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Sequence Number: 06-02-24
 Notice ID(s): 3838-3842
 File Date: 6/3/2024

Notice of Rulemaking Hearing

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

Agency/Board/Commission:	State Board of Education
Division:	N/A
Contact Person:	P. Danielle Nellis
Address:	500 James Robertson Parkway, 8th Floor, Nashville, TN 37243
Phone:	(615) 483-0268
Email:	Danielle.Nellis@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	P. Danielle Nellis
Address:	500 James Robertson Parkway, 8th Floor, Nashville, TN 37243
Phone:	(615) 483-0268
Email:	Danielle.Nellis@tn.gov

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

Address 1:	500 James Robertson Parkway		
Address 2:	Davy Crockett Building, Conference Room 1C, 1 st Floor		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	07/25/2024		
Hearing Time:	10:00 am	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

****Anyone seeking to participate electronically may access the hearing using the following information:****

URL: <https://tn.webex.com/tn/j.php?MTID=mf16932740dbe79ee11370e5f6dcf4425>

Meeting number: 2306 864 2019
Password: SBERules
Phone: 615-747-4911
Access Code: 2306 864 2019

Please check the State Board's website at <https://www.tn.gov/sbe/meetings.html> for any additional information regarding this rulemaking hearing.

Oral comments are invited at the hearing.
 In addition, written comments may be submitted via email at danielle.nellis@tn.gov or mailed to:
 Tennessee State Board of Education
 Attention: Danielle Nellis

Davy Crockett Tower, 8th Floor
500 James Robertson Parkway
Nashville, Tennessee 37243

Written comments must be received by **9:00 AM CT on July 29, 2024** in order to ensure consideration.

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

For further information, please contact Danielle Nellis by e-mail at danielle.nellis@tn.gov.

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

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-01-16	Education Savings Accounts
Rule Number	Rule Title
0520-01-16-.02	Definitions
0520-01-16-.04	Agreement and Funds Transfer
0520-01-16-.06	Term of the ESA
0520-01-16-.08	Participating Schools
0520-01-16-.11	Appeal Procedures

Chapter Number	Chapter Title
0520-01-02	District and School Operations
Rule Number	Rule Title
0520-01-02-.08	Interscholastic Athletics

Chapter Number	Chapter Title
0520-01-02	District and School Operations
Rule Number	Rule Title
0520-01-02-.17	State Enrollment and Attendance Guidelines

Chapter Number	Chapter Title
0520-01-01	Preface
Rule Number	Rule Title
0520-01-01-.01	Introduction
0520-01-01-.02	Mission of the State Board of Education

Chapter Number	Chapter Title
0520-01-03	Academic and Instructional Requirements
Rule Number	Rule Title
0520-01-03-.03	Academic Program Requirements

AMENDMENT
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:
 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.
 - (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;
 - (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.
- (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.
- (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 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 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.
- (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;
 - (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.

REPEAL
RULES
OF
THE TENNESSEE DEPARTMENT OF EDUCATION
THE STATE BOARD OF EDUCATION
CHAPTER 0520-01-02
DISTRICT AND SCHOOL OPERATIONS

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0520-01-02-.08 REPEALED.

Authority: T.C.A. § 49-1-302. **Administrative History:** Original rule certified June 10, 1974. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed October 31, 1995; effective February 28, 1996. Amendment filed April 27, 1998; effective August 28, 1998.

AMENDMENT

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

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

0520-01-02-.17 STATE ENROLLMENT AND ATTENDANCE GUIDELINES.

- (1) Children entering kindergarten shall be five (5) years of age on or before August 15. However, a child does not have to enroll in school at five (5) years of age, but enrollment must occur no later than the beginning of the academic year following the child's sixth (6th) birthday.
- (2) Any transfer student applying for admission who was legally enrolled in an approved kindergarten in another state and who will be five (5) years of age no later than December 31 of the current school year shall be enrolled.
- (3) Pursuant to the Tennessee compulsory attendance law, all children must attend school between the ages of six (6) and seventeen (17), both inclusive. T.C.A. §§ 49-6-3001 and 49-6-3005 provide that the following children may be exempt from the compulsory attendance law:
 - (a) Children mentally or physically incapacitated to perform school duties, with the disability attested to by a duly licensed physician in all cases;
 - (b) Children who have completed high school and hold a high school diploma or other certificate of graduation;
 - (c) Children enrolled in and making satisfactory progress in a course of instruction leading to a high school equivalency credential approved by the State Board of Education;
 - (d) Children participating in a program of hospital or homebound instruction administered or approved by the LEA;
 - (e) Children six (6) years of age or under whose parent or guardian have filed a notice of intent to conduct a home school as provided by T.C.A. § 49-6-3001 or who are conducting a home school as provided by T.C.A. § 49-6-3050;
 - (f) Children enrolled in a home school who have reached seventeen (17) years of age; and
 - (g) Children who have attained their seventeenth (17th) birthday and whose continued compulsory attendance, in the opinion of the local board of education in charge of the school to which the children belong and are enrolled, results in detriment to good order and discipline and to the instruction of other students and is not of substantial benefit to the children.
- (4) Local boards of education may admit students from outside their respective local school district at any time.
 - (a) Local boards of education may arrange for the transfer of students residing within their district to other school districts by establishing agreements with other local boards of education for the admission or transfer of students from one (1) school district to another.
 - (b) The receiving board of education may set a time before or during the school year after which it will not accept transfer students. The receiving board of education may charge the non-resident student tuition to attend.

- (c) If a local board of education otherwise permits non-resident students to transfer into its schools, it may not discriminate against any students solely on the grounds of their race, sex, national origin, or disability, nor may it charge such students a tuition over and above the usual tuition for students without disabilities.
- (5) Each local board of education shall adopt an attendance policy that is firm, but fair; includes effective accounting and reporting procedures to keep parents or guardians informed of student absences; accounts for extenuating circumstances created by emergencies over which the student has no control; includes appeal procedures; and establishes and maintains alternative programs for students who fail to meet minimum attendance requirements.
- (a) Excused Absences. The policy shall address requirements for the excusing of absences. Students receiving an excused absence shall be afforded the opportunity to complete all missed assignments. The policy shall include, but not be limited to, excused absences for the following situations:
1. Absences pursuant to a summons, subpoena, court order, or other legal requirement.
 - (i) This does not apply to absences that are the result of a commission of a delinquent act and when notice of intent to transfer the student to criminal court has been provided pursuant to § 37-1-134, or for detention purposes pursuant to § 37-1-114(c).
 2. Missing a class or day of school because of the observance of a day set aside as sacred by a recognized religious denomination of which the student is a member or adherent, where such religion calls for special observances of such a day.
 3. The student's parent or legal guardian is a member of the United States armed forces, including a member of a state National Guard or a reserve component, and is called to federal active duty. In this case, the principal shall give the student:
 - (i) An excused absence for one (1) day when the member is deployed;
 - (ii) An additional excused absence for one (1) day when the service member returns from deployment;
 - (iii) Excused absences for up to ten (10) days for visitation when the member is granted rest and recuperation leave and is stationed out of the country; and
 - (iv) Excused absences for up to ten (10) days cumulatively within the school year for visitation during the member's deployment cycle. The student shall provide documentation to the school as proof of the service member's deployment. However, the total number of excused absences under this subparagraph (iv) and subparagraph (iii) shall not exceed ten (10) days within the school year.
 5. The student attends a released time course and the local board of education has adopted a policy that excuses a student from school to attend a released time course in compliance with T.C.A. § 49-2-130. However, if the local board of education has not adopted such a policy, a public school shall, upon the request of a student's parent or legal guardian, excuse a student from school to attend a released time course if the requirements of T.C.A. § 49-2-130 (h) are met.
 6. Participation in a non-school-sponsored extracurricular activity, provided the LEA has adopted a policy authorizing excused absences for participating in non-school-sponsored extracurricular activities and provided the following conditions are met:
 - (i) The student provides documentation to the school as proof of the student's

participation in the non-school-sponsored extracurricular activity;

- (ii) The student's parent, custodian, or other person with legal custody or control of the student, prior to the extracurricular activity, submits to the principal or the principal's designee a written request for the excused absence. The written request shall be submitted no later than seven (7) business days prior to the student's absence and shall include all requirements set forth in T.C.A. § 49-6-3022;
 - (iii) The principal or the principal's designee shall approve, in writing, the student's participation in the non-school-sponsored extracurricular activity; and
 - (iv) The principal may limit the number and duration of non-school-sponsored extracurricular activities for which excused absences may be granted to a student during the school year, provided, however, the principal shall excuse no more than ten (10) absences each school year for students participating in non-school-sponsored extracurricular activities.
- (b) Unexcused Absences. The policy shall address unexcused absences.
- (c) Students Counted as Present. The policy shall include the following situations for which students shall be counted as present, in the same manner as an educational field trip, rather than given an excused or unexcused absence. Students counted as present shall be afforded the opportunity to complete all missed assignments.
1. Students serving in-school suspension and receiving educational services.
 2. Students receiving medical or educational homebound instruction.
 3. Students who serve as pages for the General Assembly during the school year, either at regular or special sessions.
 4. Students participating in school-sponsored events shall be counted present provided the events or activities are school directed, related to an instructional activity, and have prior approval of the local board of education.
 5. Students participating in an activity or program sponsored by 4-H shall be counted present in accordance with requirements set forth in T.C.A. § 49-6-3026 and provided the program or activity does not occur during the schedule established by the Commissioner of Education for the administration of the Tennessee comprehensive assessment program (TCAP) or any period of time for which the student has been suspended, expelled, or assigned to an alternative school or program if the suspension, expulsion, or assignment to the alternative school or program would otherwise preclude the student from participating in an educational field trip.
 6. Students appointed as the student member of the State Board of Education shall be counted as present for the time the student spends in the performance of duties as a member of the State Board of Education. The student shall provide to the principal of the student's school written certification from the Executive Director of the State Board of Education that the student was participating in duties as a member of the State Board of Education.
 7. LEAs may adopt a policy allowing high school students participating in postsecondary school visits to be counted as present. Students shall only be counted present the day of the postsecondary visit and shall not be counted as present during any travel days. If an LEA adopts such a policy, the policy shall include:
 - (i) The number of days a student may be counted present for postsecondary

school visits;

- (ii) A requirement of prior written notice from a parent or legal guardian specifying the date of the postsecondary school visit;
 - (iii) A specific procedure for documenting that a student visit to a postsecondary school occurred, such as a signed letter or form from a campus official of the postsecondary institution;
 - (iv) A requirement for students to complete all school work missed during a postsecondary school visit;
 - (v) A requirement that the postsecondary school visit does not occur during the schedule established by the Commissioner of Education for the administration of the Tennessee comprehensive assessment program (TCAP);
 - (vi) A provision specifying that postsecondary school visits are not required of any student; and
 - (vii) A provision specifying that the student's parent or guardian, not the district, is solely responsible for facilitating postsecondary school visits and for ensuring the safety of students during the visit.
- (d) The policy shall align with the McKinney-Vento Homeless Assistance Act [found at 42 U.S.C. §§ 11431, et seq.].
- (e) Local attendance policies shall not be used to penalize students academically, however, it is up to the LEA whether or not a student is allowed to make up work for assignments missed during an unexcused absence.
- (f) The attendance policy adopted by the local board of education shall be posted on the local board of education's website, and school counselors shall be supplied copies for discussion with students.
- (g) The policy shall be referenced in all school handbooks. All teachers, administrative staff, and parents/guardians shall be provided copies of the policy. Such copies may be provided electronically or in writing.
- (h) LEAs that are charter school authorizers shall ensure that authorized charter schools have adopted a policy in compliance with this Rule or that the charter school complies with the LEA's attendance policy.
- (6) Pursuant to T.C.A. § 49-6-3009, each local board of education shall adopt a progressive truancy intervention plan for students who violate compulsory attendance requirements prior to the filing of a truancy petition or a criminal prosecution for educational neglect. These interventions must be designed to address student conduct related to truancy in the school setting and minimize the need for referrals to juvenile court.
- (7) Whenever possible, attendance issues should be resolved at the school level. To ensure due process, local boards of education must adopt a policy that affords students with excessive (more than five (5)) unexcused absences the opportunity to appeal. Such policy must, at minimum, include written or actual notice to the student or their parent/guardian and the opportunity to be heard. The burden of proof rests on the student or their parent/guardian. The appeal process for determining unexcused absences is ancillary to a truancy decision rendered by a juvenile court judge as described in T.C.A. § 49-6-3010.
- (8) LEAs are encouraged to develop truancy boards, youth courts, or other alternative programs to serve as an intervention for students with excessive absences. These may be in addition to, or a part of, the progressive truancy intervention plan required by T.C.A. § 49-6-3009.

Authority: T.C.A. §§ 49-6-3002, 49-6-3005, 49-6-3009, 49-6-3019, 49-6-3022, 49-2-130, 49-6-3018, 49-6-3026 and Chapter 549 of the Public Acts of 2024. . **Administrative History:** (For history prior to June 1992, see pages iii through ix). Repeal filed March 16, 1992; effective June 29, 1992. New rule filed December 23, 2014; effective March 23, 2015. Emergency rules filed April 16, 2020; effective through October 13, 2020. Emergency rules expired effective October 14, 2020, and the rules reverted to their previous statuses. Amendments filed August 20, 2020; effective November 18, 2020.

REPEAL
RULES
OF
THE TENNESSEE DEPARTMENT OF EDUCATION
THE STATE BOARD OF EDUCATION FOR
THE OPERATION OF THE PUBLIC SCHOOL SYSTEM

CHAPTER 0520—1—1 PREFACE

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0520—1—1—.01 REPEALED.

Authority: T.C.A. §§49—108. **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 15, 1979; effective January 8, 1980. Amendment filed November 13, 1981; effective March 16, 1982. Amendment filed June 27, 1984; effective July 27, 1984.

0520—1—1—.02 REPEALED.

Authority: T.C.A. §49—1—306. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed May 28, 1986; effective June 27, 1986.

0520—1—1—.03 REPEALED.

Authority: T.C.A. §49—108. **Administrative History:** Original rule filed October 15, 1979; effective January 8, 1980. Repeal filed January 19, 1983; effective April 18, 1983.

AMENDMENT
RULES
OF
THE STATE BOARD OF EDUCATION
CHAPTER 0520-01-03
ACADEMIC AND INSTRUCTIONAL REQUIREMENTS

0520-01-03-.03 ACADEMIC PROGRAM REQUIREMENTS.

- (1) The Tennessee state academic standards approved by the State Board shall be used for all courses grades kindergarten through twelve (K-12).
- (2) All textbooks and instructional materials adopted and purchased shall be aligned with state academic standards.
- (3) All courses listed in State Board's Approved High School Courses Policy 3.205 may be offered for credit in grades nine through twelve (9-12). Additional details about approved courses shall be included in the Correlation of Course and Endorsement Codes database managed by the Department of Education.
- (4) LEAs and public charter schools may offer special courses in addition to the courses listed in the State Board's Approved High School Courses Policy 3.205. Such special courses shall be approved by the Department of Education and the State Board. Each special course approved by the Department shall be recommended to the State Board for an approval period of one (1), three (3), or six (6) years.
- (5) Each school shall evaluate and report in writing to the parent or legal guardian each student's progress in each subject, at least every nine (9) weeks, in accordance with the local school board's grading policy.
- (6) LEAs shall implement the Response to Instruction and Intervention (RTI²) framework adopted by the State Board. RTI² shall include high-quality instruction and interventions tailored to student need where core instructional and intervention decisions are guided by student outcome data. Tiered interventions in the areas of reading, mathematics, and/or writing shall occur in the general education setting depending on the needs of the student. If a student fails to respond to intensive interventions and is suspected of having a Specific Learning Disability as defined in State Board Rule 0520-01-09-.02, then the student may require special education interventions.
- (7) LEAs shall award high school credit to students who successfully complete college-level courses aligned to a graduation requirement course, including general education and elective focus courses.
 - (a) Local high schools shall accept postsecondary credits as a substitution for an aligned graduation requirement course, including general education and elective focus courses for those students who take and pass dual enrollment courses at a postsecondary institution for credit.
 - (b) Local boards of education may adopt policies providing for dual credit college-level courses to be offered during the school day on the high school campus. Such courses must be

taught by a licensed high school teacher or credentialed postsecondary faculty member approved by the local school system and partnering postsecondary institution. These courses are to be considered part of the high school program, with content and instruction subject to the supervision of the school principal and local board of education.

- (8) Coursework successfully completed in an LEA, public charter school, or Category I, II, or III private school, including coursework completed during a summer school operated or offered by these entities, is fully transferrable to any other approved school. All summer school teachers at a summer school operated or offered by an LEA or public charter school shall be licensed and hold endorsements in the subject areas in which they are teaching.
- (9) LEAs may offer Work-Based Learning (WBL) experiences that allow students to apply classroom theories to practical problems and to explore career options. All WBL experiences shall align to the State Board's Work-Based Learning Framework set forth in State Board High School Policy 2.103.
- (10) State-mandated student testing programs shall be undertaken in accordance with procedures published by the Department of Education.
 - (a) State-mandated assessments shall be given for grades three through eleven (3-11).
 - (b) End-of-course examinations shall be given in English I, English II, Algebra I, Geometry, Algebra II, Integrated Math I, Integrated Math II, Integrated Math III, U.S. History, and Biology I.
 - (c) A comprehensive writing assessment shall be conducted in at least one (1) grade within elementary, middle grades, and high school as part of the state-mandated assessment program.
 - (d) The Department of Education shall provide raw score data from the end-of-course examinations to each LEA for the purpose of including student scores on the examinations into a student's final grade for the course. The weight of the examination on the student's final course grade in grades nine (9) through twelve (12) shall be determined by the LEA from a range of not less than five percent (5%) and not more than fifteen percent (15%). If an LEA does not receive its students' end-of-course examination scores at least (5) instructional days before the scheduled end of the course, then the LEA may choose not to include its students' examination scores in the students' final average.
 - (e) Each local school board shall adopt a policy that details the methodology used and the required weighting for incorporating students' scores on end-of-course examinations into final report card grades.
 - (f) Local school boards shall adopt a policy regarding security of test administration, consistent with Department of Education guidelines.
 - (g) The Department of Education shall annually report to the State Board the number and percentage of students who scored below but were promoted to the next grade level by the LEA. This data shall be disaggregated by subgroups similar to those required for federal reporting.
- (11) Beginning in the 2023-24 school year, all students in grade eight (8), including students with an Individualized Education Program (IEP), shall begin the development of the high school and beyond plan in accordance with the State Board's Middle Grades Policy 2.102 and High School Policy 2.103.

(12) Each local board of education shall adopt a credit recovery policy, aligned to the State Board's High School Policy 2.103, to provide standards-based extended learning opportunities for students who have previously been unsuccessful in mastering the standards required to receive course credit or earn promotion.

(a) Each credit recovery policy shall include, but is not limited to, the following requirements:

1. Admission to and removal from credit recovery programs:

(i) The student's parent or legal guardian shall give written consent for the student to enroll in the proposed credit recovery course. Parents/guardians shall be informed that not all postsecondary institutions will accept credit recovery courses for credit and that the NCAA Clearinghouse will not accept credit recovery courses for credit.

(ii) The student has previously taken an initial, non-credit recovery section of the proposed course. Credit recovery is designed to be a remediation option for students, and a credit recovery course shall not be the first time a student is exposed to the course content.

(iii) The student mastered at least fifty percent (50%) of the course standards as evidenced by the course grade in a non-credit recovery section of the course or a diagnostic assessment. Students who mastered below fifty percent (50%) of the course standards as evidenced by the course grade in a non-credit recovery section of the course or a diagnostic assessment, must re-take the course.

2. Instruction:

(i) Students enrolled in any credit recovery course shall be assigned to a teacher of record who is licensed and endorsed to teach the course.

(ii) Credit recovery facilitators may be responsible for day-to-day oversight and facilitation of credit recovery programs, under the guidance of the credit recovery teacher of record.

(iii) Credit recovery courses shall align with Tennessee's current academic standards for the relevant course content area.

3. Grading and awarding of credit:

(i) Until the 2022-23 school year, students passing credit recovery courses shall receive a grade of seventy percent (70%) under the state uniform grading system. For grades issued in the 2022-23 school year and thereafter, students passing credit recovery courses shall receive a grade of sixty (60%) percent under the state uniform grading system. If the LEA also utilizes a locally-adopted grading scale that differs from the uniform grading system, students passing credit recovery shall receive a D under the locally-adopted grading scale.

(ii) The student transcript shall denote that the credit was attained through

credit recovery.

- (iii) The original failing grade may also be listed on the transcript, but shall not factor into the student's GPA, in accordance with the State Board of Education's Uniform Grading Policy 3.301.

(13) High School Equivalency Credentials.

- (a) Pursuant to T.C.A. § 4-3-1422, the Tennessee Department of Labor and Workforce Development (Department of Labor) is required to make recommendations to the State Board for approval of assessments or criteria leading to the award of a high school equivalency credential. A high school equivalency credential is recognized as being equivalent to a traditional high school diploma.
- (b) The Department of Labor shall oversee the issuance of high school equivalency credentials to individuals who meet the criteria established in subparagraphs (c) and (d) of this Rule.
- (c) An individual shall be eighteen (18) years of age before being eligible to obtain a high school equivalency credential. However, a seventeen (17) year old who is not currently enrolled in school or who is currently enrolled in a Tennessee public school may be eligible to obtain a high school equivalency credential upon receiving a signed recommendation from the director of schools (or the director's designee) of the LEA having jurisdiction over the individual. A seventeen (17) year old enrolled in a private school or church-related school may be eligible to obtain a high school equivalency credential upon receiving a signed recommendation from the leader of the private school or church-related school where the student is currently enrolled, The director of schools or leader of the private school or church-related school may require written documentation from the individual to support this recommendation. A seventeen (17) year old who is independently home schooled by their parent or legal guardian may be eligible to obtain a high school equivalency credential upon receiving a signed recommendation from the individual's parent or legal guardian.
- (d) In addition to meeting the requirements set forth in subparagraph(c), a high school equivalency credential may be obtained by meeting the requirements of any one (1) of the following pathways:
 - 1. Pathway 1: High School Equivalency Test (HiSET).
 - (i) The HiSET test shall be operated in accordance with the policies established by the Department of Labor.
 - (ii) The HiSET test consists of five (5) subtests that count twenty (20) points each. In order to pass, the total composite score on the HiSET test shall be forty-five (45) or higher, and the minimum score on each subtest shall be eight (8) or higher.
 - 2. Pathway 2: General Educational Development Test (GED).
 - (i) The GED test shall be operated in accordance with the policies established by the Department of Labor.
 - (ii) The GED test consists of four (4) subtests that count 200 points each. In order to pass, the score on each subtest shall be 145 or higher.

3. Pathway 3: Multiple Measures.

- (i) Demonstrating subject matter competency by achieving passing sub-test scores in math, reading, writing/ language, science, and social studies. Passing scores can be demonstrated through a combination of HiSET, GED, Test of Adult Basic Education (TABE), CASAS GOALS, or ACT WorkKeys subtests.
 - (I) All tests shall be operated in accordance with the policies established by the Department of Labor.
 - (II) The TABE test consists of three (3) subtests in the subject areas of math, reading, and writing/language. In order to pass the math subtest, the scale score shall be 537 or higher. In order to pass the reading subtest, the scale score shall be 536 or higher. In order to pass the writing/language subtest, the scale score shall be 547.
 - (III) The CASAS GOALS test consists of two (2) subtests in the subject areas of math and reading. In order to pass the math subtest, the scale score shall be 214 or higher. In order to pass the reading subtest, the scale score shall be 228 or higher.
 - (IV) The ACT WorkKeys test consists of one (1) math subtest and one (1) reading subtest. In order to pass the math subtest, the “Applied Math” score shall be 83 or higher. In order to pass the reading subtest, the “Workplace Documents” score shall be 78 or higher.

Authority: T.C.A. §§ 4-3-1422, 49-1-302, 49-2-110, 49-2-114, 49-6-101, 49-6-201, 49-6-3001, 49-6-3003, 49-6-3005, 49-6-3104, 49-6-3105, 49-6-6001 and 49-6-6002; and Public Chapter 652 of 2020. **Administrative History:** Original rule certified June 10, 1974. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed July 19, 1982; effective October 13, 1982. Repeal and new rule filed April 18, 1983; effective May 18, 1983. Amendment filed June 10, 1983; effective September 14, 1983. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed June 28, 1984; effective July 28, 1984. Amendment filed May 28, 1986; effective June 27, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed July 21, 1992; effective October 28, 1992. Amendment filed September 1, 1992; effective December 29, 1992. Amendment filed October 11, 1995; effective February 28, 1996. Amendment filed April 29, 1996; effective August 28, 1996. Amendment filed May 31, 1996; effective September 27, 1996. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed August 31, 2001; effective December 28, 2001. Amendment filed March 28, 2002; effective July 29, 2002. Amendment filed June 30, 2003; effective October 28, 2003. Amendment filed March 1, 2005; effective July 29, 2005. Amendment filed September 6, 2007; effective January 28, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed October 20, 2009; effective March 31, 2010. Amendment filed March 25, 2010; effective August 29, 2010. Amendment filed December 19, 2012; effective May 30, 2012. Amendments filed March 21, 2012; effective August 29, 2012. Amendment filed February 6, 2013; effective July 29, 2013. Amendment filed May 22, 2015; effective August 20, 2015. Amendments filed October 25, 2017; effective January 23, 2018. Amendments filed March 20, 2018; to have been effective June 18, 2018. However, on May 24, 2018, the Government Operations Committee filed a 5-day stay; new effective date June 23, 2018. Amendments filed January 11, 2019; effective April 11, 2019. Amendments filed August 20, 2020; effective November 18, 2020. Emergency rules filed November 19, 2020; effective through May 18, 2021. Emergency rules expired effective May 19, 2021, and the rules reverted to their previous statuses. Amendments filed September 6, 2022; effective December 5, 2022. Amendments filed January 4, 2024; effective April 3, 2024.

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

Date: 06/03/2024

Signature: 

Name of Officer: P. Danielle Nellis

Title of Officer: Deputy General Counsel

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Filed with the Department of State on: 6/3/2024



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