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File Date: 7/26/2022

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 3.251, 3 rd Floor		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	09/15/2022		
Hearing Time:	11:00 am	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

<p>**Anyone wishing to participate electronically may access the hearing using the following information:**</p> <p>URL: https://tn.webex.com/tn/j.php?MTID=mc189fc5efb958e9cf2c2c2cfaa581737</p> <p>Meeting number: 2309 940 0447</p> <p>Password: SBERules</p> <p>Phone: +1-415-655-0001</p> <p>Access Code: 2309 940 0447</p>
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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 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 **4:00 PM CT on September 19, 2022** in order to ensure consideration.

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

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 3.251 is located on the 3rd floor. Take the elevator to the 3rd floor and follow signs for the rulemaking hearing.

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
0520-02-01	Evaluations
Rule Number	Rule Title
0520-02-01-.02	General Requirements for Evaluation

Chapter Number	Chapter Title
0520-01-11	Individualized Education Accounts
Rule Number	Rule Title
0520-01-11-.02	Definitions
0520-01-11-.04	Term of the IEA
0520-01-11-.06	Account Holder Obligations
0520-01-11-.08	Participating Schools

Chapter Number	Chapter Title
0520-01-14	Course Access Program
Rule Number	Rule Title
0520-01-14-.02	Definitions
0520-01-14-.03	Student Eligibility and Participation
0520-01-14-.04	Provider Eligibility and Approval

0520-01-14-.05	Course Approval
0520-01-14-.06	Allocation and Use of Funds

Chapter Number	Chapter Title
0520-01-23	Interscholastic Athletics
Rule Number	Rule Title
0520-01-23-.01	Purpose
0520-01-23-.02	Definitions
0520-01-23-.03	LEA Requirements
0520-01-23-.04	Reviewing Allegations of Noncompliance
0520-01-23-.05	Early Resolution

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-02-01
EVALUATIONS**

0520-02-01-.02 GENERAL REQUIREMENTS FOR EVALUATION.

- (1) Local boards of education and charter schools shall implement annual evaluations for educators in accordance with T.C.A. § 49-1-302, these rules, and the State Board Educator Evaluation Policy 5.201. The Department of Education may issue additional guidance.
- (2) The annual evaluation model utilized by local boards of education and charter schools shall be comprised of multiple measures including student growth data, student achievement data, and qualitative data. Each educator's student growth data, student achievement data, and qualitative data shall be combined into a Level of Overall Effectiveness (LOE) rating that differentiates educator performance. The five (5) LOE ratings are:
 - (a) Significantly above expectations (level 5);
 - (b) Above expectations (level 4);
 - (c) At expectations (level 3);
 - (d) Below expectations (level 2); and
 - (e) Significantly below expectations (level 1).
- (3) Evaluations shall be conducted in accordance with the timelines published by the Department.
- (4) For teachers with individual growth data, sixty percent (60%) of the evaluation criteria shall be comprised of student achievement data. This sixty percent (60%) shall include thirty-five percent (35%) student growth data as represented by the Tennessee Value Added Assessment System (TVAAS) or some other comparable measure of student growth, if no such TVAAS data is available, and twenty five percent (25%) based on other measures of student achievement as defined in State Board Policy 5.201. The remaining forty percent (40%) of the evaluation shall be comprised of qualitative data using the qualitative appraisal instrument contained in the approved evaluation model utilized by the local board of education or charter school.
 - (a) If a teacher's individual student growth data reflects attainment of an achievement level of level 3, level 4, or level 5, then the student growth data shall comprise the full sixty percent (60%) student achievement data portion of the teacher's evaluation, if such use results in a higher evaluation score for the teacher.
 - (b) Local boards of education may adopt a policy allowing teachers whose individual student growth data demonstrates an effectiveness level of 4 or 5 to use the individual student growth score as one hundred percent (100%) of the teacher's final evaluation score.
 - (c) A teacher's most recent year's individual student growth data shall comprise the full thirty-five percent (35%) of the student growth data portion of the teacher's evaluation, if such use results in a higher evaluation score for the teacher.

- (d) Beginning in the 2022-23 school year, if a teacher for the current evaluation year does not have access to individual growth data due to changes in academic standards or assessment design requiring standards validation or standards setting in the teacher's content or subject area, fifteen percent (15%) of the evaluation criteria shall be comprised of other measures of student achievement as defined in State Board Educator Evaluation Policy 5.201. The remaining eighty-five percent (85%) of the evaluation shall be comprised of qualitative data using the qualitative appraisal instrument contained in the approved evaluation model utilized by the local board of education or charter school, unless using the evaluation criteria specified in paragraph (5) of this Rule results in a higher final evaluation score for the teacher.
- (5) For teachers and non-instructional licensed staff without individual student growth data, thirty percent (30%) of the evaluation criteria shall be comprised of student achievement data, including fifteen percent (15%) student growth data as evidenced by the school-level composite TVAAS score, and fifteen percent (15%) based on other measures of student achievement as defined in State Board Policy 5.201. The remaining seventy percent (70%) shall be comprised of qualitative data using the qualitative appraisal instrument contained in the approved evaluation model utilized by the local board of education or charter school.
- (a) For educators in state special schools without individual, school, or district growth data, fifteen percent (15%) of the evaluation criteria shall be comprised of other measures of student achievement as defined in State Board Policy 5.201. The remaining eighty-five percent (85%) of the evaluation shall be comprised of qualitative data.
- (6) For school administrators, the evaluation shall be comprised of thirty five percent (35%) student growth data as evidenced by the school composite TVAAS score, fifteen percent (15%) shall be comprised of other measures of student achievement data as defined in State Board Policy 5.201, and the remaining fifty percent (50%) shall be comprised of qualitative data.
- (a) If a school administrator's student growth data reflects attainment of an achievement level 3, level 4, or level 5, then the student growth data shall comprise fifty percent (50%) of the school administrator's evaluation, if such use results in a higher evaluation score for the school administrator.
- (7) Evaluation scores shall be a factor in employment decisions, including, but not limited to, promotion, retention, termination, compensation, and the attainment of tenure status; however, nothing shall require an LEA to use student achievement data based on state assessments as the sole factor in employment decisions.
- (8) The Department of Education shall monitor observation scores each year and ensure consistent application of observation standards across districts. Districts and schools that fall outside the acceptable range of alignment between student achievement data and observation results as defined in Educator Evaluation Policy 5.201 may be subject to additional training and monitoring by the Department as further defined in Educator Evaluation Policy 5.201.

Authority: T.C.A. § 49-1-302. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed July 17, 1981; effective October 28, 1981. Amendment filed March 7, 1983; effective June 15, 1983. Amendment filed September 30, 1986; effective November 14, 1986. Amendment filed October 18, 1989; effective January 29, 1989. Amendment filed November 18, 1988; effective February 28, 1989. Amendment filed October 31, 1989; effective January 29, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Repeal and new rule filed February 18, 2011; effective July 29, 2011. Amendment filed December 16, 2011; effective May 30, 2012.

**RULES
OF
STATE BOARD OF EDUCATION**

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

0520-01-11-.02 DEFINITIONS

- (1) "Account Holder" means a parent as defined in subsection (18) of this section or a participating student who has attained the age of majority who signs the IEA contract, is the Account Holder for the IEA funds, and is responsible for complying with all of the requirements of the IEA Program.
- (2) "Act" means the Individualized Education Act.
- (3) "Active IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR §§ 300.320 through 300.324 that is being implemented on the date the application window for the IEA program closes.
- (4) "Agreement" means a document signed by an applicant and a designee of the Department, which qualifies the parent or student who has attained the age of majority to participate in the Program.
- (5) "Applicant" means the parent or legal guardian of a student, or student who has attained the age of majority, who has completed the Standard Application Form.
- (6) "Computer Hardware or Other Technological Devices" means computer hardware or technological devices approved by the Department or a licensed treating physician that is used for the student's educational needs. Computer hardware and technological devices shall meet one (1) of the following criteria:
 - (a) Is a required device for communication or for physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA, or
 - (b) Allows a student to access instruction or instructional content.
- (7) "Criminal Background Check" at a minimum shall include, but not be limited to, a check of the following: Tennessee's Sex Offender Registry and the Abuse Registry of the Tennessee Department of Health. All providers as defined in subsection (23) of this section and employers of providers shall maintain documentation that any persons providing services to participating students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation (FBI) for processing pursuant to the National Child Protection Act. All participating schools shall maintain documentation that all persons working on school grounds when students are present and/or providing services to students have undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act. Individual contractors not employed by an organization shall fulfill the background check requirements by completing a fingerprint- based criminal history records check conducted by the FBI.
- (8) "Department" means the Tennessee Department of Education.
- (9) "Educational Therapies" means:

- (a) Individualized services designed to develop or improve academic performance through instructional and therapeutic techniques, and provided by licensed therapists who meet the requirements set by the Department and the State Board of Education as further defined in the Department's IEA handbook or by therapist assistants who meet the requirements set by the Department and the State Board of Education as further defined in the Department's IEA handbook and who provide the services under the direct supervision of a licensed therapist; or
 - (b) Tactile manipulatives recommended by the licensed therapist for the participating student pursuant to guidelines set forth by the Department.
- (10) "Eligible Postsecondary Institution" means a Tennessee public community college, college of applied technology, or university of the University of Tennessee system or a locally governed state university within the Tennessee Board of Regents systems, or an accredited private postsecondary institution accredited by one (1) of the following: any accreditation division of Cognia (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).
- (11) "Eligible Student" means:
- (a) A resident of this state with an Active Individualized Education Program (IEP) in accordance with 34 C.F.R §§ 300 et seq., § 49-10-102, and regulations of the State Board of Education with one (1) of the following qualifying disabilities as defined by the rules of the State Board of Education 0520-01-09-.02 as the primary or secondary disability in effect at the time the Department receives the request for participation in the Program. For purposes of this Chapter, the Department receives the request for participation in the Program on the date the application window for the IEA program closes. Qualifying disabilities for eligible students include the following:
 1. Autism;
 2. Deaf-blindness;
 3. Developmental delay;
 4. Hearing impairments;
 5. Intellectual disability;
 6. Multiple disabilities;
 7. Orthopedic impairments;
 8. Specific learning disability;
 9. Traumatic brain injury; or
 10. Visual impairments; and
 - (b) Meets at least one (1) of the following requirements:

1. Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year in which the student receives an Individualized Education Account (IEA). For the purposes of these rules, one (1) full school year means that the student was counted in the enrollment figures for the LEA(s) for the entire school year as reported in the state's student information system;
 2. Has not previously attended a K-12 school in Tennessee, but is currently eligible to enroll in a kindergarten program in a public school in this state. Students meeting this eligibility requirement shall inform the LEA in which they reside of the student's intent to participate in the program prior to July 1 of the year in which they are enrolled in the IEA Program;
 3. Has not previously attended a school in Tennessee during the one (1) full school year immediately preceding the school year in which the student receives an IEA, and moved to Tennessee less than one (1) year prior to the date of enrollment in the IEA Program; or
 4. Received an IEA in the previous school year.
- (12) "Fee-for-Service Transportation Provider" means a commercial transportation provider including a taxi or bus service. It does not include private transportation by a parent or participating student in accordance with the conflict of interest provision in these rules.
- (13) "Financial Institution" or "Private Financial Management Firm" means an institution selected by the Department to administer the individualized education accounts.
- (14) "IEA" means a Tennessee Individualized Education Account.
- (15) "Inclusive Educational Setting" means that the Participating School provides a setting that meets the following two (2) criteria:
- (a) Students with disabilities are educated with students who do not have disabilities; and
 - (b) No more than fifty percent (50%) of the students in an individual classroom or setting are students with disabilities.
- (16) "Local Education Agency (LEA)," "School System," "Public School System," "Local School System," "School District," or "Local School District" means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.
- (17) "Nonpublic Online Learning Program or Course" means online programs or courses that meet the requirements set by the Department.
- (18) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child.
- (19) "Participating School" means a nonpublic school that meets the requirements established in T.C.A. §§ 49-10-1401, et seq. and seeks to enroll eligible students.
- (20) "Participating Student" means an eligible student whose parent is participating in the IEA Program or an eligible student who has attained the age of majority and is participating in the IEA Program.
- (21) "Physician" means a person licensed under T.C.A. Title 63, Chapter 3, Chapter 4, Chapter 5, Chapter 6,

Chapter 7, Chapter 8, Chapter 9, Chapter 10, Chapter 11, Chapter 14, Chapter 16, Chapter 17, Chapter 19, Chapter 22, Chapter 23, Chapter 24, or Chapter 25.

- (22) "Program" means the Individualized Education Account (IEA) Program created in T.C.A. §§ 49-10-1401, et seq.
- (23) "Provider" means an individual or business that meets the requirements set by the State Board of Education and the Tennessee Department of Education.
- (24) "Standard Application Form" means a document whereby an Applicant may seek to establish an Individualized Education Account (IEA).
- (25) "Tutoring Services" means services provided by a tutor who meets the requirements set by the Department.

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

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

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

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

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

0520-01-11-.06 ACCOUNT HOLDER OBLIGATIONS.

- (1) Account Holders shall agree to use the funds deposited in the IEA for any, or any combination of, the following expenses:
- (a) Tuition or fees at a Participating School;
- (b) Textbooks required by a Participating School;
- (c) Tutoring Services provided by an individual tutor who meets the requirements set by the Department or a tutoring organization accredited by one (1) of the following: any accreditation division of Cognia (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE);
- (d) Payment for purchase of curriculum, defined as instructional educational materials for an academic course of study for a particular content area, including any supplemental materials required by the curriculum;
- (e) Fees for transportation paid to a Fee-for-Service Transportation Provider. Transportation fees can only be used for transportation to schools and educational providers (including tutors and therapists);

- (f) Tuition or fees for a Nonpublic Online Learning Program or Course that meets the requirements set by the Department;
 - (g) Fees for nationally standardized norm-referenced achievement tests, Advanced Placement examinations, or any examinations related to college or university admission;
 - (h) Contributions to a Coverdell education savings account established under 26 U.S.C. § 530 for the benefit of the participating student;
 - (i) Educational Therapies or services, including copays or coinsurance, for Participating Students;
 - (j) Services provided under a contract with a public school, including individual classes and extracurricular programs;
 - (k) Tuition or fees at an Eligible Postsecondary Institution;
 - (l) Textbooks required for courses at an Eligible Postsecondary Institution;
 - (m) Fees for the management of the IEA by private financial management firms;
 - (n) Computer hardware and technological devices approved by the Department or a licensed treating physician, if the computer hardware is used for the student's educational needs and is a required device for communication or physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA or allows a student to access instruction or instructional content; or
 - (o) Contributions to an Achieving a Better Life Experience (ABLE) account in accordance with the ABLE Act, compiled in T.C.A. Title 71, Chapter 4, Part 8, for the benefit of a participating student; provided, that the funds are used only for the student's education expenses subject to the rules established by the ABLE Program and that the student meets the qualifications to participate in the ABLE Program pursuant to the ABLE Act, and § 529A of the Internal Revenue Code of 1986 (26 U.S.C. § 529A), as amended, and all rules, regulations, notices, and interpretations released by the United States Department of Treasury, including the Internal Revenue Service (IRS).
- (2) Account Holders shall obtain pre-approval for Educational Therapies, Computer Hardware and Other Technological Devices, Tutoring Services, and any other expenses identified by the Department. If pre-approval is not obtained, the expense shall be deemed an unapproved expenditure. An Account Holder may request pre-approval by completing and submitting the Department's pre-approval form. For computer hardware and technological devices, a licensed treating Physician may also submit the pre-approval form.
 - (3) After the initial payment to the IEA, the Account Holder shall submit expense reports and receipts for all IEA funds expended in accordance with the procedures set by the Department before the next IEA payment is disbursed.
 - (4) In accordance with the procedures of the Department, the Department may immediately and permanently remove any Participating Student from eligibility for an IEA if the Account Holder fails to comply with the terms of the IEA Agreement or applicable laws, rules or procedures, or misspends funds. The Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this Chapter.
 - (5) If the Department determines that IEA funds have been misspent, the Department shall notify the Account Holder, and the Account Holder shall repay the misspent amount in the manner and within the timeframe set by the Department. The Department is authorized to freeze, suspend, and/or withdraw funding directly

from the student's IEA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with the terms of the state laws, rules, procedures, or the Agreement, if the student returns to the LEA, or if funds were deposited into the account in error. The Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this Chapter.

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

0520-01-11-.08 PARTICIPATING SCHOOLS.

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

- (b) Comply with all health and safety laws or codes that apply to nonpublic schools and the profession of the provider;
 - (c) Certify that they shall not discriminate against Participating Students or applicants on the basis of race, color, or national origin;
 - (d) Conduct Criminal Background Checks on employees;
 - (e) Exclude from employment any person not permitted by state law to work or act as a provider in a nonpublic school;
 - (f) Exclude from employment any person who might reasonably pose a threat to the safety of students; and
 - (g) Provide Account Holders with a receipt for all qualifying expenses.
- (3) Participating Schools shall annually submit to the Department:
- (a) All required documentation and requested information, including the school calendar, the nonpublic school's student fee schedules, and the maximum number of students receiving IEAs the school has the capacity to enroll;
 - (b) Graduation and completion information of participating students;
 - (c) Notice of whether they intend to continue participating in the Program; and
 - (d) Proof of financial viability to repay any funds that may be owed to the State by providing the Department with financial information verifying the school has the ability to pay an amount of the IEA funds expected to be paid during the school year. The school may comply with this requirement by filing a surety bond payable to the State from a surety, and in an amount determined by the Department.
- (4) The Department may require Participating Schools to submit to the Department a financial audit of the school conducted by a certified public accountant. Such audit shall include a statement that the report is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the Department to be expended in a manner inconsistent with this part shall be returned to the state.
- (5) The Department may suspend or terminate a Participating School from participating in the Program if the Department determines the school has failed to comply with the requirements of the Act, these rules, and/or the procedures set by the Department.
- (a) If the Department suspends or terminates a school's participation, the Department shall notify the Account Holder and Participating School of the decision. If a participating school is suspended or if a participating school withdraws from the Program, affected participating students remain eligible to participate in the Program.
- (6) A Participating School may appeal the Department's decision pursuant to the appeals procedures outlined in this Chapter. If a student withdraws from a participating school and transfers to another nonpublic school or returns to the LEA, the Participating School shall refund the tuition and fees on a prorated basis based on the number of days the student was enrolled in the school. If the student transfers to another nonpublic school, the funds shall be returned to the student's IEA. If the student returns to the LEA, the funds from the IEA shall be returned to the state treasurer pursuant to T.C.A. § 49-10-1403.

- (7) Third parties are prohibited from sending IEAs to collections in order to settle unpaid debts. All contracts entered into are the responsibility of the private parties involved.

Authority: T.C.A. §§ 49-1-302 and 49-10-1405. **Administrative History:** Emergency rules filed October 28, 2016; effective through April 26, 2017. Emergency rules superseded by new rules filed September 2, 2016; effective December 1, 2016. Emergency rules filed September 22, 2017; effective through March 21, 2018. Amendments filed December 21, 2017; effective March 21, 2018. Amendments filed October 25, 2018; effective January 23, 2019. Amendments filed January 22, 2020; to have become effective April 21, 2020. However, the State Board of Education filed a 34-day stay of the effective date of the rules; new effective date May 25, 2020. Amendments filed December 27, 2021; effective March 27, 2022.

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-14
COURSE ACCESS PROGRAM**

0520-01-14-.02 DEFINITIONS.

- (1) "Blended Learning" means the combination of virtual learning with the integration of in-person teaching practices. Blended learning occurs in a school building and can be teacher-led or involve the purchase or use of technology;
- (2) "Charter Management Organization" or "CMO" means a nonprofit entity that operates multiple Charter Schools, at least one (1) of which is in Tennessee;
- (3) "Charter School" means a Tennessee public charter school authorized to operate under T.C.A. Title 49, Chapter 13;
- (4) "Course Access Catalog" means a listing of providers that have been approved by the State Board and a listing of courses offered by approved Providers, which are available to Participating Students;
- (5) "Course Access Course" means a course that has been approved by the State Board and that has been included in the listing of courses in the Course Access Catalog and is offered by an approved course access Provider;
- (6) "Course Provider" or "Provider" means a business, industry, educator, nonprofit entity, for-profit entity, trade association, branch of the United States armed forces, local education agency (LEA), charter school, charter management organization, institution of higher education, or state agency that has been approved by the State Board to offer individual courses in person or online and that has been included in the listing of Providers in the Course Access Catalog;
- (7) "Department" means the Tennessee Department of Education;
- (8) "Eligible Student" means any student who is enrolled in a Tennessee public school, including a Charter School, in grades seven through twelve (7-12);
- (9) "Extended Learning" means an out-of-classroom learning experience that provides a student with:
 - (a) Enrichment opportunities outside of a classroom;
 - (b) Career readiness or employability skills, including internships and apprenticeships; or
 - (c) An out-of-classroom educational opportunity approved by the State Board or host LEA; and
 - (d) Extended Learning courses shall meet the requirements of a for-credit Work Based Learning course, as further defined in State Board High School Policy 2.103
- (10) "Governing Body of a Home LEA" means the local board of education, if the home LEA is an LEA, or the governing body of a Charter School, if the home LEA is a charter school;

- (11) "Home LEA" means the LEA or the Charter School in which the student is enrolled full-time;
- (12) "Host LEA" means an LEA or a Charter School offering course access program courses through an approved Course Provider to Eligible Students;
- (13) "Participating Student" means any Eligible Student enrolled in a course access program course through a Host LEA;
- (14) "State Board" means the Tennessee State Board of Education.
- (15) "Virtual Learning Course" means a course in which a significant portion of instruction is delivered to students through the effective use of technology.

Authority: T.C.A. §§ 49-18-101 through 49-18-110. **Administrative History:** Original rules filed September 30, 2019; effective December 29, 2019.

0520-01-14-.03 STUDENT ELIGIBILITY AND PARTICIPATION.

- (1) Students enrolled in a Tennessee public school, including a Charter School, in grades seven through twelve (7-12) are eligible to participate in the course access program, provided:
 - (a) The student meets all prerequisite requirements for the Course Access Course; and
 - (b) The student is unable to enroll in a comparable course at the student's school because either:
 - 1. A comparable course is not offered; or
 - 2. A legitimate situation exists that prevents the student from enrolling in a comparable course.
- (2) Students with disabilities shall not be precluded from enrollment in a Course Access Course based on their disabilities. Prior to the enrollment of a student with a disability into a Course Access Course, the student's Individualized Education Program (IEP) team or Section 504 team shall meet to review the student's IEP or 504 plan to identify any additional services, accommodations, modifications, or assistive technology that may be needed to ensure equitable access in the Course Access Course in order to ensure the provision of a free appropriate public education (FAPE).
- (3) The student's Home LEA shall pay the required tuition and fees to the Host LEA for the first two (2) Course Access Courses in which a Participating Student enrolls per school year.
- (4) A student's Home LEA may approve a student to take more than two (2) Course Access Courses per school year. If the student's Home LEA approves a student to take more than two (2) Course Access Courses in a school year then:
 - (a) The student shall be responsible for paying any required tuition and fees for all additional courses beyond the first two (2) courses; and
 - (b) The Home LEA shall award credit to the student upon successful completion of the additional courses.
- (5) A Home LEA may disapprove an Eligible Student's enrollment in a Course Access Course if:

- (a) The student does not meet the prerequisite requirements for the course;
 - (b) A comparable course is offered and available to the student in the Home LEA; or
 - (c) Participation in the Course Access Course is not logistically possible.
- (6) The Governing Body of a Home LEA shall develop a policy for hearing appeals from denials of Course Access Course enrollments.
 - (7) Home LEAs shall inform students and their parents or legal guardians of their right to appeal, in writing, to the Governing Body of the Home LEA any denial of Course Access Course enrollment.
 - (8) No student shall be required to enroll in a Course Access Course.
 - (9) A student may withdraw from a Course Access Course within the withdrawal period in accordance with the Host LEA's withdrawal procedures. Students who withdraw from a Course Access Course shall enroll in a course in their Home LEA to satisfy course load requirements.

Authority: T.C.A. §§ 49-18-101 through 49-18-110. **Administrative History:** Original rules filed September 30, 2019; effective December 29, 2019.

0520-01-14-.04 PROVIDER ELIGIBILITY AND APPROVAL.

- (1) A business, industry, educator, nonprofit entity, for-profit entity, trade association, branch of the United States armed forces, LEA, charter school, charter management organization, institution of higher education, or state agency seeking approval as a Course Provider shall submit an application to the Department by the deadline set by the Department.
 - (a) The Department shall create a standard provider application which shall require, at a minimum, the following:
 - 1. A data privacy policy that complies with all applicable state and federal student data privacy provisions, including, but not limited to, the Data Accessibility Transparency and Accountability Act; T.C.A. § 10-7-504; and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. g 1232g);
 - 2. An assurance that all information and resources for Extended Learning, in person, online, or Blended Learning courses are fully accessible for students of all abilities and:
 - (i) All courses submitted for approval are reviewed to ensure the courses meet legal accessibility standards;
 - (ii) The provider has an accessibility online learning policy;
 - (iii) The provider has an Americans with Disabilities Act (ADA) Section 504 coordinator, a grievance policy, and provides annual notifications to all enrolled students;
 - (iv) The provider has policies and activities to ensure its organizational and course websites meet accessibility requirements; and
 - (v) The provider has no examination or test where a specific score is required to

participate in Course Access Courses beyond completion of prerequisite coursework or demonstrated mastery of prerequisite material;

3. Evidence of financial viability in compliance with guidelines determined by the Department.
- (2) The Department shall review all provider applications submitted in accordance with the application process and shall submit to the State Board recommendations for approval or denial. No provider applicant shall act as a Course Provider until approved by the State Board.
- (3) All decisions of the State Board concerning approval of provider applicants shall be final and not subject to appeal. However, a provider applicant that has been denied approval may submit a new application to the Department, in accordance with the approval process set forth in this Rule and further defined by the Department for the school year following the school year for which the application was denied.
- (4) All approved Providers shall be included in the listing of Providers in the Course Access Catalog. In order to offer Course Access Courses to students, an approved Provider shall establish a partnership with a Host LEA. No LEA shall be required to be a Host LEA.
- (5) All approved Providers shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, sex, creed, color, national origin, religion, ancestry, or need for special education services.
- (6) Each approved Provider shall:
 - (a) Electronically provide, in compliance with guidelines set by the Department, a detailed student record of enrollment, performance, course completion, and course grading information to the participating student's home LEA and to the Department;
 - (b) Comply with applicable virtual learning requirements established in T.C.A Title 49, Chapter 16, and State Board Virtual Education Rule 0520-01-03-.05 regarding virtual education courses, if offering virtual learning courses;
 - (c) Comply with class size requirements established in T.C.A. § 49-1-104 and instructional and planning time requirements established by the State Board; and
 - (d) Ensure each teacher of a Course Access Course is licensed to teach in this state and meets the qualifications to teach, including the requirement for annual evaluations, in compliance with the rules of the State Board.
- (7) A Course Provider may be excluded from the Course Access Catalog at any time if the State Board or Department finds that a Provider has failed to comply with state or federal law, the rules or policies of the State Board, or the procedures of the Department; if the Provider violates its provider agreement; or if the terms of the provider's application for approval are no longer accurate.

Authority: T.C.A. §§ 49-18-101 through 49-18-110. **Administrative History:** Original rules filed September 30, 2019; effective December 29, 2019.

0520-01-14-.05 COURSE APPROVAL.

- (1) Host LEAs shall partner with approved Providers to offer Course Access Courses approved by the State Board for inclusion in the course access catalog.

- (2) No LEA or charter school shall be required to be a host LEA.
- (3) Host LEAs seeking to offer a Course Access Course shall establish a local course review and approval process.
- (4) Each local course review and approval process shall ensure courses recommended to the Department for inclusion in the Course Access Catalog:
 - (a) Align to the applicable state academic standards set by the State Board;
 - (b) Meet the instructional and academic rigor of a course that is provided in a traditional classroom setting;
 - (c) Are designed and implemented consistently with guidelines and procedures established by the Department;
 - (d) Are taught by a teacher who is properly licensed and endorsed in accordance with the rules of the State Board; and
 - (e) Are offered by an approved Course Provider included in the listing of providers in the course access catalog.
- (5) Course Access Courses shall not include courses with a state-required assessment.
- (6) The length of each Course Access Course shall contribute to instructional time requirements such that each student enrolled in a course access course still meets the required 6.5 hours a day of instruction.
- (7) Courses that meet all requirements under T.C.A. § 49-18-106 and the local course review and approval process may be submitted to the Department for recommendation to the State Board for its approval and inclusion in the Course Access Catalog. Host LEAs shall submit locally approved courses to the Department with an assurance that the course has been reviewed in compliance with this rule and T.C.A. § 49-18-106.
- (8) Courses approved locally shall be submitted in the school year prior to implementation by the deadline set by the Department.
- (9) The Department shall review all locally approved courses submitted in accordance with the local course review and approval process and shall submit to the State Board recommendations for approval or denial. A course shall not be included in the Course Access Catalog until approved by the State Board.
- (10) A course included in the Course Access Catalog shall be available to Eligible Students in any Home LEA.
- (11) A Home LEA shall award credit to a student upon successful completion of an approved Course Access Course.
- (12) The Department shall publish a link to the Course Access Catalog in a prominent location on the Department's website. The Course Access Catalog shall include:
 - (a) A list of approved Course Providers;
 - (b) A list of courses offered by approved Providers available through the course access program;
 - (c) A detailed description of the courses; and

- (d) All available student course completion and outcome data in a manner that protects student privacy in compliance with T.C.A. Title 49, Chapter 1, Part 7, the Data Accessibility Transparency and Accountability Act (T.C.A. § 10-7-504), and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g).
- (13) The State Board may exclude a course from the Course Access Catalog at any time if the course provider is excluded from the course access catalog, or if a home LEA, the host LEA, or the Department:
- (a) Submits evidence to the State Board that:
 1. The course is no longer adequately aligned with the approved state academic standards;
 2. The course fails to meet the minimum requirements of the State Board; or
 3. The course no longer complies with the course approval requirements set forth in paragraph (4)(a)-(e) above; and
 - (b) Requests, in writing, that the State Board exclude the course.
- (14) The State Board may also exclude a course from the Course Access Catalog if the course is offered by a host school that was issued a “D” or “F” letter grade by the Department on the most recent state report card issued pursuant to T.C.A. § 49-1-228.

Authority: T.C.A. §§ 49-18-101 through 49-18-110. **Administrative History:** Original rules filed September 30, 2019; effective December 29, 2019.

0520-01-14-.06 ALLOCATION AND USE OF FUNDS.

- (1) The student’s Home LEA shall pay the required tuition and fees to the Host LEA for the first two (2) Course Access Courses in which a Participating Student enrolls per school year.
- (2) Payment of tuition and fees for enrollment of an eligible student in a course access course shall be a proportionate share of the state and local funds allocated to the Home LEA of the student pursuant to the applicable state funding formula.
- (3) At the time of enrollment, the Home LEA shall provide fifty percent (50%) of the course fee to the Host LEA offering the course access course. The remaining amount shall be paid to the Host LEA by the Home LEA upon the student’s completion of the course.
- (4) If a student withdraws from the Course Access Course during the withdrawal period the Host LEA shall refund the Home LEA the full amount paid by the Home LEA.
- (5) The Home LEA shall not be responsible for other costs associated with the Course Access Course enrollment.

Authority: T.C.A. §§ 49-18-101 through 49-18-110. **Administrative History:** Original rules filed September 30, 2019; effective December 29, 2019.

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-23
INTERSCHOLASTIC ATHLETICS**

TABLE OF CONTENTS

0520-01-23-.01 Purpose
0520-01-23-.02 Definitions
0520-01-23-.03 LEA Requirements
0520-01-23-.04 Reviewing Allegations of Noncompliance
0520-01-23-.05 Early Resolution

0520-01-23-.01 PURPOSE.

The purpose of these Rules is to effectuate T.C.A. § 49-6-310.

Authority: T.C.A. § 49-1-201 and 49-6-310. **Administrative History:**

0520-01-23-.02 DEFINITIONS.

- (1) "Commissioner" means the Commissioner of the Tennessee Department of Education.
- (2) "Department" means the Tennessee Department of Education.
- (3) "High School" means a public school in which any combination of grades nine through twelve (9-12) are taught.
- (4) "Interscholastic Athletic Activity or Event" means a sporting activity or sporting event involving two (2) or more schools.
- (5) "LEA" means a Tennessee local education agency and has the same meaning given in T.C.A. § 49-1-103(2).
- (6) "Middle School" means a public school in which any combination of grades five through eight (5-8) are taught.
- (7) "Reporting Party" means a Tennessee citizen who reports in writing an allegation of noncompliance with T.C.A. § 49-6-310(a) to the Tennessee Department of Education.
- (8) "State Education Finance Funds", means the state school fund as defined in T.C.A. § 49-3-101(a) or funds appropriated or allocated from the state treasury for the operation and maintenance of the public schools or that may derive from any state taxes, the proceeds of which are devoted to public school purposes.

Authority: T.C.A. § 49-1-201 and 49-6-310. **Administrative History:**

0520-01-23-.03 LEA REQUIREMENTS.

- (1) Each local board of education and each governing body of a public charter school shall:
 - (a) Adopt and enforce a policy in compliance with T.C.A. § 49-6-310;
 - (b) Require each Middle School and High School under its control to adopt written procedures to ensure proper implementation of T.C.A. § 49-6-310(a) and the policy adopted pursuant to T.C.A. § 49-6-310; and
 - (c) Require annual reminders of T.C.A. § 49-6-310(a), the policy adopted pursuant to T.C.A. § 49-6-310, and the school procedures required by this Chapter be provided to all coaches and school and district administrators responsible for facilitating Interscholastic Athletic Activities or Events at Middle Schools and High Schools under its control.
- (2) Each LEA shall confirm that each Middle School and High School under its control and each public charter school authorized by the LEA is in compliance with T.C.A. § 49-6-310(a) prior to submitting the annual LEA Compliance Report to the Department certifying the LEA's compliance with all education laws and State Board of Education ("State Board") rules.

Authority: T.C.A. § 49-1-201 and 49-6-310. **Administrative History:**

0520-01-01-.04 REVIEWING ALLEGATIONS OF NONCOMPLIANCE.

- (1) Upon receipt of notice of an allegation of noncompliance with T.C.A. § 49-6-310(a), the Department shall initiate a review of the allegation within ten (10) calendar days of receiving the notice. A review is initiated when the Department sends a written notification of the review to the LEA in which the allegation(s) arose. The Department shall also notify the Reporting Party, if any, that an investigation has been initiated and provide information regarding the procedural steps involved in the investigative process.
- (2) As part of the review, the Department shall have the authority to:
 - (a) Request any relevant physical or electronic evidence from the LEA, the Reporting Party, and/or any witness; and
 - (b) Interview the Reporting Party and/or any other individual deemed necessary by the Department.
- (3) No later than sixty (60) calendar days after initiating the review, the Department shall issue a written determination letter summarizing the findings of the review to the LEA from which the allegation(s) arose. A notice shall also be sent to the Reporting Party summarizing the Department's findings. Such notice shall be sent in compliance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g); T.C.A. § 10-7-504; the Data Accessibility, Transparency, and Accountability Act, compiled in Title 49, Chapter 1, Part 7; and all other relevant privacy laws. The sixty (60) day timeline may only be extended if exceptional circumstances exist and those circumstances are appropriately documented by the Department. If there is a need for an extension of the sixty (60) day timeline, the Department shall notify the LEA in which the allegation(s) arose and the Reporting Party of this extension in writing.
- (4) If the LEA is found to be noncompliant with T.C.A. § 49-6-310, the written determination letter shall include a notice of noncompliance and corrective action steps required for compliance. The notice of noncompliance shall include a deadline for completion of the corrective action steps. An LEA shall not be deemed non-compliant by the Department if the failure to comply is in response to a court or other legally binding order that prohibits the LEA from complying.

- (5) If the Department determines that the LEA failed to complete the required corrective actions by the deadline included in the notice of noncompliance, the Department shall send the LEA a letter of withholding stating that due to failure to complete the required corrective actions by the deadline, the Commissioner shall withhold a portion of the state education finance funds that an LEA is otherwise eligible to receive until the LEA completes each of required action steps. The letter shall state that LEAs have the right to request a contested case hearing regarding the Department's written determination.
- (6) Any contested case hearing granted shall be conducted in accordance with the Tennessee Uniform Administrative Procedures Act at T.C.A. §§ 4-5-301 et. seq. and the Rules of the Tennessee Department of State Administrative Procedures Division, Chapter 1360-04-01. If the LEA chooses to request a contested case hearing, the LEA shall make such a request within thirty (30) calendar days of the Department issuing the written determination of the appeal.

Authority: T.C.A. § 49-1-201 and 49-6-310. **Administrative History:**

0520-01-23-.05 EARLY RESOLUTION.

- (1) LEAs are encouraged to work collaboratively with the Department to resolve allegations of noncompliance as quickly as possible. At any point after an allegation of noncompliance with T.C.A. § 49-6-310 has been reported, but before a written determination has been issued by the Department, the LEA may propose early resolution of the allegations through a resolution agreement.
- (2) If early resolution is agreed to by the Department and LEA, the LEA shall prepare a written resolution agreement to be submitted to the Department for review and approval. Entry into an early resolution agreement shall not constitute an admission that the LEA violated T.C.A. § 49-6-310 or this Chapter.
- (3) A written resolution agreement shall include:
 - (a) A summary of the allegations; and
 - (b) Any agreed upon terms of the early resolution, including deadlines for the completion of required acts or steps, and dates for submission of reports and documentation to the Department verifying implementation.
- (4) Once a written resolution agreement between the LEA and the Department is signed by all parties, the review shall be deemed resolved and the Department shall:
 - (a) Monitor the implementation of the written resolution agreement to ensure the LEA complies with the terms;
 - (b) Provide written notice to the LEA of any deficiencies in implementation and shall request immediate and appropriate action to address those deficiencies;
 - (c) When necessary, require additions to or modifications of the written resolution agreement to address the failure of the LEA to fully implement the terms of original agreement; and
 - (d) Provide written notice to the Reporting Party that the LEA and the Department have entered into a resolution agreement, including the terms of the resolution agreement.

- (5) When the Department determines that the LEA has fully implemented the terms of the resolution agreement, the Department shall conclude the monitoring of the written resolution agreement by sending written notification to the LEA and the Reporting Party.
- (6) Failure by an LEA to comply with the terms of the written resolution agreement shall be deemed a failure or refusal to comply with T.C.A. § 49-6-310 in accordance with Rule Section .05 of this Chapter.

Authority: T.C.A. § 49-1-201 and 49-6-310. **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: 07/26/22

Signature: 

Name of Officer: Angela C. Sanders

Title of Officer: General Counsel

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Tre Hargett
Secretary of State

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