

(Rule 0520-01-16-.05, continued)

**RULES
OF
STATE BOARD OF EDUCATION**

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

0520-01-16-.04 AGREEMENT AND FUNDS TRANSFER.

- (1) Upon notification by the Department that an ESA may be established, a parent of an eligible student or an eligible student who has reached the age of eighteen (18) shall sign an Agreement to:
 - (a) Ensure the provision of an education for the participating student that satisfies the compulsory school attendance requirement provided in T.C.A. § 49-6-3001(c)(1) through enrollment in a Category I, II, or III private school as defined by the State Board;
 - (b) Comply with the requirement that participating students in grades three through eleven (3-11) participate in the Tennessee comprehensive assessment program ("TCAP") tests for Math and English Language Arts, or successor tests authorized by the State Board, each year of enrollment in the Program;
 - (c) Not enroll the participating student in a public school during the time the student is enrolled in the Program;
 - (d) Not enroll the participating student in the Individualized Education Account (IEA) Program during the time the student is enrolled in the Program;
 - (e) Release the LEA in which the participating student resides and the school for which the participating student is zoned to attend from all obligations to educate the participating student during the time the participating student is enrolled in the Program;
 - (f) Acknowledge that participation in the Program has the same effect as parental refusal to consent to the receipt of services under the Individuals with Disabilities Education Act at 20 U.S.C. § 1414; and
 - (g) Comply with the acceptable uses of ESA funds and the responsibilities of the parent of a participating student or participating student who has reached the age of eighteen (18).
- (2) The Agreement and any additional information required by the Department shall be submitted to and received by the Department by the deadlines set by the Department before the first ESA payment is disbursed.
- (3) The Agreement shall be signed by the parent of an eligible student or by the eligible student who has reached the age of eighteen (18) and a designee of the Department to be effective.
- (4) The Department shall establish procedures to effectuate the ESA funds transfer process and dates on which each ESA payment shall be disbursed.

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- (5) Prior to the first disbursement of ESA funds, the Account Holder must provide proof of enrollment in a Category I, II, or III private school. No funds shall be disbursed to an ESA account without proof of enrollment in a Category I, II, or III private school.
- (6) ESA funds may not be used for tuition at a non-participating school.
- (7) The maximum annual amount to which a participating student is entitled under the Program shall be equal to the amount representing the per pupil state and local funds generated and required through the [state's K-12 education funding formula Basic Education Program \("BEP"\)](#) for the LEA in which the participating student resides, or the statewide per pupil average of required state and local [funds as determined through the state's K-12 education funding formula BEP funds](#), whichever amount is less.
- (8) If a participating student enrolls in the Program for less than an entire school year, the ESA amount for that school year shall be reduced on a prorated daily basis.
- (9) After the initial and each subsequent payment to the ESA, the Account Holder shall submit expense reports and receipts for all ESA funds expended in accordance with the procedures set by the Department before the next ESA payment is disbursed.
- (10) In accordance with the procedures set by the Department, the Department may remove any Account Holder from eligibility for an ESA if the Account Holder fails to comply with the terms of the Agreement or applicable laws, rules or procedures, or misuses funds. The Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.
- (11) If the Department determines that ESA funds have been misused, the Department shall notify the Account Holder, and the Account Holder shall repay the misused amount in the manner and within the timeframe set by the Department. Additionally, the Department is authorized to freeze or withdraw funding directly from the student's ESA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with state laws, rules, procedures or the Agreement, the participating student's return to the LEA, or the funds having been deposited into the account in error. An Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.

Authority: T.C.A. §§ 49-1-302 and ~~49-6-260~~~~149-10-1401~~ et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.06 TERM OF THE ESA.

- (1) For purposes of continuity of educational attainment, a participating student shall remain eligible to participate in the Program until the participating student meets one (1) of the following, whichever occurs first:
 - (a) Enrolls in a public school;
 - (b) Enrolls in a Category IV or V private school or a private school not approved under the rules of the State Board;
 - (c) Ceases to be a resident of Shelby or Davidson Counties;
 - (d) Is suspended or terminated from participating in the Program in accordance with T.C.A. § 49-6-2808;

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- (e) Graduates or withdraws from high school with no funds remaining in an open ESA account;
 - (f) Reaches twenty-two (22) years of age with no funds remaining in an open ESA account. However, if the participating student reaches the age of twenty-two (22) with funds remaining in an open ESA account after the commencement of the school year, the participating student may remain in the Program until the conclusion of that school year; or
 - (g) No longer meets or fails to verify that the participating student's household income meets the requirements of T.C.A. § 49-6-2602(3)(D) and this rule according to the schedule and income-verification process developed by the Department.
- (2) A participating student may voluntarily withdraw from the Program at any time. The Account Holder shall complete the procedures for withdrawal from the Program as set by the Department.
 - (3) If a participating student becomes ineligible to participate in the Program for any reason or withdraws from the Program, the participating student's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the ~~BEP account of the~~ Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
 - (4) The Account Holder may transfer the participating student from the participating school to another participating school in accordance with procedures set by the Department.
 - (5) In order for a participating student to continue in the Program, the Account Holder shall annually apply to renew the ESA by following the procedures developed by the Department and posted on the Department's website.
 - (6) If a participating student graduates high school or reaches twenty-two (22) years of age while enrolled in high school pursuant to T.C.A. § 49-6-2603(d)(1), and has funds remaining in the participating student's open ESA, the participating student shall become a Legacy Student.
 - (a) A Legacy Student may use ESA funds to attend or take courses from an eligible postsecondary institution and those expenditures are determined to be qualifying expenses.
 - (b) A Legacy Student's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the ~~BEP account of the e~~ Education ~~t~~Trust ~~F~~und of 1992 under T.C.A. §§ 49-3-357 and 49-3-358, after the first of the following events:
 - 1. Upon a Legacy Student's graduation from an eligible postsecondary institution;
 - 2. After four (4) consecutive years elapse immediately after a Legacy Student enrolls in an eligible postsecondary institution; or
 - 3. After a Legacy Student is not enrolled in an eligible postsecondary institution for twelve (12) consecutive months.
 - (7) Account Holders are not required to spend the entire sum each year, however, a portion of the funds must be used each year on approved expenses for the benefit of the student enrolled in the Program.
 - (8) The Department shall provide parents of participating students or participating students who have reached the age of eighteen (18) with a written explanation of the allowable uses of ESA funds and the responsibilities of parents of participating students and participating students who have reached the age of

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eighteen (18) regarding ESA funds. The Department shall also provide parents of participating students or participating students who have reached the age of eighteen (18) with a written explanation of the Department's duties regarding ESA funds, eligible students, participating students, and legacy students.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.10 RETURN TO LOCAL EDUCATION AGENCY.

- (1) A participating student who is otherwise eligible to return to the student's LEA may return to the LEA at any time after enrolling in the Program. Upon enrollment in an LEA, the student's participation in the Program shall be terminated.
- (2) If a participating student enrolls in an LEA, the parent of a participating student or the participating student who has reached the age of eighteen (18) shall notify the Department in accordance with the procedures and timelines set by the Department.
- (3) Upon termination of a student's participation in the Program, the Department shall close the participating student's ESA and any remaining funds shall be returned to the state treasurer to be placed in ~~the BEP Account of~~ the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (4) Upon enrollment in the LEA, if the parent or student who has reached the age of eighteen (18) requests an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.