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Division of Publications**

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Sequence Number: 12-20-10
Rule ID(s): 4897
File Date: 12/21/2010
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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. TCA Section 4-5-205

Agency/Board/Commission:	State Board of Education
Division:	
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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
0520-12-01	Standards For Child Care Centers And School-Age Child Care Programs
Rule Number	Rule Title
0520-12-01-.02	Definitions
0520-12-01-.13	Transportation

Chapter Number	Chapter Title
Rule Number	Rule Title

Rule 0520-12-01-.02 Definitions is amended by inserting the definition of non-school, community-based organization program as paragraph (37) and renumbering all subsequent sections accordingly.

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

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

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

0520-12-01-.13 Transportation.

(1) Management Responsibility.

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

the Tennessee Minimum School Bus Standards, adopted by the State Board of Education as required by Rule 0520-01-05-.02.

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

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

- (b) An adult must be seated behind the steering wheel if the motor is running and children are being loaded and/or are on board.
- (c) Transportation of children with special needs shall be in compliance with the Individual Education Plan (IEP) for each child. Bus drivers who do not return to a central depot shall stipulate that all buses will be checked at the end of every run to make sure that no person remains on the bus as defined in T.C.A. § 49-6-2114.
- (d) Adult Monitor Requirements.
 - 1. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more children ages six (6) weeks to four (4) years of age.
 - 2. An adult monitor, in addition to the driver, is required on the vehicle for all routes exceeding thirty (30) minutes for children ages six (6) weeks to four (4) years of age, regardless of the total number of children being transported.
 - 3. An adult monitor, in addition to the driver, is required on the vehicle for the transportation of four (4) or more non-ambulatory children (permanently or temporarily non-ambulatory) of any age.
 - 4. An adult monitor, in addition to the driver, is required if more than ten (10) pre-kindergarten students four (4) years of age are transported on the same bus.
 - 5. An adult monitor shall not be seated in the front passenger seat, but shall be seated in the vehicle in a position which will allow:
 - (i) Each child to be seen with a quick glance;
 - (ii) Each child to be heard at all times;
 - (iii) Each child's activities to be observed; and
 - (iv) The monitor to respond immediately should there be an emergency.

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

(a) Passenger Log:

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

(b) Loading Procedures:

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

(c) Unloading Procedures:

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

5. Describing the agency's management plan for ensuring all transportation staff properly perform their duties in accordance with the licensing rules and agency policies and procedures;
 6. Describing the agency's policy, procedures and staff transportation training plans for maintaining compliance with transportation rules and state law; and
 7. Describing the agency's policy, procedures and staff training plans for the emergency evacuation of the vehicle.
- (b) Non-school, community-based organization's vehicle requirements and inspections.
1. Department of Safety Inspections. Annually, all non-school, community-based organization's vehicles that are designed by the vehicle manufacturer to carry ten (10) or more passengers must be inspected in accordance with the schedule established by the Department of Safety. Any maintenance or repair to the vehicles disclosed by the inspections shall be the sole responsibility of the non-school, community-based organization.
 - (i) The non-school, community-based organization's vehicle may have a stop arm in accordance with T.C.A. § 55-8-151(d) if the bus driver has completed annual school bus driver training provided by the Department of Safety.
 - (ii) The non-school, community-based organization's vehicle with a stop arm is required to be distinctly marked "Youth Bus" on the front and rear thereof in letters not less than six inches (6") in height and legibly written.
 2. No vehicle which does not pass the inspections required in part (4) shall be used by the non-school, community-based organization to provide transportation services until necessary repairs, as determined by Department of Safety, have been made.
 3. Receive regular inspections and maintenance by a certified mechanic in accordance with the maintenance schedule recommended by the vehicle manufacturer.
 4. Have the following vehicle equipment certified as inspected at least every four thousand (4,000) miles if not covered by and/or otherwise serviced in accordance with the manufacturer's maintenance schedule: brakes; steering; oil levels; coolant; brake, windshield-washer and transmission fluids; hoses and belts; and tires.
 5. The following equipment shall be maintained in the vehicle and stored in a manner which is not readily accessible to children: fire extinguisher; emergency reflective triangles; first aid kit; blood-borne pathogenic clean-up kit; and seat-belt cutter or similar device designed to immediately release the vehicle's child restraint system(s) in an emergency.
 - (i) The bus driver or transportation monitor assigned to the vehicle shall be familiar with the location and use of all equipment required under subparagraph 5.
 6. The non-school, community-based organization shall maintain documentation that the following daily inspections have been performed and any necessary repairs completed or other appropriate action taken before transporting children.
 - (i) A visual inspection of the vehicle's tires for wear and adequate pressure;

- (ii) A visual inspection for working headlights and taillights (brake lights and back-up lights), signals, mirrors, wiper blades and dash gauges;
 - (iii) An inspection of properly functioning child and driver safety restraints;
 - (iv) An inspection for properly functioning doors and windows;
 - (v) An inspection for the presence of safety equipment required by these rules or any other provisions of law or regulations, and repair or replacement as necessary based upon visual evidence of the need to do so;
 - (vi) A determination that the vehicle has adequate fuel; and
 - (vii) An inspection for, and cleaning of, debris from the vehicle's interior.
7. Emergency exiting procedures shall be practiced on a regular basis by all staff responsible for transporting children.
- (5) Non-school community-based organizations contracting for transportation services:
- (a) Any vehicle, contracted for the purposes of transporting children in a program administered by a non-school, community-based organization, shall be a for hire commercial passenger vehicle properly registered with the Federal Motor Carrier Safety Administration, <http://www.fmcsa.dot.gov>. For hire commercial passenger vehicle registration: <http://www.fmcsa.dot.gov/registration-licensing/online-registration/onlineregdescription.htm>.
 - (b) The contracted vehicle shall have a commercial license plate (tag).
 - (c) The contracted vehicle shall have minimum levels of liability insurance as defined by the Federal Motor Carrier Safety Administration rule § 387.33. Any vehicle with seating capacity of sixteen (16) passengers or more shall have five million dollars (\$5,000,000) liability coverage. Any vehicle with seating capacity of fifteen (15) passengers or less shall have one and one half million dollars (\$1,500,000) liability coverage.

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

* 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)
Jim Ayers	X				
Vernita Justice	X				
Carolyn Pearre	X				
Richard Ray	X				
Jean Anne Rogers	X				
Fielding Rolston	X				
Theresa Sloyan	X				
Chip Woods	X				
Melvin Wright	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education on 10/29/2010, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/26/2010

Rulemaking Hearing(s) Conducted on: (add more dates). 10/19/2010

Date: 11-29-2010

Signature: Gary L. Nixon

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director



My Commission Expires JAN. 9, 2012

Subscribed and sworn to before me on: 11/29/10

Notary Public Signature: Phyllis E. Childress

My commission expires on: _____

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.

Robert E. Cooper, Jr.
 Attorney General and Reporter

12-7-10
 Date

Department of State Use Only

Filed with the Department of State on: 12/21/10

Effective on: 3/21/11

Tre Hargett
Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

11-21-2010
[Signature]



My Commission Expires 06/30/13

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.

No comments were received at the rulemaking hearing. A memorandum stating this is attached.

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)



PHIL BREDESEN
GOVERNOR

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GARY L. NIXON
EXECUTIVE DIRECTOR

MEMORANDUM

TO: Richard Arnold
Director of Publications
Department of State

FROM: Rich Haglund
General Counsel *RH*

DATE: November 29, 2010

SUBJECT: Rulemaking Hearing Oct. 19, 2010

A rulemaking hearing was held October 19, 2010, regarding the amendments to the following rule, previously submitted as emergency rules.

0520-12-01-.02, -.13 Standards for Infant/Toddler, Preschool and School-Age Extended Care Programs (Definitions and Transportation)

No comments were received at the meeting.

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 not have any 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 TCA 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;

Legislative action gave the Department of Education the responsibility to inspect non-school, community based organization administered programs (Lottery Education Afterschool Program grantees and Tennessee Early Intervention System contracted agencies) for compliance with School-administered Child Care Rules, Chapter 0520-12-01.

Chapter 0520-12-01 references laws specific to public and private school-administered programs. For non-school community based organizations' transportation of program participants, the enforcement of the Transportation Section, Chapter 0520-12-01-.13, was in conflict with the vehicle inspection and bus driver licensing and training conducted by the Department of Safety.

The amendment to the Transportation Section is proposed to clearly define the safety requirements applicable to transportation services provided by non-school, community-based organizations.

- (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. §§ 49-1-302(l), 49-6-2101 through 2117: Duties of the State Board and Department of Education relative to care of children in before or after school programs; T.C.A. §§ 55-8-151, 55-50-101 et seq.: Laws governing school buses and school bus drivers, administered by the Department of Safety.

- (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, operators of infant/toddler, preschool and school-age extended care programs overseen by the Department of Education.

- (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;

Minimal.

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

Jan Bushing
State Department of Education

Lieutenant Ray Robinson
Tennessee Highway Patrol

Rich Haglund
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;

Jan Bushing
State Department of Education

Lieutenant Ray Robinson
Tennessee Highway Patrol

Rich Haglund
State Board of Education

- (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

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