

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-16
EDUCATION SAVINGS ACCOUNTS**

0520-01-16-.02 DEFINITIONS.

- (1) "Account Holder" means a parent as defined in paragraph (17) of this section or a student who has reached the age of eighteen (18) who is approved by the Department to participate in the Program and signs the ESA agreement and is responsible for complying with all of the requirements of the Program.
- (2) "Agreement" means a document signed by a parent of an Eligible Student or an Eligible Student who has reached the age of eighteen (18) and a designee of the Department, that qualifies the parent or student who has reached the age of eighteen (18) to participate in the Program.
- (3) "Computer Hardware or Technological Devices" means computer hardware or technological devices approved by the Department that is used for the student's educational needs. Computer hardware and technological devices shall be purchased at or below fair market value through a Participating School, private school, or provider.
- (4) "Contractor" means an entity that is paid by the Department to operate the Program or portions of the Program.
- (5) "Department" means the Tennessee Department of Education.
- (6) "Early Postsecondary Opportunity Courses" means a course and/or exam recognized by the Department that give students a chance to obtain postsecondary credit while still in high school.
- (7) "Educational Therapy Services" means individualized services provided by therapists that meet the requirements established by the Department and the State Board.
- (8) "Eligible Postsecondary Institution" means an institution operated by the Board of Trustees of the University of Tennessee; the Board of Regents of the state university and community college system; or a local governing board of trustees of a state university in this state; or a private postsecondary institution accredited by an accrediting organization approved by the State Board.
- (9) "Eligible Private School" means a private school, as defined by § 49-6-3001(c)(3)(A)(iii), that meets the requirements established by the Department and the State Board for a Category I, II, or III private school, and applies to the Department to participate in the Program.
- (10) "Eligible Student" means a Tennessee resident in grades kindergarten through twelve (K-12) who:
 - (a) Meets one (1) of the following enrollment requirements:

(Rule 0520-01-16-.02, continued)

1. Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year for which the student receives an ESA;
 2. Is eligible for the first time to enroll in a Tennessee school;
 3. Received an ESA in the previous school year;
 4. Was enrolled in and attended a Tennessee public school for one (1) full school year in the 2019-20, 2020-21, or 2021-22 school year; or
 5. Was eligible for the first time to enroll in a Tennessee public school in the 2019- 20, 2020-21, or 2021-22 school year;
- (b) Is zoned to attend a school in Shelby County Schools, Metropolitan Nashville Public Schools, Hamilton County Schools, or is zoned to attend a school that was in the Achievement School District on May 24, 2019; and
- (c) Is a member of a household with an annual income for the previous year that does not exceed twice the federal income eligibility guidelines for free lunch.
- (11) “ESA” means a Tennessee Education Savings Account.
- (12) “Fee-for-Service Transportation Provider” means a commercial transportation provider including a school bus service. It does not include private transportation by a family member, parent, or Participating Student in accordance with the conflict of interest provisions set forth in this Chapter.
- (13) “IEP” means an Individualized Education Program developed by a public school pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §§ 1400, et seq.
- (14) “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 by the student’s parent.
- (15) “Legacy Student” means a Participating Student who graduates from high school or exits the Program by reaching twenty-two (22) years of age; and
- (a) Has funds remaining in the student’s ESA; and
 - (b) Has an open ESA.
- (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 Tennessee general assembly.
- (17) “Parent” means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child under T.C.A. § 49-6-3001.
- (18) “Participating School” means an Eligible Private School that has been approved to participate in the Program and seeks to enroll Eligible Students.

(Rule 0520-01-16-.02, continued)

- (19) "Participating Student" means an Eligible Student who is seventeen (17) years of age or younger and whose parent is participating in the Program or an Eligible Student who has reached the age of eighteen (18) and is participating in the Program.
- (20) "Private or Non-Profit Financial Management Organization" means an institution selected by the Department to administer the education savings accounts.
- (21) "Program" means the ESA Program created in T.C.A. §§ 49-6-2602, et seq.
- (22) "Provider" means an individual or business that provides educational services in accordance with T.C.A. §§ 49-6-2601, et seq. and that meets the requirements established by the Department and the State Board.
- (23) "State Board" means the Tennessee State Board of Education.
- (24) "Summer Education Programs and Specialized Afterschool Education Programs" means educational programs approved by the Department that are operated outside of the regular school day or school year, which do not include afterschool childcare.
- (25) "Technology Fees" means fees charged by a Participating School, private school, or provider for the use of technology or technological devices.
- (26) "Tuition or Fees" means tuition or fees of an instructional nature at a Participating School, or an Eligible Postsecondary Institution. Fees do not include: room and board, food, or consumable school supplies.
- (27) "Tutoring Services" means educational services provided by a tutor or tutoring facility that is approved by the Department and the State Board.
- (28) "Qualified Expenses" means the expenses outlined in T.C.A. § 49-6-2603(a)(4) and 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. Amendments filed December 18, 2023; effective March 17, 2024.

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;

(Rule 0520-01-16-.04, continued)

- (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. 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.
 - (g) Acknowledge that if the Participating Student enrolls in the ESA Program, the Participating School is only required to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 if the school receives federal funding; and
 - (h) 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 shall 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.

(Rule 0520-01-16-.04, continued)

- (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) 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.
- (10) 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. Amendments filed May 26, 2023; effective August 24, 2023. Amendments filed December 18, 2023; effective March 17, 2024.

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, Hamilton, 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.

(Rule 0520-01-16-.06, continued)

- (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 minimum amount of fifty percent (50%) of the funds must be used each year on approved expenses for the benefit of the student enrolled in the Program.
 - (a) If overall spending does not equal fifty percent (50%) by the deadline set by the Department and if the ESA 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 ESA Program or if the ESA is not renewed, the ESA shall be closed, and any remaining funds shall be returned to the state treasurer pursuant to T.C.A. § 49- 6-2603.
- (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

(Rule 0520-01-16-.06, continued)

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. Amendments filed May 26, 2023; effective August 24, 2023. Amendments filed December 18, 2023; effective March 17, 2024.

0520-01-16-.08 PARTICIPATING SCHOOLS.

- (1) Eligible Private Schools interested in enrolling students receiving ESAs shall submit an application to the Department by the deadline set by the Department.
 - (a) The Department shall develop an application and application process for Eligible Private Schools to participate in the Program. Such application shall be posted on the Department's website and shall request, at a minimum, the following information from an applicant:
 1. The maximum number of students receiving ESAs the school has the capacity to enroll per grade level;
 2. Demonstration of financial viability to repay any funds that may be owed to the state by filing with the application financial information verifying the school has the ability to pay an aggregate amount equal to twenty five percent (25%) of the amount of ESA funds expected to be paid during the school year. The school may comply with this requirement by filing an annual surety bond payable to the state from a surety, submitting a statement completed by a certified public accountant, or submitting the school's most recent federal tax return t; and
 3. The school's admission policy and the school's tuition and fee schedule.
 - (b) The Department shall review the application and notify the school as to whether the school meets the requirements outlined in (a) to become a Participating School and receive ESA funds from a Participating Student for Qualified Expenses including, tuition and fees.
 - (c) If an Eligible Private School is approved to be a Participating School, the Department shall list the school on the Department's website, including grades served and any other information the Department determines may assist parents in selecting a Participating School.
- (2) As a condition of approval to become a Participating School, the school shall agree to the following:
 - (a) Be academically accountable to the Account Holder for meeting the educational needs of the Participating Student by:
 1. At a minimum, annually providing to the Account Holder a written explanation of the student's progress; and
 2. Ensuring Participating Students in grades three through eleven (3-11) are administered the TCAP tests in math and English Language Arts, or

(Rule 0520-01-16-.08, continued)

successor tests approved by the State Board, each year the Participating Student is enrolled in the Participating School.

- (b) Comply with all state and federal health and safety laws or codes that apply to non-public schools;
 - (c) Comply with monitoring requirements set by the Department;
 - (d) Certify that they shall not discriminate against Participating Students or applicants on the basis of race, color, or national origin;
 - (e) Agree to accept reimbursement payments for tuition and fees from an Account Holder on the payment schedule identified by the Department;
 - (f) Agree to participate in the Program for the full school year unless the school is suspended or terminated by the Department;
 - (g) Comply with T.C.A. § 49-5-202;
 - (h) Comply with the minimum kindergarten age requirement pursuant to T.C.A § 49-6- 201(b)(3) and the State Board of Education Rule 0520-07-02;
 - (i) Comply with all requirements for criminal history records checks for employees listed in the State Board Non-Public School Approval Process Rules 0520-07-02 and
 - (j) Exclude from employment:
 - 1. Any person not permitted by state law to work in a non-public school; and
 - 2. Any person who might reasonably pose a threat to the safety of students. Participating Schools have ultimate discretion to determine whether or not a person might reasonably pose a threat to the safety of students; however, Participating Schools may consider excluding persons who have ever been convicted of any of the following offenses, or the same or similar offense in any jurisdiction, including convictions for the solicitation of, attempt to commit, conspiracy, or acting as an accessory to:
 - (i) A sexual offense or a violent sexual offense as defined in T.C.A. § 40-39- 202;
 - (ii) An offense listed in T.C.A. §§ 39-13-102 – 39-13-115;
 - (iii) An offense listed in T.C.A. §§ 39-14-301 and 39-14-302;
 - (iv) An offense listed in T.C.A. §§ 39-14-401 – 39-14-404;
 - (v) An offense listed in T.C.A. §§ 39-15-401 and 39-15-402;
 - (vi) An offense listed in T.C.A. § 39-17-417; and
 - (vii) An offense listed in T.C.A. Title 39, Chapter 17, Part 13.
- (3) The funds in an ESA may be used only as provided in section .05 of this Rule for educational purposes. Participating Schools that enroll Participating Students shall provide Account Holders with a receipt for all qualifying expenses paid to the Participating School using ESA funds.

(Rule 0520-01-16-.08, continued)

- (4) Participating Schools shall not charge an Account Holder or Participating Student additional tuition or fees that are not also charged to non-participating students.
- (5) Participating Schools shall not, in any manner, refund, rebate, or share ESA funds with an Account Holder or Participating Student.
- (6) Within five (5) business days of receipt of a Participating Student's notice of withdrawal, a Participating School shall notify the Department of the Participating Student's withdrawal.
- (7) Participating Schools shall annually submit to the Department the graduation and completion information of Participating Students in accordance with procedures set by the Department.
- (8) Annually, Participating Schools shall submit a notice to the Department if they intend to continue participating in the Program by following the procedures developed by the Department.
- (9) 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 state law, rules, or procedures.
 - (a) If the Department suspends or terminates a school's participation, the Department shall notify the affected Participating Students, the Account Holder, and the Participating School of the decision. If a Participating School is suspended or terminated or if a Participating School withdraws from the Program, affected Participating Students remain eligible to participate in the Program.
 - (b) A Participating School may appeal the Department's decision pursuant to the appeals procedures set forth in this Chapter.
- (10) The Department may suspend or terminate a Participating School from participating in the Program for low academic performance. Low academic performance is defined as failure of Participating Students to make academic progress as demonstrated by multiple performance measures, including, but not limited to, lack of progress or growth on the TCAP tests, or successor tests approved by the State Board, or any nationally normed assessment utilized by the Participating School.
- (11) All contracts entered into are the responsibility of the private parties involved.

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. Amendments filed December 18, 2023; effective March 17, 2024.

0520-01-16-.11 APPEAL PROCEDURES.

- (1) The following decisions of the Department may be appealed:
 - (a) Denial of a school's application to become a Participating School;
 - (b) Suspension or termination of a Participating School from the Program;
 - (c) Suspension or termination of a provider from the Program;

(Rule 0520-01-16-.11, continued)

- (d) Denial of a parent's, or student who has reached the age of eighteen's (18), application to participate in the Program;
 - (e) Determinations regarding the use of funds by Account Holders; or
 - (f) Suspension, termination, or removal of a Participating Student from the Program.
- (2) All 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 Commissioner of Education, or the Commissioner's designee, within ten (10) business days of notice of the decision being appealed. Notice of the decision being appealed shall be provided electronically by the Department. 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 appeal;
 - (b) Step two (2): The appellant shall be notified of the Commissioner's or Commissioner's designee's decision in step one (1) of the appeal process electronically. Such notice shall be deemed received three (3) business days after the date of postmark. An appeal of the step one (1) decision shall be filed with the Commissioner by the appellant within thirty (30) calendar days of receipt and shall be heard as a contested case hearing pursuant to the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).

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.