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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Rich Haglund
Address:	9 th Floor, 710 James Robertson Pkwy, Nashville, TN 37243
Phone:	615-253-5707
Email:	Rich.haglund@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:	Rich Haglund
Address:	9 th Floor, 710 James Robertson Pkwy, Nashville, TN 37243
Phone:	615-253-5707
Email:	Rich.haglund@tn.gov

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

Address 1:	Andrew Johnson Tower, 1 st Floor Conference Room		
Address 2:	710 James Robertson Parkway		
City:	Nashville		
Zip:	37243		
Hearing Date :	10/19/10		
Hearing Time:	10:00 – 11:00 a.m.	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Additional Hearing Information:

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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
0520-12-01	Standards For Child Care Centers And School-Age Child Care Programs
Rule Number	Rule Title
0520-12-01-.02	Definitions
0520-12-01-.13	Transportation

Rule 0520-12-1-.02 Definitions is amended by inserting the definition of non-school, community-based organization program as section (37) and renumbering all subsequent sections accordingly.

- (37) Non-school, community-based organization program. An infant/toddler, preschool or school-age before and after school program operated through contract with the Department of Education and under the certificating authority of the Department of Education.

Authority: T.C.A. §§ 4-5-201 et seq., 49-1-201(c)(24), 49-2-203(b)(11)(B), 49-1-302(I), and 49-1-1102. 49-6-101, 49-6-707.

Rule 0520-12-01-.13 Transportation is amended by deleting the present language in it entirety and replacing it with the following:

0520-12-01-.13 Transportation

(1) Management Responsibility

- (a) If a program provides transportation or contracts for transportation, the program's management shall be fully responsible for all transportation of children, including between home and program (if different facility from school), to and from school, and on field trips.
- (b) Program management is responsible for operating transportation services in compliance with:
1. All State laws, regarding school transportation, T.C.A. §§ 49-6-2102 through 49-6-2115 & 49-6-2117 through 49-6-2118;
 2. All rules and regulations, promulgated by State Board of Education, Chapter 0520-01-05 regarding school transportation and school buses.
 3. If a program is administered by a community-based organization, which is not approved as a school (non-school, community-based organization) and provides transportation or contracts for transportation, the transportation plan and vehicle requirements are excluded from 0520-12-01-.13 (1)(b) 1. & 2. The non-school community-based organization administered program shall establish a transportation plan and maintain vehicle requirements in accordance with rule 0520-12-01-.13(4).
- (c) Vehicles used to transport children and which are owned or operated by, contracted for or which are otherwise under the direction or control of the school-administered program, shall carry automobile liability insurance coverage for each vehicle used for that purpose in the minimum amounts required by T.C.A. § 49-6-2111 and defined in State Board of Education Pupil Transportation rules 0520-1-5-.01(2).
1. Automobile insurance coverage for non-school community-based organizations which transport children:
 - (i) Automobile liability coverage shall be maintained in a minimum amount of five hundred thousand dollars (\$500,000) combined single limit of liability.
 - (ii) Medical payment coverage shall be maintained in the minimum amount of five thousand dollars (\$5,000) for injuries to children being transported in vehicles owned, operated or leased by the non-school community-based organization's program.
- (d) Vehicles used to transport children must be in compliance with the Federal Motor Vehicle Safety Standards as defined by Title 49 part 571 of the Code of Federal Regulations and the Tennessee Minimum School Bus Standards, adopted by the State Board of Education as required by Rule 0520-1-5-.02.

1. Unless the certification label states the fifteen (15) passenger van is a "school bus", the National Traffic and Motor Vehicle Safety Act, 49 USC § 30112, prohibits the use of a fifteen (15) passenger van to transport students to and from school or a school-related activity. The fifteen (15) passenger van is defined as any vehicle that seats ten (10) to fifteen (15) passengers, not including the driver.
2. Children may be transported in passenger vehicles, however, children of all ages but must be in compliance with passenger restraint laws, T.C.A. § 55-9-602 at all times in passenger vehicles (vehicles weighing less than ten thousand (10,000) pounds).
 - (i) Any child under one (1) year of age or any child weighing less than twenty pounds (20 lbs) or less shall be properly secured in a child passenger restraint system in a rear facing position.
 - (ii) Any child, one (1) through three (3) years of age weighing greater than twenty pounds (20 lbs) shall be properly secured in a child passenger restraint system in a forward facing position.
 - (ii) Any child, four (4) through eight (8) years of age and measuring less than four feet, nine inches in height shall be properly secured in a passenger motor vehicle using a separate carrier, an integrated child seat or a belt-positioning booster seat.
 - (iv) Any child, nine (9) through twelve (12) years of age, measuring four feet, nine inches or more in height, shall be properly secured in a passenger motor vehicle using a seat belt system in the rear seat of the vehicle.
 - (v) Any child, thirteen (13) through fifteen (15) years of age, shall be properly secured in a passenger motor vehicle using a seat belt system.
- (e) Federally approved child care restraint systems must be provided and utilized during the transport of any child three (3) years of age and under on a school bus.
- (f) No child shall be allowed to ride on the floor of a vehicle, and no child shall be placed with another child in the same restraint device.
- (g) All school buses shall be inspected in compliance with the Rules and Regulations for School Bus Inspection, Chapter 1340-03-03, promulgated by and regulated by the Tennessee Department of Safety.
- (h) All persons hired for the position of "school bus driver" shall:
 1. Be issued a commercial driver's license (CDL) by the Tennessee Department of Safety;
 - (i) Bus drivers employed by a school/school system shall have an "S" endorsement.
 - (ii) Bus drivers employed by a non-school, community-based organization shall have a "P" endorsement with completion of school bus driver training.
 2. Knows and understands the school system's or private school's policies and procedures concerning transportation and to bus driver's responsibilities and duties;
 3. Has no criminal offense or criminal record of a violation of any of the following:

- (i) Driving under the influence of an intoxicant as prohibited by T.C.A. § 55-10-401;
 - (ii) Vehicular assault as prohibited by T.C.A. § 39-13-106;
 - (iii) Vehicular homicide as prohibited by T.C.A. § 39-13-213(a)(2);
 - (iv) Aggravated vehicular homicide as prohibited by T.C.A. § 39-13-218; or
 - (v) Manufacture, delivery, sale or possession of a controlled substance as prohibited by T.C.A. § 39-17-417;
4. Completed the annual physical and mental examinations of school bus drivers as required by T.C.A. § 49-6-2108;
 5. Complete the annual training for school bus drivers presented by the Tennessee Department of Safety. School bus driver training is not required for drivers of passenger vehicles only.
- (i) Drivers of any passenger vehicle, used to transport children, shall possess a current, valid driver's license and endorsement required by the Tennessee Department of Safety for transporting children in the applicable type of vehicle.
 - (j) Seating capacity on a school bus shall be in compliance with T.C.A. § 49-6-2110 (a), requiring a minimum of thirteen linear inches of seat space for each student.
 - (k) Vehicles used for transporting children shall have a clearly visible identifying sign.
 1. Exceptions to vehicle identification, i.e. signage:
 - (i) Vehicles used exclusively for the occasional field trip;
 - (ii) Vehicles used exclusively for the limited provision of emergency transportation, e.g., vehicle used when regular vehicle has a mechanical breakdown; and
 - (iii) The Department may waive the vehicle identification requirements for programs under the direction or control of a public agency.
 - (l) Develop transportation routes (school bus routes) in compliance with T.C.A. § 49-6-2105 to ensure no child is on a school bus more than one and one-half (1 ½) hours in the morning and one and one-half (1 ½) hours in the afternoon.
 - (m) A vehicle used to transport children shall have fire extinguishers, emergency reflective triangles, a first aid kit, and a blood-borne pathogenic clean-up kit, and an adult familiar with the use of this equipment on board. Emergency exiting procedures shall be practiced by all staff responsible for transporting children on a regular basis. (Not applicable to occasional transportation by volunteers).
 - (n) Firearms are prohibited in vehicles used to transport children.
- (2) Supervision of Children During Transportation.
 - (a) An adult must be in the vehicle whenever a child is in the vehicle.
 - (b) An adult must be seated behind the steering wheel if the motor is running and children are being loaded and/or are on board.
 - (c) Transportation of children with special needs shall be in compliance with the Individual Education Plan (IEP) for each child. Bus drivers who do not return to a central depot

shall stipulate that all buses will be checked at the end of every run to make sure that no person remains on the bus as defined in T.C.A. § 49-6-2114.

(d) Adult Monitor Requirements.

1. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks to four (4) years of age.
2. An adult monitor, in addition to the driver, is required on the vehicle for all routes exceeding thirty (30) minutes for children ages six (6) weeks to four (4) years of age, regardless of the total number of children being transported.
3. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanently or temporarily non-ambulatory) of any age.
4. An adult monitor, in addition to the driver, is required if more than ten (10) pre-kindergarten students four (4) years of age are transported on the same bus.
5. An adult monitor shall not be seated in the front passenger seat, but shall be seated in the vehicle in a position which will allow:
 - (i) Each child to be seen with a quick glance;
 - (ii) Each child to be heard at all times;
 - (iii) Each child's activities to be observed; and
 - (iv) The monitor to respond immediately should there be an emergency.

(3) Responsibility for Loading, Unloading and Tracking Each Child.

(a) Passenger Log:

1. A passenger log shall be used to track each child during transportation.
2. The first and last name of each child received for transport shall be recorded on the passenger log. A sibling group shall not be listed as a single group entry, for example, "Smith children".
3. The driver of the vehicle or the monitor shall be designated by management as the person responsible for completing the log.

(b) Loading Procedures:

1. As each child is loaded onto the vehicle, the time the child was placed on the vehicle shall be recorded on the passenger log.
2. If the child was loaded from home, the parent or other authorized person will additionally sign the log indicating the child was placed on the vehicle.

(c) Unloading Procedures:

1. The individual designated by the program as responsible for the log shall update it immediately upon the child being released from the vehicle. The designated staff member shall update the log by:
 - (i) Recording the time the child was released; and
 - (ii) Initialing next to the time of release.

2. When the child is released to a parent or other authorized person, that person must sign the log indicating that the child was released to them.
 3. When Pre-Kindergarten children are transported on the return route, the school bus driver must not leave a Pre-K child at the child's home or bus stop unless the parent or other authorized person is present. If the parent or other authorized person is not present, the Pre-K student is not to exit the bus and the school bus driver is to follow the process/policy developed by the school system in collaboration with the Department of Children's Services and/or the police or sheriff's office.
- (d) Confirming that Every Child is Off the Vehicle.
1. Driver Responsibilities. Immediately upon unloading the last child and to ensure that all children have been unloaded the driver shall:
 - (i) Physically walk through the vehicle;
 - (ii) Inspect all seat surfaces, under all seats and in all compartments or recesses in the vehicle's interior; and
 - (iii) Sign the log, with the driver's full name, indicating the children are all unloaded.
 - (e) If a child is expected for transport (based on the roster) but is not present at the location, the driver may not leave the location without checking with a designated member of staff and the center. If the designated member of staff is not present in the loading area and there is not an additional adult on the vehicle, all children will accompany the driver into the facility to verify the whereabouts of the child.
- (4) Transportation provided by non-school, community-based organization.
- (a) Non-school, community-based organizations providing transportation for child care shall provide a written statement to the Department:
1. Stating the type(s) of transportation offered, e.g. transportation to and/or from school, transportation to and from child care program, transportation to and from child's home, etc.;
 2. Listing and describing the vehicles that will be used for the transportation of children;
 3. Describing any contracts, agreements or arrangements with any third (3rd) parties for the provision of transportation services, with copies of such contracts or agreements or arrangements available upon the Department's request;
 4. Describing the agency's policy, procedures and staff training plans for maintaining compliance with responsibilities for loading and unloading and tracking each child;
 5. Describing the agency's management plan for ensuring all transportation staff properly perform their duties in accordance with the licensing rules and agency policies and procedures;
 6. Describing the agency's policy, procedures and staff transportation training plans for maintaining compliance with transportation rules and state law; and
 7. Describing the agency's policy, procedures and staff training plans for the emergency evacuation of the vehicle.

- (b) Non-school, community-based organization's vehicle requirements and inspections.
1. Department of Safety Inspections. Annually, all non-school, community-based organizations vehicles that are designed by the vehicle manufacturer to carry ten (10) or more passengers must be inspected in accordance with the schedule established by the Department of Safety. Any maintenance or repair to the vehicles disclosed by the inspections shall be the sole responsibility of the non-school, community-based organization.
 - (i) The non-school, community-based organization's vehicle may have a stop arm in accordance with T.C.A. § 55-8-151(d) if the bus driver has completed annual school bus driver training provided by the Department of Safety.
 - (ii) The non-school, community-based organization's vehicle with a stop arm is required to be distinctly marked "Youth Bus" on the front and rear thereof in letters not less than six inches (6") in height and legibly written.
 2. No vehicle which does not pass the inspections required in this paragraph (4) shall be used by the non-school, community-based organization to provide transportation services until necessary repairs, as determined by Department of Safety, have been made.
 3. Receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer.
 4. Have the following vehicle equipment certified as inspected at least every four thousand (4,000) miles if not covered by and/or otherwise serviced in accordance with the manufacturer's maintenance schedule: brakes; steering; oil levels; coolant; brake, windshield-washer and transmission fluids; hoses and belts; and tires.
 5. The following equipment shall be maintained in the vehicle and stored in a manner which is not readily accessible to children: fire extinguisher; emergency reflective triangles; first aid kit; blood-borne pathogenic clean-up kit; and seat-belt cutter or similar device designed to immediately release the vehicle's child restraint system(s) in an emergency.
 - (i) The bus driver or transportation monitor assigned to the vehicle shall be familiar with the location and use of all equipment required under subparagraph 5.
 6. The non-school, community-based organization shall maintain documentation that the following daily inspections have been performed and any necessary repairs completed or other appropriate action taken before transporting children.
 - (i) A visual inspection of the vehicle's tires for wear and adequate pressure;
 - (ii) A visual inspection for working headlights and taillights (brake lights and back-up lights), signals, mirrors, wiper blades and dash gauges;
 - (iii) An inspection of properly functioning child and driver safety restraints;
 - (iv) An inspection for properly functioning doors and windows;
 - (v) An inspection for the presence of safety equipment required by these rules or any other provisions of law or regulations, and repair or replacement as necessary based upon visual evidence of the need to do so;

- (vi) A determination that the vehicle has adequate fuel; and
 - (vii) An inspection for, and cleaning of, debris from the vehicle's interior.
7. Emergency exiting procedures shall be practiced on a regular basis by all staff responsible for transporting children.
- (5) Non-school community-based organizations contracting for transportation services.
- (a) Any vehicle, contracted for the purposes of transporting children in a program administered by a non-school, community-based organization, shall be a for hire commercial passenger vehicle properly registered with the Federal Motor Carrier Safety Administration, <http://www.fmcsa.dot.gov>. For hire commercial passenger vehicle registration: <http://www.fmcsa.dot.gov/registration-licensing/online-registration/onlineregdescription.htm>
 - (b) The contracted vehicle shall have a commercial license plate (tag).
 - (c) The contracted vehicle shall have minimum levels of liability insurance as defined by the Federal Motor Carrier Safety Administration rule § 387.33. Any vehicle with seating capacity of sixteen (16) passengers or more shall have five million dollars (\$5,000,000) liability coverage. Any vehicle with seating capacity of fifteen (15) passengers or less shall have one and one half million dollars (\$1,500,000) liability coverage.

Authority: T.C.A. §§ 49-1-302(l), 49-6-2101 through 2117, 55-8-151, 55-9-602, 55-10-401, 55-50-101 et seq.

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: 8-13-10

Signature: *Gary Nixon*

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 8/13/10

Notary Public Signature: *Phyllis E. Childress*

My commission expires on: _____

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Tre Hargett

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Secretary of State

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