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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: | Angie Sanders |
| Address: | 500 James Robertson Parkway, 5 th Floor, Nashville, TN 37243 |
| Phone: | (615) 253-5707 |
| Email: | Angela.C.Sanders@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: | Angie Sanders |
| Address: | 500 James Robertson Parkway, 5 th Floor, Nashville, TN 37243 |
| Phone: | (615) 253-5707 |
| Email: | Angela.C.Sanders@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 : | 12/16/2021 | | |
| Hearing Time: | 9:00 AM | <input checked="" type="checkbox"/> X | CST/CDT <input type="checkbox"/> EST/EDT |

Additional Hearing Information:

****Anyone wishing to participate electronically may access the hearing using the following information:****
URL: <https://bit.ly/3vsRZl8>
Password: SBerules
Phone: 1-415-655-0001
Access Code: 2301 767 6244

Please check the State Board’s website at <https://www.tn.gov/sbe/meetings.html> for any additional information regarding this rulemaking hearing. **If limitations on in-person gatherings due to COVID-19 prevent this hearing from occurring in-person, such information will be posted on the State Board’s website and all attendees will utilize the above information to participate**

electronically.

Oral comments are invited at the hearing.

In addition, written comments may be submitted via email at angela.c.sanders@tn.gov or mailed to:

Tennessee State Board of Education

Attention: Angie Sanders

Davy Crockett Tower, 5th Floor

500 James Robertson Parkway

Nashville, Tennessee 37243.

Written comments must be received by 4:30 PM CT on December 21, 2021 in order to ensure consideration. For further information, please contact Angie Sanders by e-mail at angela.c.sanders@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 |
|----------------|--|
| 0520-02-07 | LEA Teacher Training Programs |
| Rule Number | Rule Title |
| 0520-02-07-.01 | Purpose |
| 0520-02-07-.02 | Definitions |
| 0520-02-07-.03 | LEA Requirements for Initial Approval |
| 0520-02-07-.04 | LEA Requirements for Maintaining Full Approval |
| 0520-02-07-.05 | Requirements for Educators |

| Chapter Number | Chapter Title |
|----------------|---|
| 0520-01-09 | Special Education Programs and Services |
| Rule Number | Rule Title |
| 0520-01-09-.02 | Definitions |
| 0520-01-09-.23 | Isolation and Restraint for Students Receiving Special Education Services |
| 0520-01-09-.24 | Functional Behavioral Assessments and Behavior Intervention Plans |

| Chapter Number | Chapter Title |
|----------------|--------------------------------------|
| 0520-01-20 | Residential Mental Health Facilities |
| Rule Number | Rule Title |
| 0520-01-20-.01 | Purpose |
| 0520-01-20-.02 | Definitions |
| 0520-01-20-.03 | Approval of Out-of-State Facilities |
| 0520-01-20-.04 | Student Admission |
| 0520-01-20-.05 | Compliance and Monitoring |
| 0520-01-20-.06 | Calculation of Funds |

NEW
RULES
OF
THE STATE BOARD OF EDUCATION
CHAPTER 0520-02-07
LEA TEACHER TRAINING PROGRAMS
TABLE OF CONTENTS

0520-02-07-.01 Purpose
0520-02-07-.02 Definitions
0520-02-07-.03 LEA Requirements for Initial Approval

0520-02-07-.04 LEA Requirements for Maintaining Full
Approval
0520-02-07-.05 Requirements for Educators

0520-02-07-.01 PURPOSE.

- (1) The purpose of this rule is to effectuate T.C.A. § 49-5-108(d) that requires the State Board of Education to approve a process for an LEA, or for two (2) or more LEAs working together, to establish an LEA teacher training program for the purpose of recommending eligible educators for additional endorsements.

Authority: T.C.A. § 49-5-108 and Public Chapter 571 of 2021. **Administrative History:**

0520-02-07-.02 DEFINITIONS.

- (1) "Department" means the Tennessee Department of Education.
- (2) "Eligible Educator" means an educator who holds an active Tennessee professional-level teacher license with at least one academic Endorsement Area in accordance with State Board Educator Licensure Rules Chapter 0520-02-03.
- (3) "Endorsement Area" has the same definition as used in State Board Educator Preparation Rule 0520-02-04-.02.
- (4) "LEA" means a Tennessee Local Education Agency and has the same meaning given in T.C.A. § 49-1-103(2).
- (5) "State Board" means the Tennessee State Board of Education.
- (6) "Specialty Area Program or "SAP" has the same definition as used in State Board Educator Preparation Rule 0520-02-04-.02.

Authority: T.C.A. § 49-5-108 and Public Chapter 571 of 2021. **Administrative History:**

0520-02-07-.03 LEA REQUIREMENTS FOR INITIAL APPROVAL.

- (1) LEA teacher training programs may be formed by one (1) LEA or by two (2) or more LEAs working together, provided, that at the time of application and initial approval, none of the applicant LEAs have received the lowest performance designation on the state's LEA accountability system in either of the last two (2) years in which designations were assigned.

- (2) The LEA or LEAs seeking to establish a LEA teacher training program may partner with an Educator Preparation Provider (EPP) that is operating under State Board approval.
- (3) Proposals submitted for initial approval as a LEA teacher training program shall be reviewed by the Department.
- (4) To be considered for initial approval, LEA teacher training programs shall submit a proposal to the Department that contains, at minimum, evidence of the following:
 - (a) Evidence of Program Capacity.
 - 1. A designated program supervisor for the LEA, as appointed by the Director of Schools;
 - 2. Adequate staffing for each course the LEA teacher training program seeks to offer to prepare educators for the Endorsement Area(s), including evidence that the faculty or staff who teach courses or provide direct coaching to Eligible Educators possess sufficient knowledge, skills, training, and expertise;
 - 3. A requirement for each Eligible Educator participating in the program to receive ongoing support, coaching, and feedback from a mentor teacher during the time the educator is enrolled in the LEA teacher training program. The mentor teacher shall:
 - (i) Hold an active Tennessee educator license with an endorsement in the area or a closely related area to the one in which the Eligible Educator is seeking endorsement;
 - (ii) Have a level of overall effectiveness of above expectations or significantly above expectations on the mentor teacher's most recent evaluation; and
 - (iii) Have a minimum of three (3) years of experience as a teacher.
 - (b) Evidence of Alignment to Specialty Area Program Standards.
 - 1. Program structure and method(s) of delivery;
 - 2. Alignment to the standards of the applicable sections of the Literacy and Specialty Area Program Standards Policy 5.106 for the Endorsement(s) the LEA teacher training program seeks to offer;
 - 3. Opportunities for Eligible Educators to demonstrate application of the standards through field experience;
 - 4. Opportunities for Eligible Educators to demonstrate understanding of the standards through benchmark assessments throughout the LEA teacher training program.
- (5) The Department shall review all proposals for initial approval of an LEA teacher training program or approval of a new SAP and provide feedback within ninety (90) calendar days of receipt of the completed proposal.
 - (a) Within the ninety (90) calendar day review, the Department may request additional information or revisions to a proposal.

- (b) Applicants shall respond to requests for additional information or revisions within forty-five (45) calendar days.
 - (c) The Department may provide an additional opportunity for applicants to respond to a request for minor revisions.
 - (d) No more than sixty (60) days following the submission of required revisions to the proposal, the Department shall notify an applicant of its recommendation or decision, as outlined in paragraphs (6) or (7) below, as applicable.
- (6) After review of the proposal for initial approval of a LEA teacher training program, the Department shall recommend to the State Board one (1) of the following:
- (a) Initial approval. If initial approval is awarded, LEA teacher training programs may begin enrolling and subsequently recommending Eligible Educators for Endorsement in approved Specialty Area Programs; or
 - (b) Denial of initial approval. If initial approval is denied, LEA teacher training programs shall not recommend educators for Endorsements or identify the program as leading to Endorsement. LEA teacher training programs may submit a revised proposal for consideration to the Department during the next review period established by the Department.
- (7) After administrative review of proposals for new SAPs, approval or denial shall be issued through Department notification. SAPs that are denied approval shall be provided an opportunity to resubmit the proposal to the Department to correct any identified deficiencies.
- (8) Applicants shall not publicize LEA teacher training programs or SAPs as leading to endorsement prior to receiving initial approval.
- (9) Applicants that receive initial approval from the State Board to operate an LEA teacher training program may begin enrolling Eligible Educators and subsequently recommending Eligible Educators for Endorsement.
- (10) The initial approval period shall last for a minimum of three (3) years and a maximum of five (5) years. An LEA teacher training program may seek full approval after three (3) years in operation under initial approval by requesting a full approval review from the Department. Initial approval expires after five (5) years or upon the LEA teacher training program earning full approval from the State Board.

Authority: T.C.A. § 49-5-108 and Public Chapter 571 of 2021. **Administrative History:**

0520-02-07-.04 LEA REQUIREMENTS FOR MAINTAINING FULL APPROVAL.

- (1) In order to receive full approval, LEA teacher training programs with initial approval must undergo a full approval review by the Department by the timeline set forth in section 0520-02-07-.06 of this Chapter. In order to maintain full state approval, LEA teacher training programs shall participate in a full approval review every seven (7) years.
- (2) Each full approval review shall be conducted by the Department and shall include, at a minimum, the following components:
 - (a) LEA teacher training programs shall submit evidence demonstrating alignment to the standards established in section 0520-02-07-.05 of this chapter, the applicable

professional education standards, and State Board Literacy and Specialty Area Program Standards Policy 5.106.

- (b) LEA teacher training programs shall verify records of the Eligible Educators prepared in each approved Endorsement area since the previous review.
 - (c) LEA teacher training programs shall submit evaluation records, which may include observation data, student growth data, or overall level of effectiveness (LOE), of Eligible Educators who earned additional Endorsements through the LEA teacher training program and taught in the Endorsement area earned.
 - (d) The Department shall compile and review data on the extent to which Eligible Educators prepared in the LEA teacher training program pass the required licensure assessments for their Endorsement area(s).
- (3) The Department shall be responsible for, at a minimum:
- (a) Developing a full approval rubric for evaluating LEA teacher training programs;
 - (b) Reviewing all required evidence submitted by the LEA teacher training program;
 - (c) Reviewing data regarding educator outcomes on licensure assessments and LOE scores; and
 - (d) Recommending an approval status to the State Board.
- (4) Following each full approval review, the Department shall recommend to the State Board one (1) of the following:
- (a) Full approval. The LEA teacher training program meets expectations for approval on the Department full approval rubric.
 - (b) Denial of approval. The LEA teacher training program falls below expectations on the Department full approval rubric. LEA teacher training programs that are denied approval shall no longer enroll new educators for Endorsement and shall notify all currently participating Eligible Educators of the denial of approval status of its program. Denied LEA teacher training programs may continue to serve Eligible Educators who can complete the program within twelve (12) months of the denial of approval. The LEA teacher training program shall not re-apply for initial approval for at least three (3) years from the date of denial.
- (5) If a LEA teacher training program refuses to participate in any required review, the Department may make a recommendation for approval status change, including denial of approval, to the State Board.
- (6) LEA teacher training programs shall annually submit to the Department the following:
- (a) Any substantial changes to the approved LEA teacher training program or SAP(s); and
 - (b) Contact information, including primary contact information and verification of the designated supervisor of the LEA teacher training program.
- (7) Each LEA teacher training program shall annually verify or submit all information identified by the Department for inclusion in annual reports to the State Board. The annual reports to the State

Board shall include evidence of performance of the LEA teacher training program and shall include, at a minimum, the following:

- (a) Participating Eligible Educators' outcomes including, but not limited to, program completion rates and pass rates on required licensure assessments; and
- (b) Participating educators' classroom impact as measured by components of an approved Tennessee educator evaluation model including, but not limited to, overall levels of effectiveness, observation scores, and individual growth scores.
- (c) All reports shall maintain confidentiality for individual educators and be aggregated at the LEA teacher training program and/or SAP level.

Authority: T.C.A. § 49-5-108 and Public Chapter 571 of 2021. **Administrative History:**

0520-02-07-.05 REQUIREMENTS FOR EDUCATORS.

- (1) To enroll in an approved LEA teacher training program, Eligible Educators shall:
 - a. Hold, at time of enrollment in the LEA teacher training program, an active, professional-level, Tennessee teacher license with at least one (1) academic Endorsement issued in accordance with State Board Rules Chapter 0520-02-03; and
 - b. Be employed full-time by an LEA that is operating the State Board-approved LEA teacher training program in which the educator seeks enrollment.
- (2) To obtain the additional Endorsement(s), Eligible Educators shall:
 - a. Hold, at the time of application to the Department for the additional Endorsement(s), an active, professional-level Tennessee teacher license with at least one (1) academic Endorsement issued in accordance with State Board Rules Chapter 0520-02-03;
 - b. Submit a recommendation from the LEA by which they are employed and were trained for the additional Endorsement(s); and
 - c. Submit proof of passing scores on the specialty area assessment(s) required by the State Board Professional Assessments Policy 5.105.
- (3) Enrollment in an LEA teacher training program is at the discretion of the Eligible Educator.

Authority: T.C.A. § 49-5-108 and Public Chapter 571 of 2021. **Administrative History:**

AMENDMENT/NEW

RULES

OF

STATE BOARD OF EDUCATION

CHAPTER 0520-01-09

SPECIAL EDUCATION PROGRAMS AND SERVICES

TABLE OF CONTENTS

| | | | |
|----------------|---|----------------------------------|---|
| 0520-01-09-.01 | General Regulations. Adoption by Reference | 0520-01-09-.13 0520-01-09-.14 | Repealed Repealed |
| 0520-01-09-.02 | Definitions | 0520-01-09-.15 | Parent Participation in IEP Meetings |
| 0520-01-09-.03 | Recognized Disability Categories | 0520-01-09-.16 | Repealed |
| 0520-01-09-.04 | Consent | 0520-01-09-.17 | Mediation |
| 0520-01-09-.05 | Child Find and Free Appropriate Public Education | 0520-01-09-.18 | Impartial Due Process Hearing |
| 0520-01-09-.06 | Repealed | 0520-01-09-.19 | Civil Action |
| 0520-01-09-.07 | Educational Homebound Placements for Students with Disabilities | 0520-01-09-.20 | Surrogate Parents |
| 0520-01-09-.08 | State Advisory Council | 0520-01-09-.21 | Transfer of Parental Rights at Age of Majority |
| 0520-01-09-.09 | LEA Eligibility for Federal IDEA Part B Funds | 0520-01-09-.22 | Amendment of Records at Parent's Request |
| 0520-01-09-.10 | Funding Requirements | | |
| 0520-01-09-.11 | Evaluation Procedures | 0520-01-09-.23 | Isolation and Restraint for Students Receiving Special Education Services |
| 0520-01-09-.12 | Individualized Education Program (IEP) Requirements | 0520-01-09-.24 | Functional Behavioral Assessments and Behavior Intervention Plans |

0520-01-09-.02 DEFINITIONS.

- (1) "Behavior Intervention Plan" or "BIP" means an individualized plan based on the results of a Functional Behavior Assessment that is designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.
- (2) "Charter school" means a public charter school as defined at T.C.A. § 49-13-104.
- (3) "Child with a Disability" means a child between three (3) and twenty-one (21) years of age, both inclusive, who has been evaluated and determined as having a state-identified disability of functional delay or intellectually gifted, or as having one (1) or more of the following disabilities as defined in 34 C.F.R. §§ 300.8: an intellectual disability; a hearing impairment, including deafness; a speech or language impairment; a visual impairment, including blindness; emotional disturbance; an orthopedic impairment; autism; traumatic brain injury; other health impairment; a specific learning disability; developmental delay; deaf-blindness; or multiple disabilities and who, by reason thereof, needs special education and related services. Any child with a disability who turns twenty-two (22) years of age between the commencement of the school year and the conclusion of the school year continues to be a child with a disability for the remainder of that school year.
- (4) "Department" means the Tennessee Department of Education.
- (5) "FAPE" means a free appropriate public education in compliance with the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq.;
- (6) "Functional Behavior Assessment" or "FBA" means a process rooted in applied behavior analysis that focuses on determining why a student engages in behaviors that impede learning and how the

student's behavior relates to the environment.

- (7) Individualized Education Program” or “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;
- (8) “IEP Team” means a group of individuals described in 34 CFR § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability;
- (9) “LEA” means a Tennessee local education agency and has the same meaning given in T.C.A. § 49-1-103(2);
- (10) “Licensed Behavior Analyst” means an individual who is certified as a board certified behavior analyst (BCBA) or board certified behavior analyst-doctoral (BCBA-D) and is licensed by the Applied Behavior Analyst Licensing Committee of the Tennessee Department of Health to practice applied behavior analysis as an independent practitioner.
- (11) “Parent” means:
 - (a) The biological or adoptive parent;
 - (b) A legal guardian;
 - (c) A person who has custody of the child;
 - (d) A surrogate parent appointed in accordance with 34 C.F.R. § 300.519 and Rule 0520-01-09-.20 to represent a child in all matters relating to:
 - 1. The identification, evaluation, and educational placement of the child; and
 - 2. The provision of FAPE to the child; or
 - (e) A person with caregiving authority for the child, including but not limited to, a foster parent if the biological or adoptive parent’s authority to make educational decisions on the child’s behalf has been terminated under Tennessee law and the foster parent:
 - 1. Is willing to make the educational decisions required of parents under the law;
 - 2. Has no interest that would conflict with the interest of the child; and
 - 3. Has been the foster parent to the child for more than one (1) year in duration. If he or she has been the foster parent to the child for less than one (1) year in duration, he or she may be appointed by the LEA as a surrogate parent for the child.
- (12) “Related services” means:
 - (a) Transportation and such developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education, including, but not limited to, speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; transition services, including job placement; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling with a focus on career development, employment preparation, achieving independence, and integration in the workplace and community of a child with a disability; orientation and mobility services; and medical services for diagnostic or evaluation purposes; or

- (b) School health services and school nurse services, social work services in schools, and parent counseling and training.
 - 1. Parent counseling and training means:
 - (i) Assisting parents in understanding the special needs of their child;
 - (ii) Providing parents with information about child development; and
 - (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.
- (11) "School year" means July 1 to June 30 for the purposes of determining eligibility and services for a child with a disability.
- (12) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, home, hospitals, institutions, and other settings, and instruction in physical education.

Authority: T.C.A. §§ 49-10-101 et seq., 49-10-1301, et seq., and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed August 13, 2010; effective January 29, 2011. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021.

0520-01-09-.23 ISOLATION AND RESTRAINT FOR STUDENTS RECEIVING SPECIAL EDUCATION SERVICES.

- (1) Definitions:
 - (a) "Extended Isolation" means isolation which lasts longer than one (1) minute per year of the student's age or isolation which lasts longer than the time provided in the child's individualized education program (IEP).
 - (b) "Extended Restraint" means a physical holding restraint lasting longer than five (5) minutes or a physical holding restraint which lasts longer than the time provided in the child's IEP.
 - (c) "Noxious Substance" means a substance released in proximity to the student's face or sensitive area of the body for the purpose of limiting a student's freedom of movement or action, including but not limited to Mace and other defense sprays.
- (2) LEAs are authorized to develop and implement training programs that include:
 - (a) Use of positive behavioral interventions and supports;
 - (b) Nonviolent crisis prevention and de-escalation;
 - (c) Safe administration of isolation and restraint; and
 - (d) Documentation and reporting requirements.
- (3) LEAs are authorized to determine an appropriate level of training commensurate with the job descriptions and responsibilities of school personnel.
- (4) LEAs shall develop policies and procedures governing:

- (a) Personnel authorized to use isolation and restraint;
 - (b) Training requirements; and
 - (c) Incident reporting procedures.
- (5) If school personnel impose isolation or restraint, then the school personnel shall immediately contact the school principal, or the principal's designee. The principal or the principal's designee, shall observe and evaluate the student's condition within a reasonable time after the isolation or restraint was used. As needed, the school nurse shall also observe and evaluate the student's condition within a reasonable time after the isolation and restraint was used. The school principal, or principal's designee, shall notify the student's parent or guardian orally or by written or printed communication the same day the isolation or restraint was used.
- (6) When the use of isolation or restraint is proposed at an IEP meeting, the parent shall be advised of the provisions of T.C.A. §§ 49-10-1301, et seq., this rule and the IDEA procedural safeguards.
- (7) An IEP team meeting shall be convened within ten (10) days of use of restraint if:
- (a) The student's IEP does not provide for the use of a physical holding restraint generally;
 - (b) The student's IEP does not provide for the use of restraint for the behavior precipitating the use of the restraint; or
 - (c) An Extended Restraint is used.
- (8) An IEP team meeting shall be convened within ten (10) days of use of isolation if:
- (a) The student's IEP does not provide for the use of an isolation generally;
 - (b) The student's IEP does not provide for the use of isolation for the behavior precipitating the use of the isolation; or
 - (c) An Extended Isolation is used.
- (9) State agencies providing educational services within a residential therapeutic setting to children in their legal and physical custody shall develop and adhere to isolation and restraint policies in such educational settings which conform to the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) state standards as applicable and at least one (1) of the following national standards: American Correctional Association (ACA), Council on Accreditation (COA), Centers for Medicare & Medicaid Services (CMS), Joint Commission for Accreditation of Healthcare Organizations (JCAHO), Commission on Accreditation of Rehabilitation Facilities (CARF), as they apply in the educational environment. Development of, and adherence to, such policies shall be overseen by a licensed qualified physician or licensed doctoral level psychologist.
- (10) School Personnel who must isolate or restrain a student receiving special education services shall report each individual incident of isolation or restraint to the school principal or the principal's designee. The Department shall develop a report form, which shall be used by School Personnel when reporting isolation or restraint to the school principal or the principal's designee.
- (a) The report form shall be submitted for each individual incident and shall include the following information:
 - 1. Student's name, age, and disability;

2. Student's school and grade level;
3. Date, time and location of the isolation or restraint;
4. Length of time student was isolated or restrained;
5. Names, job titles, and signatures of the School Personnel who administered the isolation or restraint;
6. Whether the School Personnel who administered the isolation or restraint were certified for completing a behavior intervention training program;
7. Names and job titles of other School Personnel who observed or witnessed the isolation or restraint;
8. Name of the principal or designee who was notified following the isolation or restraint and time of notification;
9. Description of the antecedents that immediately preceded the use of isolation or restraint and the specific behavior being addressed;
10. A certification that any space used for isolation is at least forty (40) square feet;
11. A certification that School Personnel are in continuous direct visual contact at all times with a student who is isolated;
12. How the isolation or restraint ended, including the student's demeanor at the cessation of the isolation or restraint;
13. Physical injury or death to the student, School Personnel or both during the isolation or restraint;
14. Medical care provided to the student, School Personnel or both during the isolation or restraint;
15. Description of property damage, if relevant;
16. Date, time, and method of parent notification;
17. Whether an IEP team meeting is required pursuant to T.C.A. § 49-10-1304; and
18. A determination whether the student has a Functional Behavior Assessment and Behavior Intervention Plan for the behavior precipitating the use of isolation or restraint.

- (b) A copy of the report must be submitted to the Department within five (5) calendar days of incident.

Authority: T.C.A. §§ 49-10-1301, et seq. **Administrative History:** Original rule filed October 20, 2009; effective January 18, 2010. Amendments filed March 21, 2012; effective August 29, 2012. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021.

0520-01-09-.24 FUNCTIONAL BEHAVIOR ASSESSMENTS AND BEHAVIOR INTERVENTION

PLANS.

- (1) A Functional Behavior Assessment shall be conducted by a group of at least three (3) individuals knowledgeable about the student, to include as appropriate:
 - (a) The Parent of the child;
 - (b) At least one (1) special education teacher of the child;
 - (c) At least one (1) general education teacher of the child;
 - (d) Related service provider(s);
 - (e) School psychologist;
 - (f) Other School Personnel; and
 - (g) The student.
- (2) To the extent possible, the FBA process shall be led by a school psychologist, Licensed Behavior Analyst, or other School Personnel trained to conduct FBAs.
- (3) An FBA shall be conducted to inform the development or revision of a Behavior Intervention Plan in the following situations:
 - (a) When a student receiving special education and related services engages in conduct that results in a change of placement as defined by 34 C.F.R. 300.356 and the LEA, the Parent, and relevant members of the IEP team determine that the student's conduct that gave rise to the change in placement was a manifestation of the child's disability;
 - (b) When an IEP provides for the use of restraint or isolation, as required by T.C.A. 49-10-1304(b);
 - (c) When the student exhibits a pattern of behaviors that impede their learning or that of others;
 - (d) When the student exhibits a pattern of behavior that places the student or others at risk of harm or injury;
 - (e) When the student's IEP team is considering a more restrictive placement as a result of the student's behavior; or
 - (f) When determined appropriate by the student's IEP team.
- (4) An FBA shall be conducted, as appropriate, to inform the development or revision of a BIP in the following situations:
 - (a) When a student receiving special education and related services is removed from their current placement for more than ten (10) consecutive school days for behavior not determined to be a manifestation of the student's disability; or
 - (b) When a student receiving special education and related services is removed to an interim alternative education setting for up to forty-five (45) school days for weapons, drugs, or serious bodily injury, irrespective of whether the student's behavior is a manifestation of the student's disability;

- (5) An FBA shall include, at a minimum:
- (a) Description of the problem or targeted behavior(s);
 - (b) Systematic observation of the events that immediately precede each display of the targeted behavior(s) and are associated with the display of the behavior(s);
 - (c) Systematic observation and analysis of the consequences following the display of the targeted behavior(s);
 - (d) Analysis of the antecedent/setting(s) or environment(s) in which the targeted behavior(s) occurs and the frequency of those behavior(s);
 - (e) Review of the student's educational and disciplinary records;
 - (f) Structured interviews with or surveys completed by the student's teachers, parents, or School Personnel, as determined by the group of individuals conducting the FBA, who regularly interact with the student, and when applicable, a student interview;
 - (g) Review of the history of the targeted behavior(s) to include the effectiveness of any intervention previously used; and
 - (h) Determination of whether a skill deficit is a contributing factor to the behavior(s).
 - 1. If the results of the FBA determine that a skill deficit is contributing to the target behavior(s), the IEP must include measurable annual goal(s) to address the skill deficit.
- (6) The group of individuals that conducts the FBA shall review the description of the problem or targeted behavior(s), the results of the assessment, and a hypothesis of the function of the behavior to develop a BIP.
- (7) The BIP shall include, at a minimum:
- (a) A description of the behavior(s) and the frequency;
 - (b) A restatement of the hypothesized function of behavior(s);
 - (c) Measurable replacement behavior goals that align to the hypothesized function of behavior(s);
 - (d) Strategies for intervention, such as antecedent-based interventions, mitigating the consequences that reinforce the targeted behavior(s), and/or reinforcing identified replacement behavior(s) based on the results of the FBA;
 - (e) Identification of team members to teach appropriate replacement behaviors;
 - (f) A progress monitoring plan, including regular and frequent data collection and fidelity checks;
 - (g) A plan to train school personnel who interact regularly with the student on the intervention strategies identified in the student's BIP; and

- (h) A description of the consequences or strategies required when the challenging behavior occurs.
- (8) The BIP shall be based on the student's most recent FBA.
- (9) The student's IEP team shall review the BIP at least annually during the student's annual IEP team meetings and revise the BIP as needed.

Authority: T.C.A. § 49-10-1301 et seq . **Administrative History:** 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. Emergency rule filed June 10, 2020; effective through December 7, 2020. Emergency rule expired effective December 8, 2020, and the rule reverted to its previous status.

NEW

RULES

OF

THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-20

RESIDENTIAL MENTAL HEALTH FACILITIES

TABLE OF CONTENTS

| | | | |
|----------------|-------------------------------------|----------------|---------------------------|
| 0520-01-20-.01 | Purpose | 0520-01-20-.05 | Compliance and Monitoring |
| 0520-01-20-.02 | Definitions | 0520-01-20-.06 | Calculation of Funds |
| 0520-01-20-.03 | Approval of Out-of-State Facilities | | |
| 0520-01-20-.04 | Student Admission | | |

0520-01-20-.01 PURPOSE.

The purpose of this Chapter is to establish procedures for approving educational programs or instructional services provided by residential mental health facilities and for the allocation of funding to residential mental health facilities as required by T.C.A. § 49-3-370.

Authority: T.C.A. § 49-3-370. **Administrative History:**

0520-01-20-.02 DEFINITIONS.

- (1) "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 and was being implemented in the LEA at the time the student was admitted to the out-of-state Residential Mental Health Facility.
- (2) "Applicant" means an out-of-state Residential Mental Health Facility that seeks to receive LEA per pupil state and local funds on a prorated daily basis for the length of a Tennessee student's stay.
- (3) "Basic Education Program" or "BEP" means the funding formula through which state education dollars are generated and distributed to Tennessee schools.
- (4) "Category 1-Special Purpose School" means a non-public school approved individually by the Tennessee Department of Education that addresses a student's education while receiving short term medical or transient care.
- (5) "Department" means Tennessee Department of Education.
- (6) "Duplicated Count" means a student is counted towards the annual total of students served by the facility each time the student is admitted to the facility.
- (7) "Facility" or "Residential Mental Health Facility" means a facility which provides twenty-four (24) hour residential treatment and habilitation. The focus of the program may be on short-term stabilization or longer-term treatment and habilitation. The program must provide or arrange for an education component in compliance with this Chapter.
- (8) "FAPE" means a free appropriate public education in compliance with the Individuals with Disabilities Act ("IDEA"), 20 U.S.C. § 1400 et seq.

- (9) "Individualized Education Program" or "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.
- (10) "IEP Team" means a group of individuals described in 34 CFR § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.
- (11) "LEA" means a Tennessee Local Education Agency and has the same meaning given in T.C.A. § 49-1-103(2).
- (12) "Physician Attestation Form" means a form signed and dated by the Qualified Physician that contains the patient's name and the dates of admission.
- (13) "Qualified Physician" means a person who is licensed under T.C.A. Title 63, Chapter 6 or T.C.A. Title 63, Chapter 9 or similar statute in another jurisdiction and who is the professional treating the student for the medical condition requiring admittance to a Residential Mental Health Facility.
- (14) "School Year" means July 1 to June 30 for the purposes of determining enrollment.
- (15) "Standard Application Form" means a document whereby an out-of-state Facility may seek to receive approval by the Department to receive LEA per pupil state and local funds on a prorated daily basis for the length of a Tennessee student's stay.
- (16) "Standard Application Renewal Form" means a document whereby an approved out-of-state Facility may seek to receive continued approval by the Department to receive LEA per pupil state and local funds on a prorated daily basis for the length of a Tennessee student's stay.
- (17) "Student" means a child enrolled in a Tennessee public school, grades Kindergarten through grade twelve (K-12), and who is admitted to the Facility pursuant to this Chapter.

Authority: T.C.A. § 49-3-370. **Administrative History:**

0520-01-20-.03 APPROVAL OF OUT-OF-STATE FACILITIES.

- (1) The Department shall administer an application process for out-of-state Facilities to receive approval to be eligible to receive LEA per pupil state and local funds prorated for the length of an admitted Student's stay.
- (2) An Applicant shall complete and submit the Standard Application Form in accordance with the Department's application process. Applicants may apply for approval throughout the calendar year.
 - (a) The Department shall make a determination and notify the Applicant of approval or denial within thirty (30) business days of receipt of a completed Standard Application Form.
- (3) Applicants shall submit documentation to support that the Facility meets the following requirements:
 - (a) Operates in Alabama, Arkansas, Georgia, Kentucky, Mississippi, Missouri, North Carolina, or Virginia;
 - (b) Complies with all applicable health and safety laws, regulations, and codes of the state and locality in which the Facility is located;
 - (c) Serves at least fifteen (15) Tennessee students per School Year. The number of Tennessee students served shall be based on student enrollment from the School Year

immediately preceding the School Year in which the Applicant seeks to receive approval. The number of Tennessee students served shall be determined using a Duplicated Count;

- (d) All teachers are licensed by the educator licensing authority of the state in which the Facility is located;
 - (e) Has at least one (1) teacher with an endorsement in special education or a certification that the Department determines equivalent to an endorsement in special education in Tennessee based on similar training and experience requirements to provide special education and related services to admitted Students; and
 - (f) Provides a minimum of sixteen and one-half (16 ½) hours per week of educational instructional services to Students, unless the Student's IEP provides otherwise.
- (4) The Department shall determine whether the Applicant's educational programs or instructional services meet the same requirements as a Category I-Special Purpose School, as applicable, pursuant to State Board of Education Rules Chapter 0520-07-02.
- (a) The Department may request additional documentation from the Applicant to make such determination. Additional documentation includes, but is not limited to, documentation of teacher licensure and evaluations, employee background checks, parent and teacher handbooks, school calendar, examples of teacher and student daily schedules, and documentation of curriculum used.
- (5) An approved out-of-state Facility shall reapply annually to the Department for continued approval in order to remain eligible to receive LEA funds for the length of an admitted Student's stay. To reapply, a Facility shall complete and submit the Standard Renewal Application Form in accordance with the Department's procedures no later than one (1) calendar year from the date of initial or last approval. A Facility that is notified by the Department that it is not eligible to reapply for approval shall not reapply until one (1) calendar year after the Department's final notice to the Facility that it is not eligible to reapply.
- (a) The Department shall make a determination and notification to the Applicant of approval or denial within thirty (30) business days of receipt of the completed Standard Renewal Application Form.

Authority: T.C.A. § 49-3-370. **Administrative History:**

0520-01-20-.04 STUDENT ADMISSION.

- (1) An LEA shall only allocate per pupil state and local funds on a prorated daily basis to an approved out-of-state Facility for the length of the Student's stay under the following conditions:
- (a) The Student is admitted to the out-of-state Facility under a signed, written order of a Qualified Physician, the order being based upon both medical necessity and the most appropriate medical services for the Student;
 - (b) The Qualified Physician determines there were no facilities in Tennessee with the capacity to deliver the appropriate mental health treatment to the Student at the time the Student is admitted to the out-of-state Facility;
 - (c) The Student was enrolled in and attended a public school in Tennessee for the one (1) full School Year immediately preceding the student's admission to the out-of-state Facility;
 - (d) The Student is enrolled in a public school in Tennessee at the time of admission to the out-

of-state Facility; and

- (e) The Student has an Active IEP from an LEA at the time of the medical placement decision;
- (2) An LEA may require a Physician Attestation Form to be submitted to the LEA prior to the disbursement of funds to the out-of-state Facility.

Authority: T.C.A. § 49-3-370. **Administrative History:**

0520-01-20-.05 COMPLIANCE AND MONITORING.

- (1) The LEA and out-of-state Facility in which the Student enrolls shall establish a placement agreement outlining the responsibilities of the LEA and the responsibilities of the out-of-state Facility regarding the student's FAPE and special education and related services pursuant to the Student's IEP. At minimum, the placement agreement shall certify the Facility intends to meet the following requirements when providing services to an admitted Student:
 - (a) Provides a minimum of sixteen and one-half (16 ½) hours per week of educational instructional services to admitted students, unless the Student's IEP provides otherwise;
 - (b) Implements the Student's IEP as written at the time of the medical placement decision, and as subsequently amended by the Student's IEP team during the Student's stay at the Facility; and
 - (c) Has a sufficient number of teachers with an endorsement in special education or a certification that the Department determines to be equivalent to an endorsement in special education in Tennessee to comply with the Student's IEP as written at the time of the medical placement decision, or as revised by the IEP team as appropriate per 34 CFR §§ 300.324(b). The out-of-state Facility shall have the capacity to implement all special education and related services by the endorsed service provider as stated and required in the Student's IEP and to offer FAPE.
- (2) The out-of-state Facility shall consult with the student's LEA to determine how the Facility will best provide core instruction in, at a minimum, English Language Arts and Mathematics for the Student, as well as arranging for required Tennessee state assessments when applicable.
 - (a) The out-of-state Facility staff shall participate in the Student's IEP team meetings to inform the instructional programming needs of the Student.
- (3) The out-of-state Facility shall report the attendance of each admitted Student to the public school in the LEA in which the Student is enrolled.
- (4) If an LEA allocates funds to an out-of-state Facility pursuant to this Chapter, then the LEA and Department shall monitor the out-of-state Facility for compliance with this Chapter, implementation of the Student's IEP, and all other applicable state and federal laws.
- (5) If the Department determines the out-of-state Facility fails to comply with the requirements of T.C.A. § 49-3-370(b), this Chapter, or all other applicable state and federal laws then the LEA shall cease the allocation of funding as provided in this Chapter.
 - (a) The Department shall notify the out-of-state Facility of noncompliance within five (5) business days of discovery of noncompliance. The notification shall state reasons for noncompliance and that the Facility is not eligible to receive LEA per pupil state and local BEP funds until the noncompliance is corrected.

- (6) The out-of-state Facility may lose its approval from the Department due to noncompliance.
 - (a) If the out-of-state Facility loses its approval from the Department due to noncompliance, the Facility may file an appeal to the Department in accordance with the Department's procedures.

Authority: T.C.A. § 49-3-370. **Administrative History:**

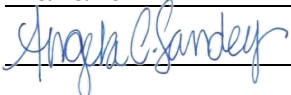
0520-01-20-.06 CALCULATION OF FUNDS.

- (1) The LEA shall allocate funding to the out-of-state Facility in an amount equal to the per pupil state and local BEP funds received by the LEA on a prorated daily basis for the Student's length of stay, provided that the Facility and Student meets the requirements of this Chapter.
- (2) The daily rates shall be calculated by the Department each School Year.
- (3) The Department shall calculate the daily rate of funds to be transferred from the LEA to the Facility as follows:
 - (a) Applicable state and local funds received by the LEA in the prior fiscal year divided by the average daily membership (ADM) from the prior fiscal year to equal the per pupil state and local funding;
 - (b) The per pupil state and local funding is then divided by the 180 days to equal the total daily rate.
- (4) An approved Facility shall receive funds only for the days during which the Student is served during the regular 180-day school year.
- (5) The funding specified in this chapter shall be in addition to funds allocated pursuant to federal law and regulation, including, but not limited to, Title I and Elementary and Secondary Education Act (ESEA) funds.
- (6) The calculation of funds as specified in this rule also applies to funding for Students admitted to a Tennessee state-licensed Residential Mental Health Facility pursuant to T.C.A. § 49-3-370(a).

Authority: T.C.A. § 49-3-370. **Administrative History:**

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: 10/25/2021

Signature: 

Name of Officer: Angela C. Sanders

Title of Officer: General Counsel

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Filed with the Department of State on: _____

Tre Hargett
Secretary of State