

**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:

(Rule 0520-01-11-.02, continued)

- (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 with an Active Individualized Education Program (IEP) in accordance with 34 C.F.R §§ 300 et seq., § 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

(Rule 0520-01-11-.02, continued)

- (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 during the 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) "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) "Nonpublic Online Learning Program or Course" means online programs or courses that meet the requirements set by the Department.
- (18) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child.
- (19) "Participating School" means a nonpublic school that meets the requirements established in T.C.A. §§ 49-10-1401, et seq. and seeks to enroll eligible students.

(Rule 0520-01-11-.02, continued)

- (20) "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) "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) "Program" means the Individualized Education Account (IEA) Program created in T.C.A. §§ 49-10-1401, et seq.
- (23) "Provider" means an individual or business that meets the requirements set by the State Board of Education and the Tennessee Department of Education.
- (24) "Standard Application Form" means a document whereby an Applicant may seek to establish an Individualized Education Account (IEA).
- (25) "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 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 nonpublic 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) nonpublic school to another nonpublic school in accordance with procedures set by the Department.

(Rule 0520-01-11-.04, continued)

- (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 §§ 34-3-101 et seq.

Authority: T.C.A. §§ 49-1-302 and 49-10-1401, et seq.; T.C.A. §§ 34-6-101 et seq. and §§ 34-3-101 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-.06 ACCOUNT HOLDER OBLIGATIONS.

- (1) Account Holders shall agree to use the funds deposited in the IEA for any, or any combination of, the following expenses:
 - (a) Tuition or fees at a Participating School;
 - (b) Textbooks required by a Participating School;
 - (c) Tutoring Services provided by an individual tutor who meets the requirements set by the Department or a tutoring organization 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);

(Rule 0520-01-11-.08, continued)

- (d) Payment for purchase of curriculum, defined as instructional educational materials for an academic course of study for a particular content area, including any supplemental materials required by the curriculum;
 - (e) Fees for transportation paid to a Fee-for-Service Transportation Provider. Transportation fees can only be used for transportation to schools and educational providers (including tutors and therapists);
 - (f) Tuition or fees for a Nonpublic Online Learning Program or Course that meets the requirements set by the Department;
 - (g) Fees for nationally standardized norm-referenced achievement tests, Advanced Placement examinations, or any examinations related to college or university admission;
 - (h) Contributions to a Coverdell education savings account established under 26 U.S.C. § 530 for the benefit of the participating student;
 - (i) Educational Therapies or services, including copays or coinsurance, for Participating Students;
 - (j) Services provided under a contract with a public school, including individual classes and extracurricular programs;
 - (k) Tuition or fees at an Eligible Postsecondary Institution;
 - (l) Textbooks required for courses at an Eligible Postsecondary Institution;
 - (m) Fees for the management of the IEA by private financial management firms;
 - (n) Computer hardware and technological devices approved by the Department or a licensed treating physician, if the computer hardware is used for the student's educational needs and is a required device for communication or physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA or allows a student to access instruction or instructional content; or
 - (o) Contributions to an Achieving a Better Life Experience (ABLE) account in accordance with the ABLE Act, compiled in T.C.A. Title 71, Chapter 4, Part 8, for the benefit of a participating student; provided, that the funds are used only for the student's education expenses subject to the rules established by the ABLE Program and that the student meets the qualifications to participate in the ABLE Program pursuant to the ABLE Act, and § 529A of the Internal Revenue Code of 1986 (26 U.S.C. § 529A), as amended, and all rules, regulations, notices, and interpretations released by the United States Department of Treasury, including the Internal Revenue Service (IRS).
- (2) Account Holders shall obtain pre-approval for Educational Therapies, Computer Hardware and Other Technological Devices, Tutoring Services, and any other expenses identified by the Department. If pre-approval is not obtained, the expense shall be deemed an unapproved expenditure. An Account Holder may request pre-approval by completing and submitting the Department's pre-approval form. For computer hardware and technological devices, a licensed treating Physician may also submit the pre-approval form.
- (3) After the initial payment to the IEA, the Account Holder shall submit expense reports and receipts for all IEA funds expended in accordance with the procedures set by the Department before the next IEA payment is disbursed.

(Rule 0520-01-11-.08, continued)

- (4) In accordance with the procedures of the Department, the Department may immediately and permanently remove any Participating Student from eligibility for an IEA if the Account Holder fails to comply with the terms of the IEA Agreement or applicable laws, rules or procedures, or misspends funds. The Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this Chapter.
- (5) If the Department determines that IEA funds have been misspent, the Department shall notify the Account Holder, and the Account Holder shall repay the misspent amount in the manner and within the timeframe set by the Department. The Department is authorized to freeze, suspend, and/or withdraw funding directly from the student's IEA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with the terms of the state laws, rules, procedures, or the Agreement, if the student returns to the LEA, or if funds were deposited into the account in error. The Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this Chapter.

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 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-.08 PARTICIPATING SCHOOLS.

- (1) Nonpublic schools interested in becoming a Participating School shall submit an application to the Department by the deadline set by the Department.
 - (a) The nonpublic school's application shall:
 1. State the maximum number of students receiving IEAs the school has the capacity to enroll;
 2. Demonstrate financial viability to repay any funds that may be owed to the state by providing the Department with financial information verifying the school has the ability to pay an amount of the IEA funds expected to be paid during the school year. The school may comply with this requirement by filing a surety bond payable to the state from a surety, and in an amount determined by the Department; and
 3. State whether the school provides an Inclusive Educational Setting; however, schools are not required to have an Inclusive Educational Setting to participate in the IEA Program.
 - (b) The Department shall determine the application process for nonpublic schools to participate in the Program. The Department shall create a standard application which shall include, at a minimum, the eligibility requirements set forth in the Act and these rules, and may also include additional eligibility requirements set by the Department.
 - (c) The Department shall review the application and notify the school as to whether the school meets the requirements to enroll students receiving IEAs.
 - (d) If the Department determines that a school is eligible to enroll students receiving IEAs, the Department shall list the school on the Department's website.

(Rule 0520-01-11-.08, continued)

- (2) Participating Schools shall:
- (a) Be academically accountable to the Account Holder for meeting the educational needs of the student by:
 - 1. At a minimum, annually providing to the Account Holder a written explanation of the student's progress; and
 - 2. Cooperating with an Account Holder who chooses for the student to participate in the statewide assessments.
 - (b) Comply with all health and safety laws or codes that apply to nonpublic schools and the profession of the provider;
 - (c) Certify that they shall not discriminate against Participating Students or applicants on the basis of race, color, or national origin;
 - (d) Conduct Criminal Background Checks on employees;
 - (e) Exclude from employment any person not permitted by state law to work or act as a provider in a nonpublic school;
 - (f) Exclude from employment any person who might reasonably pose a threat to the safety of students; and
 - (g) Provide Account Holders with a receipt for all qualifying expenses.
- (3) Participating Schools shall annually submit to the Department:
- (a) All required documentation and requested information, including the school calendar, the nonpublic school's student fee schedules, and the maximum number of students receiving IEAs the school has the capacity to enroll;
 - (b) Graduation and completion information of participating students;
 - (c) Notice of whether they intend to continue participating in the Program; and
 - (d) Proof of financial viability to repay any funds that may be owed to the State by providing the Department with financial information verifying the school has the ability to pay an amount of the IEA funds expected to be paid during the school year. The school may comply with this requirement by filing a surety bond payable to the State from a surety, and in an amount determined by the Department.
- (4) The Department may require Participating Schools to submit to the Department a financial audit of the school conducted by a certified public accountant. Such audit shall include a statement that the report is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the Department to be expended in a manner inconsistent with this part shall be returned to the state.
- (5) The Department may suspend or terminate a Participating School from participating in the Program if the Department determines the school has failed to comply with the requirements of the Act, these rules, and/or the procedures set by the Department.

(Rule 0520-01-11-.08, continued)

- (a) If the Department suspends or terminates a school's participation, the Department shall notify the Account Holder and Participating School of the decision. If a participating school is suspended or if a participating school withdraws from the Program, affected participating students remain eligible to participate in the Program.
- (6) A Participating School may appeal the Department's decision pursuant to the appeals procedures outlined in this Chapter. If a student withdraws from a participating school and transfers to another nonpublic school or returns to the LEA, the Participating School shall refund the tuition and fees on a prorated basis based on the number of days the student was enrolled in the school. If the student transfers to another nonpublic school, the funds shall be returned to the student's IEA. If the student returns to the LEA, the funds from the IEA shall be returned to the state treasurer pursuant to T.C.A. § 49-10-1403.
- (7) Third parties are prohibited from sending IEAs to collections in order to settle unpaid debts. All contracts entered into are the responsibility of the private parties involved.

Authority: T.C.A. §§ 49-1-302 and 49-10-1405. **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.