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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	State Board of Education
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0520-01-11	Individualized Education Accounts
Rule Number	Rule Title
0520-01-11-.01	Purpose
0520-01-11-.02	Definitions
0520-01-11-.03	Application
0520-01-11-.04	Term of the IEA
0520-01-11-.05	Contract and Funds Transfer
0520-01-11-.06	Use of Funds
0520-01-11-.07	Monitoring and Compliance
0520-01-11-.08	Participating Schools and Providers
0520-01-11-.09	Return to Local Education Agency
0520-01-11-.10	Appeal Procedures
0520-01-11-.11	Conflict of Interest
0520-01-11-.12	Reserved

Chapter 0520-01-11 Individualized Education Accounts is added to Chapter 0520-01 State Board of Education Rules and Regulations and Minimum Standards for the Operation of the Public School System and shall read as follows:

**RULES  
OF  
STATE BOARD OF EDUCATION  
CHAPTER 0520-01-11  
INDIVIDUALIZED EDUCATION ACCOUNTS**

**TABLE OF CONTENTS**

<u>0520-01-11-.01</u>	<u>Purpose</u>	<u>0520-01-11-.07</u>	<u>Monitoring and Compliance</u>
<u>0520-01-11-.02</u>	<u>Definitions</u>	<u>0520-01-11-.08</u>	<u>Participating Schools and Providers</u>
<u>0520-01-11-.03</u>	<u>Application</u>	<u>0520-01-11-.09</u>	<u>Return to Local Education Agency</u>
<u>0520-01-11-.04</u>	<u>Term of the IEA</u>	<u>0520-01-11-.10</u>	<u>Appeal Procedures</u>
<u>0520-01-11-.05</u>	<u>Contract and Funds Transfer</u>	<u>0520-01-11-.11</u>	<u>Conflict of Interest</u>
<u>0520-01-11-.06</u>	<u>Use of Funds</u>	<u>0520-01-11-.12</u>	<u>Reserved</u>

**0520-01-11-.01 PURPOSE.**

The purpose of these rules is to effectuate the Individualized Education Act as required by Public Chapter 431 (2015).

**Authority:** T.C.A. § 49-1-302.

**0520-01-11-.02 DEFINITIONS.**

- (1) "Account holder" means a parent as defined in subsection (18) of this section or a 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 the requirements of the IEA Program.
- (2) "Act" means the Individualized Education Act.
- (3) "Agreement" means a document signed by a parent of a participating student or a participating student who has attained the age of majority and the Department.
- (4) "Application" means a document whereby parents and participating eligible students may seek to establish an Individualized Education Account (IEA).
- (5) "Computer hardware" means technological devices approved by the Department or a licensed treating physician that is used for the student's educational needs. Computer hardware must meet one 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.
- (6) "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 must maintain documentation that any persons providing services to participating students has 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. All participating schools must 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.

- (7) "Department" means the Tennessee Department of Education.
- (8) "Educational purposes" means the curriculum of a participating school and educational therapies.
- (9) "Educational therapies" means individualized services designed to develop or improve academic performance through instructional and therapeutic techniques.
- (10) "Eligible postsecondary institution" means a community college, college of applied technology, or university of the University of Tennessee system or the Tennessee Board of Regents system, a Tennessee public postsecondary institution, or a private postsecondary institution accredited by one (1) of the following: any accreditation division of AdvancED (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 any of the following disabilities as documented in their individualized education program (IEP) at the time of their application and defined in the rules of the State Board of Education 0520-01-09-.02:
    - (i) Autism;
    - (ii) Deaf-blindness;
    - (iii) Hearing impairments;
    - (iv) Intellectual disability;
    - (v) Orthopedic impairments;
    - (vi) Traumatic brain injury; or
    - (vii) Visual impairments.
  - (b) Has an IEP in effect at the time the Department receives the request for participation in the program; and
  - (c) Meets at least one (1) of the following requirements:
    - (i) Was previously enrolled in a Tennessee public school during the two (2) semesters immediately preceding the semester in which the student receives an IEA; For the purposes of these rules, prior two (2) full semesters in enrollment means that the student

was counted in the enrollment figures for the Local Education Agency (LEA) in months two (2), three (3), six (6) and seven (7) for purposes of calculating the basic education program (BEP) funding.

- (ii) 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;
  - (iii) Has not previously attended a school in Tennessee during the two (2) semesters immediately preceding the semester in which the student receives an IEA, and is eligible to enroll in a public school in this state. When a student has an active IEP in another state and moves to Tennessee, the student shall register with the LEA in which he/she resides in order to be eligible to participate in the IEA program. The LEA shall then request a copy of the student's IEP from the student's previous out-of-state school;
  - (iv) Received an IEA in the previous school year; or
  - (v) If a student has an IEP prior to enrolling in kindergarten, the student will be eligible to receive an IEA without having to attend a Tennessee public school; however, the student would have to register with the LEA in which they reside for purposes of calculating the amount of IEA funding the student would be eligible to receive.
- (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) "IEP" means an individualized education program developed by a public school pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1400, et seq.
- (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 courses designated and approved by the Department.
- (18) "Parent" means the parent, legal guardian, person who has custody of the child pursuant to an order of a court of competent jurisdiction, or person with caregiving authority pursuant to a power of attorney for care of a minor child pursuant to T.C.A. § Title 34, Chapter 6, Part 3.
- (19) "Participating school" means a nonpublic school that meets the requirements established in the Act, and meets related rules, regulations, policies, and procedures of the state board of education and the Department. Participating schools must be a Category I, II, or III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02.
- (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 6 or T.C.A. § Title 63, Chapter 9.
- (22) "Program" means the individualized education account (IEA) program.
- (23) "Provider" means an individual or business that meets the requirements for accreditation or licensure established by the Tennessee Department of Health pursuant to T.C.A. Title § 63 or T.C.A. § Title 68 or Tennessee Department of Education and pursuant to the application and approval process created by the Departments of education and health for participating providers.
- (24) "Technological device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability in the curriculum of a participating school or the program of a participating provider.
- (25) "Tutoring services" means services provided by a tutor accredited by a state, regional, or national accrediting organization.

**Authority:** T.C.A. §§ 49-1-302 and 49-10-1401 et seq.

#### **0520-01-11-.03 APPLICATION.**

- (1) To receive an IEA the parent of an eligible student, or a student who has attained the age of majority, must first request an IEA by filing a notice of intent with the Department and fully completing an application available through the Department's website by the deadline set by the Department.
  - (a) A school district, a nonpublic school, or the Department may assist a parent or student who has attained the age of majority in filing the application.
  - (b) An application must include all information requested by the Department and must be approved by the Department.
- (2) The Department shall make a determination of eligibility and notify the parent or student who has reached the age of majority.

**Authority:** T.C.A. § 49-1-302.

#### **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 of the following, whichever occurs first:
  - (a) Enrolls full-time in a public school in the LEA in which the parent or student who has attained the age of majority resides;
  - (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 notify the Department of the student's withdrawal from the IEA program and return to the LEA by the date set by the Department.
- (3) Upon reasonable notice to the Department, the student's parent (or a student who has attained the age of majority) may move the student from one participating nonpublic school to another participating nonpublic school.
- (4) In order for students to continue in the program, the parent or participating student who has attained the age of majority 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) years after a student has aged out of the program. 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 IEA program and overall spending must equal fifty (50) percent of the annual award at the close of each contract year (twelve [12] months).
  - (a) If overall spending does not equal fifty (50) percent at the close of the contract year and if the IEA is renewed for the following year, the Department will 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 to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

**Authority:** T.C.A. § 49-1-302.

#### **0520-01-11-.05 AGREEMENT AND FUNDS TRANSFER.**

- (1) Upon notification by the Department that an IEA may be established, a parent or student who has attained the age of majority shall sign an agreement to:
  - (a) Provide an education for the participating student in at least the subjects of reading, grammar, mathematics, social studies, and science;
  - (b) Not to enroll the participating student in a public school during the time the student is enrolled in the IEA program; and
  - (c) Release the LEA in which the student resides and the school which the student is zoned to attend from all obligations to educate the student during the time the student is enrolled in the IEA program.
- (2) The Agreement template shall be available on the Department's website. Parents or students that have attained the age of majority shall complete the Agreement and submit it along with all information requested by the Department by the date set by the Department before the first IEA payment is disbursed.
- (3) Participation in the Program shall have the same effect as a parental refusal to consent to the receipt of specially designed instruction and related services pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1414.

- (4) The Agreement shall be signed by the parent of an eligible student or by the student who has attained the age of majority and a designee of the Department. The Agreement shall specify the anticipated participating school or participating provider(s), acceptable uses of IEA funds, the responsibilities of the parent or student that has attained the age of majority, the duties of the Department, and shall specify the financial institution to which the IEA funds shall be electronically transferred.
- (5) Upon receipt of the signed agreement, the Department shall remit the first payment to the IEA via electronic funds transfer. IEA funds shall be remitted to the IEA thereafter until termination of the Agreement.
- (6) The Department shall establish procedures to effectuate the funds transfer process and dates on which each IEA payment shall be disbursed.
- (7) After the initial payment to the IEA, the account holder shall submit receipts for all IEA funds expended by the date set by the Department before the next IEA payment is disbursed.
- (8) In accordance with the procedures of the Department, the Department may remove any account holder 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 misuses monies. The account holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.
- (9) 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 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. An account holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

**Authority:** T.C.A. § 49-1-302.

**0520-01-11-.06 USE OF FUNDS.**

- (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 that meets the requirements set by the Department or a tutoring organization accredited by one (1) of the following: any accreditation division of AdvancED (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 a complete course of study for a particular content-area or grade level, 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 participating schools and providers (including approved tutors and therapists);
  - (f) Tuition or fees for a nonpublic online learning program or course provided by a Category III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02;
  - (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 for participating students from a licensed or accredited practitioner or provider;
  - (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. Eligible postsecondary institutions include community colleges, colleges of applied technology, or universities of the University of Tennessee system or the Tennessee Board of Regents system, Tennessee public postsecondary institutions, or private postsecondary institutions accredited by one (1) of the following: any accreditation division of AdvancED (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).
  - (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 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. Account holders must receive prior approval from the Department or a licensed, treating physician before purchasing computer hardware using IEA funds.
  - (o) Contributions to an Achieving a Better Life Experience (ABLE) account, 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.
- (2) Account holders shall obtain pre-approval for educational therapies and/or tutoring services. If pre-approval is not obtained, the expense will be deemed an unapproved expenditure.

**Authority:** T.C.A. § 49-1-302.

**0520-01-11-.07 MONITORING AND COMPLIANCE.**

- (1) The Department shall conduct fiscal and program compliance reviews of all IEAs pursuant to procedures developed by the Department for this purpose. The Department shall conduct random reviews as determined appropriate pursuant to procedures established by the Department for this purpose.
- (2) The Department shall conduct an annual review of all IEAs.
- (3) The Department shall establish or contract for the establishment of an online anonymous fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an account holder, nonpublic school, school district, participating school(s), or participating provider(s) of state laws relating to program participation. The Department shall conduct an inquiry of any written report of fraud, or make a referral to the appropriate agency for an investigation.
- (4) The Department may terminate a participating school, provider, participating student, or parent from participation in the program upon finding that a participating school, provider, participating student, or parent has failed to comply with the provisions of the Act, rules, or procedures. A participating school, provider, participating student, or parent may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.
- (5) Notice of termination shall be provided electronically and via first-class USPS mail.

**Authority:** T.C.A. § 49-1-302.

**0520-01-11-.08 PARTICIPATING SCHOOLS AND PROVIDERS.**

- (1) For the purposes of the IEA program, a participating nonpublic school is considered to have an inclusive educational setting if the following two (2) criteria are met:
  - (a) Students with disabilities are educated with non-disabled children; and
  - (b) No more than fifty (50) percent (%) of the students in an individual classroom or setting are students with disabilities.
- (2) Nonpublic schools interested in enrolling students receiving IEAs shall submit an application to the Department by the deadline set by the Department.
  - (a) 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.
  - (b) The Department shall review the application and notify the school as to whether the school meets the requirements to enroll students receiving IEAs.

- (c) 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.
- (3) Participating schools shall include in their initial application to participate in the IEA program and in their annual renewal application the maximum number of students receiving IEAs the school has the capacity to enroll.
  - (a) Participating schools must demonstrate financial viability to repay any funds that may be owed to the state by filing with the Department, prior to the start of each school year, financial information verifying the school has the ability to pay an aggregate amount equal to the amount of the scholarships 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.
  - (b) Participating schools shall provide to the Department all documentation required for a student's participation, including the nonpublic school's and student's fee schedules.
- (4) Participating schools and participating providers shall:
  - (a) Be academically accountable to the account holder for meeting the educational needs of the student by:
    - (i) At a minimum, annually providing to the account holder a written explanation of the student's progress; and
    - (ii) Cooperating with the parent of a student enrolled in the IEA program, or a student enrolled in the IEA program who has attained the age of majority, who chooses 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 participating provider;
  - (c) Certify that they shall not discriminate against 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 in a nonpublic school or as a participating provider; and
  - (f) Exclude from employment any person who might reasonably pose a threat to the safety of students.
- (5) The funds in an IEA may be used only for educational purposes. Participating schools, postsecondary institutions, and education providers that enroll participating students shall provide account holders with a receipt for all qualifying expenses.
- (6) Participating schools shall verify each student's continued enrollment and attendance by following the procedures posted on the Department's website. The Department may suspend or remove a school from participating in the IEA program if the school fails to verify a student's continued enrollment and attendance. A participating school or participating provider may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

- (7) Annually, participating schools shall submit a notice to the Department if they intend to continue participating in the program by following the procedures developed by the Department.
- (8) 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.
- (9) The Department may suspend or terminate a participating school or participating provider from participating in the program if the Department determines the school or provider 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 or provider's participation, the Department shall notify affected participating students and/or their parent of the decision. If a participating school or provider is suspended or if a participating school or provider withdraws from the program, affected participating students remain eligible to participate in the program.
  - (b) A participating school or participating provider may appeal the Department's decision pursuant to the appeals procedures in the Rules of the State Board of Education.
- (10) If a student withdraws from a participating school and transfers to another participating 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 participating 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 to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.
- (11) 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.

#### **0520-01-11-.09 RETURN TO LOCAL EDUCATION AGENCY.**

- (1) A participating student may return to the LEA in which the student resides and the school which the student is zoned to attend upon termination of the student's participation in the program.
- (2) If the student transfers from a nonpublic school and enrolls in the LEA for which the student is zoned to attend, the parent or student shall notify the Department by following the procedures and timeline set by the Department.
- (3) Upon a student's return to the LEA, the Department shall close the participating student's IEA. Upon a student's withdrawal from the school, participating schools and providers shall send all educational records of the participating student to the LEA or other school identified by the parent.
- (4) The LEA shall enroll the student and provide instruction in the general education curriculum.
- (5) If the parent or student who has attained the age of majority requests, in writing, 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 49-10-1403.

**0520-01-11-.10 APPEAL PROCEDURES.**

- (1) Participating schools and providers may appeal the denial, suspension, or termination of the entity's participation in the IEA program, and a parent or student who has attained the age of majority may appeal a denial of determination of eligibility, preauthorization request, a denial of an expense paid for using IEA funds, or removal of the student from the IEA program pursuant to the following two (2) step appeal process:
  - (a) Step one (1): The appeal should be on the form provided by the Department and should be submitted to the commissioner of education within ten (10) business days of receipt of the notice of denial, suspension, termination, and/or removal. Notice of denial, suspension, termination, and/or removal shall be provided electronically and via first-class USPS mail and be deemed received three (3) business days after the date of postmark. The commissioner of education, or the commissioner's designee shall review the appeal within thirty (30) calendar days. The commissioner's decision shall be rendered within ten (10) business days of the date of the review.
  - (b) Step two (2): The account holder shall be notified of the commissioner's decision for the step one (1) appeal electronically and via first-class USPS. Such notice shall be deemed received three (3) business days after the date of postmark. An appeal of the commissioner's decision in step one (1) shall be filed with the commissioner by the account holder within thirty (30) days and shall conform to the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).

**Authority:** T.C.A. § 49-1-302.

**0520-01-11-.11 CONFLICT OF INTEREST.**

- (1) Use of IEA funds must be for the sole benefit of the participating student for which the IEA is established. Any services, resources, and/or equipment purchased using IEA funds shall only be used by the participating student whose IEA paid for said services, resources, and/or equipment.
  - (a) It is a conflict of interest and is considered a misuse of IEA funds against IEA program rules and procedures for a family member of a participating student, including stepparent, or member of an eligible student's household to derive any financial benefit from the IEA program.
  - (b) It is also a conflict of interest and against IEA program rules and procedures for a family member of a participating student, including a stepparent or a member of a participating student's household to provide a professional recommendation or approval for a service or the use of computer hardware or other technological device for the participating student.

**Authority:** T.C.A. § 49-1-302.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

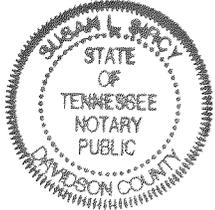
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chancey	X				
Edwards	X				
Hartgrove	X				
Johnson	X				
Pearre	X				
Roberts				X	
Rolston	X				
Tucker	X				
Troutt				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee State Board of Education (board/commission/ other authority) on 01/29/2016 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/18/2015

Rulemaking Hearing(s) Conducted on: (add more dates). 11/12/2015



MY COMMISSION EXPIRES:  
October 18, 2016

Date: 8/5/16

Signature: [Handwritten Signature]

Name of Officer: Dr. Sara Heyburn

Title of Officer: Executive Director

Subscribed and sworn to before me on: 8/5/16

Notary Public Signature: [Handwritten Signature]

My commission expires on: 10-18-16

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]  
Herbert H. Slatery III  
Attorney General and Reporter  
8/18/2016  
Date

Department of State Use Only

Filed with the Department of State on: 9/2/16

Effective on:

12/1/16



Tre Hargett  
Secretary of State

RECEIVED  
2016 SEP -2 PM 1:08  
SECRETARY OF STATE  
PUBLICATIONS

## **Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Please see attached document.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Not applicable.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will have no impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules effectuate the Individualized Education Act as required by Public Chapter 431 (2015). The Act provides options for account holders to choose the educational opportunities that best meet the individual needs of the eligible child by giving him or her direct access to state and local public education funds.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tennessee Public Chapters Nos. 431, 620, and 793

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The Board held a public rulemaking hearing on November 12, 2015, and five (5) members of the public presented oral feedback on the proposed rules. There was an open public comment period for the proposed rules and eighteen (18) individuals submitted comments to the Board on the proposed rules. The Board staff and the Department reviewed and considered all comments. The rules being presented for promulgation have been revised based on the feedback from the public comments and the IEA External Advisory Group.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Please see the Fiscal Note for SB 00027 - HB 00138, attached to this form as exhibit 1, which states an estimate of the probable increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule and the assumptions and reasoning upon which the estimate is based.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)  
  
Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)  
  
Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Elizabeth Taylor  
[Elizabeth.Taylor@tn.gov](mailto:Elizabeth.Taylor@tn.gov)  
1st Floor, Andrew Johnson Tower  
710 James Robertson Parkway  
Nashville, TN 37243  
(615)-253-5707

Nathan James  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)  
1st Floor, Andrew Johnson Tower  
710 James Robertson Parkway  
Nashville, TN 37243  
(615)-532-3528

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

N/A

## **Response to Public Comments Received on Proposed Rules of the State Board of Education for the Individualized Education Account (IEA) Program**

The Board held a public rulemaking hearing on November 12, 2015, and five members of the public presented oral feedback on the proposed rules. There was an open public comment period for the proposed rules and 18 individuals submitted comments to the Board on the proposed rules. All comments were reviewed by the Board staff and the Department. The public comment period closed on November 19, 2015.

The rules approved by the Board on final read were revised based on the feedback from the public comments and the IEA External Advisory Group. The revisions made include:

- Refer to students as 'students enrolled in the IEA Program' or 'students receiving IEAs' instead of 'IEA students.'
- Revised the definition of 'educational therapies.'
- Changed the percentage of IEA funds that must be spent each year from 90 percent to 50 percent.

Public comments received on the rules are summarized as follows:

1. **Comments related to state law (including the IEA Program law) and federal law.** The Board does not have the authority to make changes to state and federal laws.
2. **Comments related to additional information about the IEA Program and/or clarification of the language in the rules.** Some of these comments were addressed through revisions to the rules (see examples listed above) and others were addressed in the IEA Procedures approved by the Department and/or the additional documentation developed by the Department (e.g., IEA Parent Handbook, forms, etc.).
3. **Comments to decrease the percentage of IEA funds that account holders must spend each year.** These comments were addressed in the revisions to the rules approved by the Board on final read.
4. **Comments creating additional responsibilities for local education agencies (LEAs)** that were beyond the authority of the Board or Department to require and thus could not be added to the rules.

5. **Comments related to additional support of parents/students enrolled in the IEA Program outside of the Department's statutory responsibility to administer the program.** The rules cannot be changed to increase the Department's responsibilities to administer the IEA Program because this could have a fiscal impact on the Department by increasing costs to administer the program that were not considered in the fiscal note on the legislation which created the IEA Program and not included in funds allocated to the Department in the state budget.
6. **Recommendations for the Department's administration of the IEA Program** – these comments were reviewed by the Department to help inform the development and administration of the IEA Program, but were not applicable to revisions to the rules.
7. **General comments** that did not provide specific feedback on how the rules should be revised.
8. **Questions about the IEA Program.** The public comment period was to receive comments on the proposed rules. Questions about the IEA Program should have been submitted to the Department separately from the comments on the proposed rules. The Department addressed the questions received through the procedures, resources, and additional information posted on the department's IEA webpage. Members of the public can also contact the Department directly through phone or email to receive answers to questions not addressed in the resources.

The Board and the Department are committed to an ongoing review of the proposed rules based on feedback from stakeholders and members of the public.

RULES  
OF  
STATE BOARD OF EDUCATION  
CHAPTER 0520-01-11  
INDIVIDUALIZED EDUCATION ACCOUNTS

TABLE OF CONTENTS

<u>0520-01-11-.01</u>	<u>Purpose</u>	<u>0520-01-11-.07</u>	<u>Monitoring and Compliance</u>
<u>0520-01-11-.02</u>	<u>Definitions</u>	<u>0520-01-11-.08</u>	<u>Participating Schools and Providers</u>
<u>0520-01-11-.03</u>	<u>Application</u>	<u>0520-01-11-.09</u>	<u>Return to Local Education Agency</u>
<u>0520-01-11-.04</u>	<u>Term of the IEA</u>	<u>0520-01-11-.10</u>	<u>Appeal Procedures</u>
<u>0520-01-11-.05</u>	<u>Contract and Funds Transfer</u>	<u>0520-01-11-.11</u>	<u>Conflict of Interest</u>
<u>0520-01-11-.06</u>	<u>Use of Funds</u>	<u>0520-01-11-.12</u>	<u>Reserved</u>

**0520-01-11-.01 PURPOSE.**

The purpose of these rules is to effectuate the Individualized Education Act as required by Public Chapter 431 (2015).

Authority: T.C.A. § 49-1-302.

**0520-01-11-.02 DEFINITIONS.**

- (1) "Account holder" means a parent as defined in subsection (18) of this section or a 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 the requirements of the IEA Program.
- (2) "Act" means the Individualized Education Act.
- (3) "Agreement" means a document signed by a parent of a participating student or a participating student who has attained the age of majority and the Department.
- (4) "Application" means a document whereby parents and participating eligible students may seek to establish an Individualized Education Account (IEA).
- (5) "Computer hardware" means technological devices approved by the Department or a licensed treating physician that is used for the student's educational needs. Computer hardware must meet one 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.
- (6) "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 must maintain documentation that any persons providing services to participating students has 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. All participating schools must 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.

- (7) "Department" means the Tennessee Department of Education.
- (8) "Educational purposes" means the curriculum of a participating school and educational therapies.
- (9) "Educational therapies" means individualized services designed to develop or improve academic performance through instructional and therapeutic techniques.
- (10) "Eligible postsecondary institution" means a community college, college of applied technology, or university of the University of Tennessee system or the Tennessee Board of Regents system, a Tennessee public postsecondary institution, or a private postsecondary institution accredited by one (1) of the following: any accreditation division of AdvancED (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 any of the following disabilities as documented in their individualized education program (IEP) at the time of their application and defined in the rules of the State Board of Education 0520-01-09-.02:
    - 1. Autism;
    - 2. Deaf-blindness;
    - 3. Hearing impairments;
    - 4. Intellectual disability;
    - 5. Orthopedic impairments;
    - 6. Traumatic brain injury; or
    - 7. Visual impairments.
  - (b) Has an IEP in effect at the time the Department receives the request for participation in the program; and
  - (c) Meets at least one (1) of the following requirements:
    - 1. Was previously enrolled in a Tennessee public school during the two (2) semesters immediately preceding the semester in which the student receives an IEA; For the purposes of these rules, prior two (2) full semesters in enrollment means that the student was counted in the enrollment figures for the Local Education Agency (LEA) in months two (2), three (3), six (6) and seven (7) for purposes of calculating the basic education program (BEP) funding.
    - 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;

3. Has not previously attended a school in Tennessee during the two (2) semesters immediately preceding the semester in which the student receives an IEA, and is eligible to enroll in a public school in this state. When a student has an active IEP in another state and moves to Tennessee, the student shall register with the LEA in which he/she resides in order to be eligible to participate in the IEA program. The LEA shall then request a copy of the student's IEP from the student's previous out-of-state school;
4. Received an IEA in the previous school year; or
5. If a student has an IEP prior to enrolling in kindergarten, the student will be eligible to receive an IEA without having to attend a Tennessee public school; however, the student would have to register with the LEA in which they reside for purposes of calculating the amount of IEA funding the student would be eligible to receive.
- (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) "IEP" means an individualized education program developed by a public school pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1400, et seq.
- (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 courses designated and approved by the Department.
- (18) "Parent" means the parent, legal guardian, person who has custody of the child pursuant to an order of a court of competent jurisdiction, or person with caregiving authority pursuant to a power of attorney for care of a minor child pursuant to T.C.A. § Title 34, Chapter 6, Part 3.
- (19) "Participating school" means a nonpublic school that meets the requirements established in the Act, and meets related rules, regulations, policies and procedures of the state board of education and the Department. Participating schools must be a Category I, II, or III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02.
- (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 6 or T.C.A. § Title 63, Chapter 9.
- (22) "Program" means the individualized education account (IEA) program.
- (23) "Provider" means an individual or business that meets the requirements for accreditation or licensure established by the Tennessee Department of Health pursuant to T.C.A. Title § 63 or T.C.A. § Title 68 or Tennessee Department of Education and pursuant to the application and approval process created by the Departments of education and health for participating providers.

(24) "Technological device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability in the curriculum of a participating school or the program of a participating provider.

(25) "Tutoring services" means services provided by a tutor accredited by a state, regional, or national accrediting organization.

**Authority:** T.C.A. §§ 49-1-302 and 49-10-1401 et seq.

#### **0520-01-11-03 APPLICATION.**

(1) To receive an IEA the parent of an eligible student, or a student who has attained the age of majority, must first request an IEA by filing a notice of intent with the Department and fully completing an application available through the Department's website by the deadline set by the Department.

(a) A school district, a nonpublic school, or the Department may assist a parent or student who has attained the age of majority in filing the application.

(b) An application must include all information requested by the Department and must be approved by the Department.

(2) The Department shall make a determination of eligibility and notify the parent or student who has reached the age of majority.

**Authority:** T.C.A. § 49-1-302.

#### **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 of the following, whichever occurs first:

(a) Enrolls full-time in a public school in the LEA in which the parent or student who has attained the age of majority resides;

(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 notify the Department of the student's withdrawal from the IEA program and return to the LEA by the date set by the Department.

(3) Upon reasonable notice to the Department, the student's parent (or a student who has attained the age of majority) may move the student from one participating nonpublic school to another participating nonpublic school.

- (4) In order for students to continue in the program, the parent or participating student who has attained the age of majority 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) years after a student has aged out of the program. 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 IEA program and overall spending must equal fifty (50) percent of the annual award at the close of each contract year (twelve [12] months).
  - (a) If overall spending does not equal fifty (50) percent at the close of the contract year and if the IEA is renewed for the following year, the Department will 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 to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

**Authority: T.C.A. § 49-1-302.**

**0520-01-11-.05 AGREEMENT AND FUNDS TRANSFER.**

- (1) Upon notification by the Department that an IEA may be established, a parent or student who has attained the age of majority shall sign an agreement to:
  - (a) Provide an education for the participating student in at least the subjects of reading, grammar, mathematics, social studies, and science;
  - (b) Not to enroll the participating student in a public school during the time the student is enrolled in the IEA program; and
  - (c) Release the LEA in which the student resides and the school which the student is zoned to attend from all obligations to educate the student during the time the student is enrolled in the IEA program.
- (2) The Agreement template shall be available on the Department's website. Parents or students that have attained the age of majority shall complete the Agreement and submit it along with all information requested by the Department by the date set by the Department before the first IEA payment is disbursed.
- (3) Participation in the Program shall have the same effect as a parental refusal to consent to the receipt of specially designed instruction and related services pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1414.
- (4) The Agreement shall be signed by the parent of an eligible student or by the student who has attained the age of majority and a designee of the Department. The Agreement shall specify the anticipated participating school or participating provider(s), acceptable uses of IEA funds, the responsibilities of the parent or student that has attained the age of majority, the duties of the Department, and shall specify the financial institution to which the IEA funds shall be electronically transferred.
- (5) Upon receipt of the signed agreement, the Department shall remit the first payment to the IEA via electronic funds transfer. IEA funds shall be remitted to the IEA thereafter until termination of the Agreement.
- (6) The Department shall establish procedures to effectuate the funds transfer process and dates on which each IEA payment shall be disbursed.

- (7) After the initial payment to the IEA, the account holder shall submit receipts for all IEA funds expended by the date set by the Department before the next IEA payment is disbursed.
- (8) In accordance with the procedures of the Department, the Department may remove any account holder 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 misuses monies. The account holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.
- (9) 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 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. An account holder may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

**Authority: T.C.A. § 49-1-302.**

**0520-01-11-.06 USE OF FUNDS.**

- (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 that meets the requirements set by the Department or a tutoring organization accredited by one (1) of the following: any accreditation division of AdvancED (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 a complete course of study for a particular content-area or grade level, 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 participating schools and providers (including approved tutors and therapists);
  - (f) Tuition or fees for a nonpublic online learning program or course provided by a Category III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02;
  - (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 for participating students from a licensed or accredited practitioner or provider;

- (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. Eligible postsecondary institutions include community colleges, colleges of applied technology, or universities of the University of Tennessee system or the Tennessee Board of Regents system, Tennessee public postsecondary institutions, or private postsecondary institutions accredited by one (1) of the following: any accreditation division of AdvancED (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).
  - (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 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. Account holders must receive prior approval from the Department or a licensed, treating physician before purchasing computer hardware using IEA funds.
  - (o) Contributions to an Achieving a Better Life Experience (ABLE) account, 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.
- (2) Account holders shall obtain pre-approval for educational therapies and/or tutoring services. If pre-approval is not obtained, the expense will be deemed an unapproved expenditure.

**Authority: T.C.A. § 49-1-302.**

**0520-01-11-.07 MONITORING AND COMPLIANCE.**

- (1) The Department shall conduct fiscal and program compliance reviews of all IEAs pursuant to procedures developed by the Department for this purpose. The Department shall conduct random reviews as determined appropriate pursuant to procedures established by the Department for this purpose.
- (2) The Department shall conduct an annual review of all IEAs.
- (3) The Department shall establish or contract for the establishment of an online anonymous fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an account holder, nonpublic school, school district, participating school(s), or participating provider(s) of state laws relating to program participation. The Department shall conduct an inquiry of any written report of fraud, or make a referral to the appropriate agency for an investigation.
- (4) The Department may terminate a participating school, provider, participating student, or parent from participation in the program upon finding that a participating school, provider, participating student, or

parent has failed to comply with the provisions of the Act, rules, or procedures. A participating school, provider, participating student, or parent may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

(5) Notice of termination shall be provided electronically and via first-class USPS mail.

**Authority: T.C.A. § 49-1-302.**

**0520-01-11-.08 PARTICIPATING SCHOOLS AND PROVIDERS.**

(1) For the purposes of the IEA program, a participating nonpublic school is considered to have an inclusive educational setting if the following two (2) criteria are met:

(a) Students with disabilities are educated with non-disabled children; and

(b) No more than fifty (50) percent (%) of the students in an individual classroom or setting are students with disabilities.

(2) Nonpublic schools interested in enrolling students receiving IEAs shall submit an application to the Department by the deadline set by the Department.

(a) 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.

(b) The Department shall review the application and notify the school as to whether the school meets the requirements to enroll students receiving IEAs.

(c) 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.

(3) Participating schools shall include in their initial application to participate in the IEA program and in their annual renewal application the maximum number of students receiving IEAs the school has the capacity to enroll.

(a) Participating schools must demonstrate financial viability to repay any funds that may be owed to the state by filing with the Department, prior to the start of each school year, financial information verifying the school has the ability to pay an aggregate amount equal to the amount of the scholarships 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.

(b) Participating schools shall provide to the Department all documentation required for a student's participation, including the nonpublic school's and student's fee schedules.

(4) Participating schools and participating providers 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 the parent of a student enrolled in the IEA program, or a student enrolled in the IEA program who has attained the age of majority, who chooses 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 participating provider;
  - (c) Certify that they shall not discriminate against 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 in a nonpublic school or as a participating provider; and
  - (f) Exclude from employment any person who might reasonably pose a threat to the safety of students.
- (5) The funds in an IEA may be used only for educational purposes. Participating schools, postsecondary institutions, and education providers that enroll participating students shall provide account holders with a receipt for all qualifying expenses.
- (6) Participating schools shall verify each student's continued enrollment and attendance by following the procedures posted on the Department's website. The Department may suspend or remove a school from participating in the IEA program if the school fails to verify a student's continued enrollment and attendance. A participating school or participating provider may appeal the Department's decision pursuant to the appeals procedures in the rules of the State Board of Education.
- (7) Annually, participating schools shall submit a notice to the Department if they intend to continue participating in the program by following the procedures developed by the Department.
- (8) 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.
- (9) The Department may suspend or terminate a participating school or participating provider from participating in the program if the Department determines the school or provider 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 or provider's participation, the Department shall notify affected participating students and/or their parent of the decision. If a participating school or provider is suspended or if a participating school or provider withdraws from the program, affected participating students remain eligible to participate in the program.
  - (b) A participating school or participating provider may appeal the Department's decision pursuant to the appeals procedures in the Rules of the State Board of Education.
- (10) If a student withdraws from a participating school and transfers to another participating 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 participating 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 to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

- (11) 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.

#### **0520-01-11-.09 RETURN TO LOCAL EDUCATION AGENCY.**

- (1) A participating student may return to the LEA in which the student resides and the school which the student is zoned to attend upon termination of the student's participation in the program.
- (2) If the student transfers from a nonpublic school and enrolls in the LEA for which the student is zoned to attend, the parent or student shall notify the Department by following the procedures and timeline set by the Department.
- (3) Upon a student's return to the LEA, the Department shall close the participating student's IEA. Upon a student's withdrawal from the school, participating schools and providers shall send all educational records of the participating student to the LEA or other school identified by the parent.
- (4) The LEA shall enroll the student and provide instruction in the general education curriculum.
- (5) If the parent or student who has attained the age of majority requests, in writing, 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 49-10-1403.

#### **0520-01-11-.10 APPEAL PROCEDURES.**

- (1) Participating schools and providers may appeal the denial, suspension, or termination of the entity's participation in the IEA program, and a parent or student who has attained the age of majority may appeal a denial of determination of eligibility, preauthorization request, a denial of an expense paid for using IEA funds, or removal of the student from the IEA program pursuant to the following two (2) step appeal process:
- (a) Step one (1): The appeal should be on the form provided by the Department and should be submitted to the commissioner of education within ten (10) business days of receipt of the notice of denial, suspension, termination, and/or removal. Notice of denial, suspension, termination, and/or removal shall be provided electronically and via first-class USPS mail and be deemed received three (3) business days after the date of postmark. The commissioner of education, or the commissioner's designee shall review the appeal within thirty (30) calendar days. The commissioner's decision shall be rendered within ten (10) business days of the date of the review.
- (b) Step two (2): The account holder shall be notified of the commissioner's decision for the step one (1) appeal electronically and via first-class USPS. Such notice shall be deemed received three (3) business days after the date of postmark. An appeal of the commissioner's decision in step one (1) shall be filed with the commissioner by the account holder within thirty (30) days and shall conform to the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).

**Authority:** T.C.A. § 49-1-302.

**0520-01-11-.11 CONFLICT OF INTEREST.**

- (1) Use of IEA funds must be for the sole benefit of the participating student for which the IEA is established. Any services, resources, and/or equipment purchased using IEA funds shall only be used by the participating student whose IEA paid for said services, resources, and/or equipment.
- (a) It is a conflict of interest and is considered a misuse of IEA funds against IEA program rules and procedures for a family member of a participating student, including step parent, or member of an eligible student's household to derive any financial benefit from the IEA program.
- (b) It is also a conflict of interest and against IEA program rules and procedures for a family member of a participating student, including a step parent, or a member of a participating student's household to provide a professional recommendation or approval for a service or the use of computer hardware or other technological device for the participating student.

**Authority: T.C.A. § 49-1-302.**