one (1) full school year means that the student was counted in the enrollment figures for the LEA(s) for the entire school year as reported in the state's student information system;
2. Has not previously attended a K-12 school in Tennessee, but is currently eligible to enroll in a kindergarten program in a public school in this state. Students meeting this

(Rule 0520-01-11-.03, continued)

eligibility requirement shall inform the LEA in which they reside of the student's intent to participate in the program prior to July 1 of the year in which they are enrolled in the IEA Program;

3. Has not previously attended a school in Tennessee for the duration of one (1) full school year immediately preceding the school year in which the student receives an IEA, and moved to Tennessee less than one (1) year prior to the date of enrollment in the IEA Program; or
 4. Received an IEA in the previous school year.
- (12) "Fee-for-Service Transportation Provider" means a commercial transportation provider including a taxi or bus service. It does not include private transportation by a parent or participating student in accordance with the conflict of interest provision in these rules.
- (13) "Financial Institution" or "Private Financial Management Firm" means an institution selected by the Department to administer the individualized education accounts.
- (14) "IEA" means a Tennessee Individualized Education Account.
- (15) "Inclusive Educational Setting" means that the Participating School provides a setting that meets the following two (2) criteria:
- (a) Students with disabilities are educated with students who do not have disabilities; and
 - (b) No more than fifty percent (50%) of the students in an individual classroom or setting are students with disabilities.
- ~~(16)~~ "ISP" means an Individualized Service Plan and is a written statement that describes the special education and related services to be provided by an LEA to a student who is eligible under Individuals with Disabilities Education Act at 20 U.S.C. §§ 1400, et seq., but has been enrolled in a non-public school or independent home school by the student's Parent.
- ~~(16)~~~~(17)~~ "Local Education Agency (LEA)," "School System," "Public School System," "Local School System," "School District," or "Local School District" means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.
- ~~(17)~~~~(18)~~ "Non-public Online Learning Program or Course" means online programs or courses that meet the requirements set by the Department.
- ~~(18)~~~~(19)~~ "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child.
- ~~(19)~~~~(20)~~ "Participating School" means a non-public school that meets the requirements established in T.C.A. §§ 49-10-1401, et seq. and seeks to enroll eligible students.
- ~~(20)~~~~(21)~~ "Participating Student" means an eligible student whose parent is participating in the IEA Program or an eligible student who has attained the age of majority and is participating in the IEA Program.
- ~~(21)~~~~(22)~~ "Physician" means a person licensed under T.C.A. Title 63, Chapter 3, Chapter 4, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 9, Chapter 10, Chapter 11, Chapter 14, Chapter 16, Chapter 17, Chapter 19, Chapter 22, Chapter 23, Chapter 24, or Chapter 25.
- ~~(22)~~~~(23)~~ "Program" means the Individualized Education Account (IEA) Program created in T.C.A. §§ 49-10-1401, et seq.
- ~~(23)~~~~(24)~~ "Provider" means an individual or business that meets the requirements set by the State Board of Education and the Tennessee Department of Education.

(Rule 0520-01-11-.03, continued)

~~(24)~~(25) "Standard Application Form" means a document whereby an Applicant may seek to establish an Individualized Education Account (IEA).

~~(25)~~(26) "Tutoring Services" means services provided by a tutor who meets the requirements set by the Department.

Authority: T.C.A. §§ 49-1-302 and 49-10-1401, et seq. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019. Amendments filed January 22, 2020; to have become effective April 21, 2020. However, the State Board of Education filed a 34-day stay of the effective date of the rules; new effective date May 25, 2020. Amendments filed December 27, 2021; effective March 27, 2022.

0520-01-11-.04 TERM OF THE IEA.

- (1) For purposes of continuity of educational attainment, a student who enrolls in the Program shall remain eligible until the Participating Student meets one (1) of the following, whichever occurs first:
 - (a) Enrolls full-time in a public school;
 - (b) Graduates from high school. The student may continue in the Program until such time as he or she receives a high school diploma, or receives a high school equivalency credential approved by the State Board of Education passing score on all subtests of the GED or HISET. Certificates of attendance do not constitute graduation from high school for the purpose of this Program; or
 - (c) Reaches twenty-two (22) years of age. The student may complete the school year in which he or she reaches the age of twenty-two (22), provided a student shall not be enrolled in the Program past August 15 of the next school year after they have reached twenty-two (22) years of age.
- (2) The Account Holder may remove the Participating Student from the non-public school and place the student in a public school. The Account Holder shall complete the procedures for withdrawal from the IEA Program set by the Department.
- (3) The Account Holder may move the student from one (1) non-public school to another non-public school in accordance with procedures set by the Department.
- (4) In order for students to continue in the Program, the Account Holder shall annually renew the IEA by following the procedures posted on the Department's website.
- (5) After graduating from high school or reaching twenty-two (22) years of age, unused funds in an IEA from prior years can be used in subsequent years, up to four (4) consecutive years after a student has exited the Program, provided the student attends or takes courses from an Eligible Postsecondary Institution and the expenditures are determined to be qualifying expenses.
- (6) Account Holders are not required to spend the entire sum each year, however, a portion of the funds shall be used each year on approved expenses for the benefit of the student

enrolled in the IEA Program and overall spending shall equal fifty (50) percent of the annual award by the deadline for submission of the last expense report of the contract year.

- (a) If overall spending does not equal fifty (50) percent by the deadline for submission of the last expense report and if the IEA is renewed for the following year, the Department shall subtract the difference from the payments in the next contract year. If a student withdraws from the IEA Program or if the IEA is not renewed, the IEA shall be closed, and any remaining funds shall be returned to the state treasurer pursuant to T.C.A. § 49-10-1403.
- (7) All benefits and obligations established by participation in the Program, including the right to continue participation in the IEA Program, vest in the Participating Student when the student attains eighteen (18) years of age, unless the student's educational and financial decision-making rights have been transferred to his or her parent or guardian through a power of attorney, created in accordance with T.C.A. §§ 34-6-101 et seq., or a conservatorship, created in accordance with §§ 34-3-101 et seq.

Authority: T.C.A. §§ 34-3-101, et seq.; 34-6-101, et seq.; 49-1-302; and 49-10-1401, et seq. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019. Amendments filed January 22, 2020; to have become effective April 21, 2020. However, the State Board of Education filed a 34-day stay of the effective date of the rules; new effective date May 25, 2020. Amendments filed December 27, 2021; effective March 27, 2022. Amendments filed January 26, 2023; effective April 26, 2023.

0520-01-11-.05 AGREEMENT AND FUNDS TRANSFER.

- (1) Upon notification by the Department that an IEA may be established, the applicant shall sign an Agreement outlining the Account Holder's contractual obligations upon enrolling in the Program, including the acceptable uses of IEA funds and expense reporting requirements. In the Agreement, the Account Holder shall:
 - (a) Agree to provide an education for the Participating Student in at least the subjects of English language arts, mathematics, social studies, and science;
 - (b) Agree to not enroll the Participating Student in a public school during the time the student is enrolled in the IEA Program;
 - (c) Agree to release the LEA in which the student resides and the school for which the student is zoned to attend from all obligations to educate the student during the time the student is enrolled in the IEA Program;
 - (d) Acknowledge that upon enrolling in the Program, the Participating Student shall have no individual entitlement to a free appropriate public education from their LEA, including special education and related services, so long as the child remains in the Program. 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. Participating Students will no longer be entitled to a free appropriate public education (FAPE) provided through an IEP but instead will be entitled to equitable services through an JSP. Account holders acknowledge that students with an ISP are only entitled to receive some

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special education and related services, not all of the services that are required for a student with an IEP to receive FAPE. Participating Students who previously held IEPs should engage with the LEA to develop an ISP through the consultation process, as defined in 34 C.F.R. §§ 300.134 and 300.137.

- (2) The Agreement shall:
 - (a) Be submitted to the Department, along with all required information, by the date set by the Department before the first IEA payment is disbursed; and
 - (b) Be signed by the Account Holder and a designee of the Department prior to becoming effective.
- (3) After the Agreement is fully executed by the Account Holder and the Department, the Department shall remit the first payment to the IEA. IEA funds shall be remitted to the IEA thereafter until termination of the Agreement.
- (4) The Department shall establish procedures to effectuate the funds transfer process and dates on which each IEA payment shall be disbursed.

Authority: T.C.A. §§ 49-1-302 and 49-10-1401, et seq. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019. Amendments filed January 22, 2020; to have become effective April 21, 2020. However, the State Board of Education filed a 34-day stay of the effective date of the rules; new effective date May 25, 2020. Amendments filed December 27, 2021; effective March 27, 2022.

0520-01-11-.09 RETURN TO LOCAL EDUCATION AGENCY.

- (1) A Participating Student may return to the LEA upon termination of the student's participation in the Program.
- (2) If the Participating Student transfers from a nonpublic school and enrolls in the LEA, the Account Holder shall notify the Department and the LEA in which the student resides, by following the procedures and timeline set by the Department.
- (3) Upon termination of a student's participation in the Program, the Department shall close the Participating Student's IEA.
- (4) Upon a student's withdrawal from the nonpublic school, Participating Schools shall send all educational records of the Participating Student to the LEA or other nonpublic school identified by the parent.
- (5) The LEA shall enroll the student and provide instruction in the general education curriculum.
- ~~(6) If the parent or student who has attained the age of majority requests, in writing, an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301. Upon enrollment in the LEA, students previously eligible for an IEP as set forth in State Board Chapter 0520-01-09~~

remain eligible for special education and related services unless the LEA conducts a reevaluation and determines that the student is no longer eligible for special education and related services.

Authority: T.C.A. §§ 49-1-302 and 49-10-1403. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019. Amendments filed January 22, 2020; to have become effective April 21, 2020. However, the State Board of Education filed a 34-day stay of the effective date of the rules; new effective date May 25, 2020. Amendments filed December 27, 2021; effective March 27, 2022.