

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 10-23-13
Rule ID(s): 5600
File Date: 10/23/13
Effective Date: 3/31/14

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Dannelle F. Walker
Address:	1 st Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243
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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
0520-01-09	Special Education Programs and Services
Rule Number	Rule Title
0520-01-09-.12	Definition of Individualized Education Program (IEP).

Chapter 0520-01-09
Special Education Programs and Services
Amendment

Rule 0520-01-09-.12 Definition of Individualized Education Program (IEP) is amended by deleting paragraphs (1), (2), (3), (5), and (6) so that, as amended, the new rule shall read as follows:

0520-01-09-.12 Definition of Individual Education Program (IEP).

Prior to the 9th grade or age fourteen (14) (or younger, if determined appropriate by the IEP team), all students will develop an initial four (4) year plan of focused and purposeful high school study. The plan will be reviewed annually and amended as necessary and will connect the student's goals for high school including, the courses and/or training and/or skills necessary to meet their potential after high school. This required plan will include identifying possible transition service needs of the student under the applicable components of the student's IEP. This plan may be developed through a process in general education but a copy must be in the student's IEP after approval by the IEP team.

Authority: T.C.A. §§ 49-10-101 and 49-10-701.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Ayers	X				
Edwards	X				
Justice				X	
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Student Member				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 07/26/2013, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 10/1/13

Signature: [Handwritten Signature]

Name of Officer: Dannelle F. Walker

Title of Officer: General Counsel



MY COMMISSION EXPIRES: January 9, 2016

Subscribed and sworn to before me on: 10/1/13

Notary Public Signature: [Handwritten Signature: Phyllis E. Childress]

My commission expires on: _____

All proposed 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: Robert E. Cooper, Jr.]
 Robert E. Cooper, Jr.
 Attorney General and Reporter
10-15-13
 Date

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Filed with the Department of State on: 10/23/13

Effective on: 3/31/14



Tre Hargett
Secretary of State

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.

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 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;

The 2004 reauthorization of the Individuals with Disabilities Act, or IDEA eliminated the requirement that individualized education programs (IEP) for children with disabilities include benchmarks or short term objectives in IEPs other than IEPs of children who take alternate assessments. 20 U.S.C. §1414(d)(1)(A) and 34 C.F.R. §300.320(a)(2). However, states were left with the option to continue to require benchmarks or short term objectives in all IEPs. When the State Board of Education revised Tennessee Rules and Regulations Chapter 0520-01-09, Special Education Programs and Services, effective February 2008, it retained the requirement for benchmarks or short term objectives in all IEPs.

This rule change would delete sections (1), (2), (3), (5), and (6). Deletion of the requirement for benchmarks or short term objectives in all IEPs is appropriate because the progress monitoring component of the responsiveness to intervention (RTI) plan and the mandatory high school course of study accurately measure growth and accountability. Additionally, deletion of benchmarks or short term objectives lessens the need for routine removal of students with disabilities from the general education classroom, thereby ensuring complete access to the general education curriculum.

When the State Board of Education revised Tennessee Rules and Regulations Chapter 0520-01-09, Special Education Programs and Services, effective February 2008, it adopted by reference the Compilation of Federal Regulations at 34 C.F.R. Parts 300 and 301 in their entirety, unless otherwise provided, as the policies and procedures for administration of special education programs and services in the state. Therefore, deletion of Rule 0520-01-09-.12 will result in adoption by reference of 34 C.F.R. §300.320(a)(2) regarding measurable annual goals and 34 C.F.R. §300.320(b) regarding transition services.

34 C.F.R. §300.320(a)(2) regarding measurable annual goals, provides that all IEPs must include a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability; and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.

34 C.F.R. §300.320(b) regarding transition services, provides that all IEPs must include, beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services (including courses of study) needed to assist the child in reaching those goals.

- (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;

T.C.A. §§ 49-10-101 and 49-10-701.

- (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;

State Department of Education, Local Education Agencies, students with special needs, special education advocacy groups.

On July 17, 2013, a rulemaking hearing was held regarding the proposed rule change. The overwhelming majority of the advocates attending the hearing objected to changing the age for transition services from age fourteen (14) to age sixteen (16), which was the proposal after first reading. After the rulemaking hearing, the State Board decided to retain the transition age at fourteen (14) on final reading.

- (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;

None.

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

Ms. Dannelle F. Walker
TN State Board of Education

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

Ms. Dannelle F. Walker
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- (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

Ms. Dannelle F. Walker
State Board of Education
601 Mainstream Drive
Nashville, Tennessee 37228
615-253-5707
Dannelle.Walker@tn.gov

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

None.

Comments from July 17, 2013 Rulemaking Hearing

- Sherry Wilds, Senior Disability Rights Attorney, Disability Law and Advocacy Center
Transition planning is one of only three areas of work for special education students; early and effective transition changes lives. There are concerns about changing the transition age from fourteen to sixteen. Many states are transitioning to 14. The U.S. Department of Education encourages states to transition at 14. Also concerned that transition age before sixteen will not occur unless required. Look at it as "course of study +"; students with disabilities need this course of study and transition.
- Joey Ellis, Support and Training for Exceptional Parents
There is no validity in the idea that focus course of study conversations alone are effective in the transition process. The age of transition should remain at the age of fourteen. Transition plans focus on self-advocacy more than the course of study alone will.
- Elise McMillan, Vanderbilt Kennedy Center
Please reconsider the move from age fourteen to sixteen. Age sixteen is too late to begin transition services. It would be a step backward in light of how we're moving forward in so many areas.
- Carol Needleman, Parent
Age sixteen is too late to begin transition services. Transition plans also provide social and emotional support, which is critical to the success of students with disabilities.
- Beth Cruise, Kids Rights Program, Metropolitan Nashville Public Defender's Office
Students need to be provided with more support during transitioning. Transition planning at sixteen is too late.
- Adam Horn, Clinical Director of Tennessee Voices for Children
I am urging you to maintain the transition age to fourteen. Transition plan works best toward the beginning of services.
- Eric Carter, Professor of Special Education at Vanderbilt University
I am urging the state to maintain the transition age to fourteen. Research says that beginning transition before age sixteen results in positive outcomes for students with disabilities. Transition needs are rarely addressed in course of study only--- this is supported by research. The age of fourteen is a formative point where children develop career aspirations. It gives parents sufficient timing to plan for their children's aspirations. The age of fourteen is a developmentally optimal time. The State has improved in the quality of transition plans. We will see outcomes improving where we are. But we may see those decline if we change the age.
- Kerry Guiden, ARC of Tennessee
It is critical to start transition planning at age fourteen. Tennessee has always gone above and beyond what the federal government requires. The federal government is considering moving it to age fourteen. Course of study planning does not necessarily address the specific needs of students with disabilities.
- Angela Webster, Public Policy Advisor and DLAC and Representative of Disability Coalition on Education
I am urging you to retain transition planning to age fourteen. This may have a negative impact on the work of other state agencies that have grant obligations.
- Chip Fair, Rutherford Co. Schools, TASSE
Losing the short term objectives is not a bad thing. With good annual goals and good teaching, the outcomes can still be a good thing. The transition age at sixteen may be okay for students who stay in school until twenty-two. I am not in opposition to the rule change. Social and emotional goals needs can be addressed at any time.
- Shelly Baldwin, Parent
Moving the age from age fourteen to sixteen, you are losing time to help students with disabilities to achieve their goals.

- Janet Chall, Disability Coalition on Education, Autism Society of Middle Tennessee
The transition planning for her child was weak, but since she was a knowledgeable parent, she was able to bolster what was weak. Students without knowledgeable parents need earlier and more developed transition planning may not have this benefit. It is important to have short term benchmarks.

Special Education Programs and Services
0520-01-09
Amendments

0520-01-09-.12 DEFINITION OF INDIVIDUALIZED EDUCATION PROGRAM (IEP).

The IEP for each child must include:

(1) A statement of measurable annual goals, including benchmarks or short-term objectives, related to:

- (a) Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum (the same curriculum as for children without disabilities), or for preschool children to participate in appropriate activities; and
- (b) Meeting each of the child's other educational needs that result from the child's disability.

(2) Strategies that are effective in realizing the child's goals and either measurable, intermediate steps (short-term objectives) or major milestones (benchmarks) that will enable parents, students, and educators to monitor progress during the year, and, if appropriate, to revise the IEP consistent with the student's instructional needs.

(3) Short-term objectives or benchmarks for each annual goal. Short-term instructional objectives generally break the skills described in the annual goal down into discrete components. As an alternative, IEP teams may develop benchmarks, which can be thought of as describing the amount of progress the child is expected to make within specified segments of the year. Generally, benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child's progress toward achieving the annual goals. An IEP team may use either short-term objectives or benchmarks or a combination of the two depending on the nature of the annual goals and the needs of the child.

(4) Prior to the 9th grade or age fourteen (14) (or younger, if determined appropriate by the IEP team), all students will develop an initial four (4)-year plan of focused and purposeful high school study. The plan will be reviewed annually and amended as necessary and will connect the student's goals for high school including, the courses and/or training and/or skills necessary to meet their potential after high school. This required plan will include identifying possible transition service needs of the student under the applicable components of the student's IEP. This plan may be developed through a process in general education but a copy must be in the students IEP after approval by the IEP team.

(5) For each student beginning at age sixteen (16) (or younger, if determined appropriate by the IEP team), the plan of study will be revised to ensure the completion of the child's high school program of study and a smooth transition from high school. The plan must include a statement of needed transition services, including, if appropriate, a statement of the interagency responsibilities and any needed linkages. This plan may be developed through a process in general education but a copy must be in the students IEP after approval by the IEP team.

(6) A statement of how the child's progress toward the annual goals will be measured and how the child's parents will be informed of the child's progress. Progress reports must be provided at least equivalent to those provided to non-disabled children.

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