

# RULES OF THE STATE BOARD OF EDUCATION

## CHAPTER 0520-01-09 SPECIAL EDUCATION PROGRAMS AND SERVICES

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### **0520-01-09-.01 GENERAL REGULATIONS. ADOPTION BY REFERENCE.**

The State Board of Education adopts by reference the Compilation of Federal Regulations at 34 C.F.R. Part 300 in their entirety unless otherwise provided herein as the policies and procedures for administration of special education programs and services in the State. The regulations, evaluation procedures, and eligibility criteria are available from the Division of Special Education, Tennessee Department of Education, 710 James Robertson Parkway, Nashville, TN 37243, or on the internet by accessing the State Department of Education's website at <https://www.tn.gov/content/tn/education/families/student-support/special-education.html>.

**Authority:** T.C.A. § 49-10-101 and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 10, 1974. Amendment filed October 3, 1974; effective November 2, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed January 15, 1976; effective April 15, 1976. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed May 12, 1985; effective August 13, 1985. Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repealed and new rule filed August 18, 1993; effective December 29, 1993. Amendment filed June 21, 1995; effective October 27, 1995. Amendment filed August 7, 1995; effective December 29, 1995. Rule 0520-01-03-.09 removed and new Chapter 0520-01-09 filed per Tennessee State Board of Education letter dated and effective April 29, 1999. Amendment filed June 19, 2001; effective September 2, 2001. Amendment filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021.

**0520-01-09-.02 DEFINITIONS.**

- (1) "Behavior Intervention Plan" or "BIP" means an individualized plan based on the results of a Functional Behavior Assessment that is designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.
- (2) "Charter School" means a public charter school as defined at T.C.A. § 49-13-104.
- (3) "Child with a Disability" means a child between three (3) and twenty-one (21) years of age, both inclusive, who has been evaluated and determined as having a state-identified disability of functional delay or intellectually gifted, or as having one (1) or more of the following disabilities as defined in 34 C.F.R. §§ 300.8: an intellectual disability; a hearing impairment, including deafness; a speech or language impairment; a visual impairment, including blindness; emotional disturbance; an orthopedic impairment; autism; traumatic brain injury; other health impairment; a specific learning disability; developmental delay; deaf-blindness; or multiple disabilities and who, by reason thereof, needs special education and related services. Any child with a disability who turns twenty-two (22) years of age between the commencement of the school year and the conclusion of the school year continues to be a child with a disability for the remainder of that school year.
- (4) "Department" means the Tennessee Department of Education.
- (5) "FAPE" means a free appropriate public education in compliance with the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq.
- (6) "Functional Behavior Assessment" or "FBA" means a process rooted in applied behavior analysis that focuses on determining why a student engages in behaviors that impede learning and how the student's behavior relates to the environment.
- (7) "Individualized Education Program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR §§ 300.320 through 300.324.
- (8) "IEP Team" means a group of individuals described in 34 CFR § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.
- (9) "LEA" means a Tennessee local education agency and has the same meaning given in T.C.A. § 49-1-103(2).
- (10) "Licensed Behavior Analyst" means an individual who is certified as a board certified behavior analyst (BCBA) or board certified behavior analyst-doctoral (BCBA-D) and is licensed by the Applied Behavior Analyst Licensing Committee of the Tennessee Department of Health to practice applied behavior analysis as an independent practitioner.
- (11) "Parent" means:
  - (a) The biological or adoptive parent;
  - (b) A legal guardian;
  - (c) A person who has custody of the child;
  - (d) A surrogate parent appointed in accordance with 34 C.F.R. § 300.519 and Rule 0520-01-09-.20 to represent a child in all matters relating to:
    1. The identification, evaluation, and educational placement of the child; and

(Rule 0520-01-09-.02, continued)

2. The provision of FAPE to the child; or
  - (e) A person with caregiving authority for the child, including but not limited to, a foster parent if the biological or adoptive parent's authority to make educational decisions on the child's behalf has been terminated under Tennessee law and the foster parent:
    1. Is willing to make the educational decisions required of parents under the law;
    2. Has no interest that would conflict with the interest of the child; and
    3. Has been the foster parent to the child for more than one (1) year in duration. If he or she has been the foster parent to the child for less than one (1) year in duration, he or she may be appointed by the LEA as a surrogate parent for the child.
- (12) "Related Services" means:
- (a) Transportation and such developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education, including, but not limited to, speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; transition services, including job placement; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling with a focus on career development, employment preparation, achieving independence, and integration in the workplace and community of a child with a disability; orientation and mobility services; and medical services for diagnostic or evaluation purposes; or
  - (b) School health services and school nurse services, social work services in schools, and parent counseling and training.
    1. Parent counseling and training means:
      - (i) Assisting parents in understanding the special needs of their child;
      - (ii) Providing parents with information about child development; and
      - (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.
- (13) "School Year" means July 1 to June 30 for the purposes of determining eligibility and services for a child with a disability.
- (14) "Special Education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, home, hospitals, institutions, and other settings, and instruction in physical education.

**Authority:** T.C.A. §§ 49-10-101, et seq. and 49-10-1301, et seq., and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed August 13, 2010; effective January 29, 2011. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021. Amendments filed March 29, 2022; effective June 27, 2022.

**0520-01-09-.03 RECOGNIZED DISABILITY CATEGORIES.****(1) Autism.**

- (a) "Autism" means a developmental disability, which significantly affects verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experience. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an Emotional Disturbance, as defined in this Rule.
- (b) Eligibility for autism also includes students who have been diagnosed with an Autism Spectrum Disorder such as Autism, a Pervasive Developmental Disorder, or Asperger's Syndrome when the child's educational performance is adversely affected. Autism may exist concurrently with other areas of disability.
- (c) A child may be found eligible as having Autism if the child manifests both of the following characteristics in early childhood (as social demands increase):
  - 1. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by all of the following:
    - (i) Deficits in social-emotional reciprocity (including, but not limited to abnormal social approach, failure of normal back and forth conversation, reduced sharing of interests, reduced sharing of emotions/affect, lack of initiation of social interaction, and poor social imitation);
    - (ii) Deficits in nonverbal communicative behaviors used for social interaction (including but not limited to impairments in social use of eye contact, use and understanding of body postures, use and understanding of gestures; abnormal volume, pitch, intonation, rate, rhythm, stress, prosody, and/or volume of speech; abnormal use and understanding affect, lack of coordinated verbal and nonverbal communication, and lack of coordination nonverbal communication); and
    - (iii) Deficits in developing and maintaining relationships appropriate to developmental level; ranging from difficulties adjusting behavior to social contexts, through difficulties in sharing imaginative play, to an apparent absence of interest in people; and
  - 2. Restricted, repetitive patterns of behavior, interests, or activities as manifested by at least two (2) of the following:
    - (i) Stereotyped or repetitive speech, motor movements, or use of objects (including but not limited to echolalia, repetitive use of objects, idiosyncratic language, simple motor stereotypies);
    - (ii) Excessive adherence to routines, ritualized patterns of verbal or nonverbal behavior, or excessive resistance to change (including but not limited to motor rituals, insistence on same route or food, repetitive questioning, or extreme distress at small changes);

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- (iii) Highly restricted, fixated interests that are abnormal in intensity or focus (including but not limited to strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests); or
- (iv) Hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of environment (including but not limited to apparent indifference to pain/heat/cold, adverse response to sounds or textures, excessive smelling or touching of objects, fascination with lights or spinning objects).

(2) Deaf-Blindness.

- (a) “Deaf-Blindness” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs by addressing any one (1) of the impairments. A child may be found eligible as having Deaf-Blindness if the child:
  - 1. Meets criteria for Deafness or Hearing Impairment and Visual Impairment; and
  - 2. Is diagnosed with a degenerative condition or syndrome which will lead to Deaf-Blindness, and whose present level of functioning is adversely affected by both hearing and vision deficits; or
  - 3. Has severe multiple disabilities due to generalized central nervous system dysfunction, and who exhibits auditory and visual impairments or deficits which are not perceptual in nature.

(3) Deafness.

- (a) “Deafness” means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child’s educational performance. A child may be found eligible as having Deafness if the child has one (1) or more of the following characteristics:
  - 1. An inability to communicate effectively due to deafness;
  - 2. An inability to perform academically on a level commensurate with the expected level because of deafness; or
  - 3. Delayed speech and/or language development due to deafness.

(4) Developmental Delay.

- (a) “Developmental Delay” refers to children aged three years, zero months (3:0) through nine years, eleven months (9:11) who are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas:
  - 1. Physical (gross motor and/or fine motor);
  - 2. Cognitive;
  - 3. Communication;
  - 4. Social or emotional; or

(Rule 0520-01-09-.03, continued)

5. Adaptive development that adversely affects a child's educational performance.
  - (b) Initial eligibility as Developmental Delay shall be determined before the child's seventh birthday.
  - (c) Other disability categories shall be used if they are more descriptive of the young child's strengths and needs.
  - (d) The use of Developmental Delay as a disability category is optional for LEAs.
- (5) Emotional Disturbance.
  - (a) "Emotional Disturbance" means a condition exhibiting one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
    1. Inability to learn which cannot be explained by intellectual, sensory, or health factors;
    2. Inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
    3. Inappropriate types of behavior or feelings under normal circumstances;
    4. A general pervasive mood of unhappiness or depression; or
    5. A tendency to develop physical symptoms or fears associated with personal or school problems.
  - (b) Emotional Disturbance includes schizophrenia. Emotional Disturbance does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.
- (6) Functional Delay.
  - (a) "Functional Delay" means a continuing significant disability in intellectual functioning and achievement that adversely affects the student's ability to progress in the general education program, but the student's adaptive behavior in the home or community is not significantly impaired and is at or near a level appropriate to the student's chronological age, including all of the following:
    1. Significantly impaired intellectual functioning which is two (2) or more standard deviations below the mean, and difficulties in the following areas cannot be the primary reason for significantly impaired scores on measures of intellectual functioning:
      - (i) Limited English proficiency;
      - (ii) Cultural factors;
      - (iii) Medical conditions that impact school performance;
      - (iv) Environmental factors; and
      - (v) Communication, sensory or motor disabilities;

(Rule 0520-01-09-.03, continued)

2. Deficient academic achievement which is at or below the fourth percentile in two (2) or more total or composite scores on a norm referenced test in the following areas:
    - (i) Basic reading skills;
    - (ii) Reading fluency skills;
    - (iii) Reading comprehension;
    - (iv) Mathematics calculation;
    - (v) Mathematics problem solving; or
    - (vi) Written expression; and
  3. Home or school adaptive behavior scores that fall above the level required for meeting Intellectual Disability eligibility standards.
- (b) Prior to identification of Functional Delay the student's IEP team must determine that underachievement is not primarily the result of Visual, Motor, or Hearing Disability, Intellectual Disability, Speech or Language Impairment, or a Specific Learning Disability.
- (c) Other disability categories shall be used if they are more descriptive of the student's strengths and needs.
- (7) Hearing Impairment.
- (a) "Hearing Impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but does not include Deafness.
- (b) A child may be found eligible as having Hearing Impairment if the child has one (1) or more of the following characteristics:
1. Inability to communicate effectively due to a hearing impairment;
  2. Inability to perform academically on a level commensurate with the expected level because of a hearing impairment; or
  3. Delayed speech and/or language development due to a hearing impairment.
- (8) Intellectually Gifted.
- (a) "Intellectually Gifted" means a child whose intellectual abilities, creativity, and potential for achievement are so outstanding that the child's needs exceed differentiated general education programming, adversely affect educational performance, and require specifically designed instruction or support services.
- (b) Children from all populations (including but not limited to all cultural, racial, and ethnic groups, English Learners, all economic strata, twice-exceptional, etc.) can be found eligible for Intellectually Gifted.
- (c) Children identified as Intellectually Gifted are exempted from the discipline procedures at 34 C.F.R. § 300.530-537. Children with a dual diagnosis that includes Intellectually

(Rule 0520-01-09-.03, continued)

Gifted must be considered as children with a disability and may not be exempted from the discipline procedures at 34 C.F.R. § 300.530-537.

(9) Intellectual Disability.

- (a) "Intellectual Disability" means significantly impaired intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(10) Multiple Disabilities.

- (a) "Multiple Disabilities" means concomitant impairments (including but not limited to Intellectual disability- Deafness, Intellectual disability- Orthopedic Impairment), the combination of which causes such severe educational needs that they cannot be accommodated by addressing only one (1) of the impairments. Multiple Disabilities does not include Deaf-Blindness.

(11) Orthopedic Impairment.

- (a) "Orthopedic Impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes, but is not limited to, impairments caused by congenital anomaly (including but not limited to club foot, absence of some member), impairments caused by disease (including but not limited to poliomyelitis, bone tuberculosis), and impairments from other causes (including but not limited to cerebral palsy, amputations, and fractures or burns that cause contractures).

(12) Other Health Impairment.

- (a) "Other Health Impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems including but not limited to asthma, Attention Deficit Hyperactivity Disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Syndrome that adversely affects a child's educational performance.
- (b) A child may be found eligible as having an Other Health Impairment if the child has a chronic or acute health problem that requires specially designed instruction due to:
  - 1. Impaired organizational or work skills;
  - 2. Inability to manage or complete tasks;
  - 3. Excessive health related absenteeism; or
  - 4. Medications that affect cognitive functioning.

(13) Specific Learning Disability.

- (a) "Specific Learning Disability" means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, and that adversely affect a child's educational performance. Specific Learning Disability includes conditions such as perceptual disabilities (including but not limited to, visual processing), brain injury that



(Rule 0520-01-09-.03, continued)

is not caused by an external physical force, minimal brain dysfunction, dyslexia, and developmental aphasia.

- (b) Specific Learning Disability does not include a learning problem that is primarily the result of Visual Impairment, Hearing Impairment, Orthopedic Impairment, Intellectual Disability, Emotional Disturbance, Limited English Proficiency, or environmental cultural, or economic disadvantage.

(14) Speech or Language Impairment.

- (a) "Speech or Language Impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or voice impairment that adversely affects a child's educational performance.
- (b) Speech or Language Impairment includes demonstration of impairments in one (1) or more of the following areas:
  - 1. Language Impairment. A significant deficiency in comprehension and/or use of spoken language that may also impair written and/or other symbol systems and is negatively impacting the child's ability to participate in the classroom environment. The impairment may involve any or a combination of the following: the form of language (phonology, morphology, and syntax), the content of language (semantics) and/or the use of language in communication (pragmatics) that is adversely affecting the child's educational performance;
  - 2. Articulation (Speech Sound Production) Impairment. A significant deficiency in the ability to produce sounds in conversational speech not consistent with chronological age. This includes a significant atypical production of speech sounds characterized by substitutions, omissions, additions, or distortions that interfere with intelligibility in conversational speech and obstruct learning and successful verbal communication in the educational setting. Speech sound errors may be a result of impaired phonology, oral motor or other issues;
  - 3. Voice Impairment. An excess or significant deficiency in pitch, intensity, resonance, or quality resulting from pathological conditions or inappropriate use of the vocal mechanism; or
  - 4. Fluency Impairment. Abnormal interruption in the flow of speech characterized by an atypical rate or rhythm, and/or repetitions in sounds, syllables, words, and phrases that significantly reduces the speaker's ability to participate within the learning environment.
- (c) Speech or Language deficiencies identified cannot be attributed to characteristics of second language acquisition, cognitive referencing, and/or dialectic differences.

(15) Traumatic Brain Injury.

- (a) "Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech.
- (b) Traumatic Brain Injury may include the following:

(Rule 0520-01-09-.03, continued)

1. An insult to the brain caused by an external force that may produce a diminished or altered state of consciousness; and
2. The insult to the brain induces a partial or total functional disability resulting in one (1) or more of the following:
  - (i) Physical impairments such as, but not limited to:
    - (I) Speech, vision, hearing, and other sensory impairments;
    - (II) Headaches;
    - (III) Fatigue;
    - (IV) Lack of coordination;
    - (V) Spasticity of muscles;
    - (VI) Paralysis of one or both sides; or
    - (VII) Seizure disorder.
  - (ii) Cognitive impairments such as, but not limited to:
    - (I) Attention or concentration;
    - (II) Ability to initiate, organize, or complete tasks;
    - (III) Ability to sequence, generalize, or plan;
    - (IV) Flexibility in thinking, reasoning or problem solving;
    - (V) Abstract thinking;
    - (VI) Judgment or perception;
    - (VII) Long-term or short-term memory, including confabulation;
    - (VIII) Ability to acquire or retain new information; or
    - (IX) Ability to process information/processing speed.
  - (iii) Psychosocial impairments such as, but not limited to:
    - (I) Impaired ability to perceive, evaluate, or use social cues or context appropriately that affect peer or adult relationships;
    - (II) Impaired ability to cope with over-stimulation environments and low frustration tolerance;
    - (III) Mood swings or emotional ability;
    - (IV) Impaired ability to establish or maintain self-esteem;
    - (V) Lack of awareness of deficits affecting performance;

(Rule 0520-01-09-.03, continued)

- (VI) Difficulties with emotional adjustment to injury (anxiety, depression, anger, withdrawal, egocentricity, or dependence);
  - (VII) Impaired ability to demonstrate age-appropriate behavior;
  - (VIII) Difficulty in relating to others;
  - (IX) Impaired self-control (verbal or physical aggression, impulsivity);
  - (X) Inappropriate sexual behavior or disinhibition;
  - (XI) Restlessness, limited motivation and initiation; or
  - (XII) Intensification of pre-existing maladaptive behaviors or disabilities.
- (c) Traumatic Brain Injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

**(16) Visual Impairment.**

- (a) "Visual Impairment," including either partial sight or blindness, means impairment in vision that, even with correction, adversely affects a child's educational performance. A child may be found eligible as having a visual impairment if the child has at least one (1) of the following:
- 1. Visual acuity in the better eye or both eyes with best possible correction:
    - (i) Legal blindness – 20/200 or less at distance and/or near; or
    - (ii) Low vision – 20/70 or less at distance and/or near;
  - 2. Visual field restriction with both eyes:
    - (i) Legal blindness – remaining visual field of 20 degrees or less;
    - (ii) Low vision – remaining visual field of 60 degrees or less; or
    - (iii) Medical and educational documentation of progressive loss of vision, which may in the future affect the student's ability to learn visually; or
  - 3. Other Visual Impairment, not perceptual in nature, resulting from a medically documented condition (For example, but not limited to, cortical visual impairment).

**Authority:** T.C.A. §§ 49-10-101, et seq., and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021.

**0520-01-09-.04 CONSENT.**

- (1) Parental consent is required for the following:
  - (a) Initial evaluations and reevaluations;

(Rule 0520-01-09-.04, continued)

- (b) Initial provision of special education and related services; and
  - (c) Functional behavior assessments.
- (2) Consent means:
- (a) The Parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;
  - (b) The Parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
  - (c) The Parent understands that the granting of consent is voluntary on the part of the Parent and may be revoked at any time.
    - 1. If a Parent revokes consent, that revocation is not retroactive. Revocation of consent shall be in writing and is not effective until received by the LEA to which the consent was granted.
    - 2. If the Parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the LEA is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

**Authority:** T.C.A. §§ 49-10-101, et seq., and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendments filed May 14, 2021; effective August 12, 2021.

**0520-01-09-.05 CHILD FIND AND FREE APPROPRIATE PUBLIC EDUCATION.**

- (1) Child Find.
- (a) Every LEA shall develop and implement child find activities to identify, locate, and evaluate all children with disabilities, or who are suspected of having a disability, within its jurisdictional boundaries, ages three (3) through twenty-one (21), both inclusive, who need special education and related services, even though they are advancing from grade to grade. This includes but is not limited to:
    - 1. Children who are enrolled by their Parents in a non-public school located within the jurisdictional boundaries of the LEA;
    - 2. Children who are wards of the state; and
    - 3. Children who are highly mobile (including children who are migrant and children who are homeless).
  - (b) Each LEA shall develop and implement procedures for creating public awareness of special education programs and services. A notice shall be published or announced in newspapers, other media (including the LEA's website), or both, with circulation adequate to notify Parents of the activities conducted by the LEA.

(Rule 0520-01-09-.05, continued)

- (c) Any child suspected of having a disability may be referred to the LEA. The LEA shall establish written procedures for accepting, processing and documenting receipt of each referral. The procedures shall be subject to review by the Department of Education.
  - (d) As a component of child find activities, general education programs within each LEA shall provide and document interventions implemented in the general education program.
  - (e) A Parent may request that the LEA conduct a full and individualized evaluation of the Parent's child to determine if the child has a disability and is eligible for special education and related services.
  - (f) Eligibility determinations shall be completed within sixty (60) calendar days of receipt of parental consent for an initial evaluation.
- (2) Free Appropriate Public Education (FAPE).
- (a) FAPE shall be made available to all children with disabilities, including those children who reach twenty-two (22) years of age during the school year and children who have been suspended or expelled from school for more than ten (10) school days in a school year.
  - (b) To meet the obligations of FAPE, each LEA or Charter School shall provide services that address all of a child's identified special education and related service needs, based on the child's unique needs and not on the child's disability.
  - (c) Charter Schools shall ensure students with disabilities receive education services required by their IEP. LEAs shall be responsible for ensuring that children with disabilities attending a charter school authorized by the LEA are provided FAPE.
  - (d) The Tennessee academic standards adopted by the State Board of Education shall serve as the basis for developing special education programs. Each LEA and Charter School shall provide a variety of services, interventions, and programs to meet the educational needs of all students, including the needs of children with disabilities.
  - (e) LEAs and Charter Schools shall provide children with disabilities with special transportation as required by the student's IEP.
    - 1. Children with disabilities shall, whenever appropriate, be provided transportation along with children who do not have disabilities. Adaptations shall be made to meet the needs of children with disabilities rather than separate transportation whenever appropriate.
    - 2. Travel time for children with disabilities shall not exceed the travel time for other children, provided that exceptions may be made by the IEP team.
    - 3. Vehicles used to provide special transportation shall meet the requirements established by the State Board's Pupil Transportation Rule 0520-01-05.
    - 4. Operators and attendants of vehicles who provide special transportation shall be given special training regarding the needs and special requirements of children with disabilities, except when Parents are transporting children with disabilities. Special attendants shall be provided when an IEP team determines that such services are necessary.

(Rule 0520-01-09-.05, continued)

5. LEAs may contract for special transportation provided that the operators, attendants, and vehicles used by a contractor meet the requirements established by the State Board of Education, except when Parents are transporting children with disabilities.
- (f) Children with disabilities who are convicted as adults under state law and incarcerated in adult prisons shall be entitled to their rights under IDEA with the following exceptions:
  1. The following requirements do not apply:
    - (i) Participation of children with disabilities in general statewide assessments; and
    - (ii) Transition planning and transition services with respect to the students whose eligibility under IDEA Part B will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
  2. The IEP team may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The requirements of 34 C.F.R. § 300.320 relating to the definition of an IEP and the general requirements of 34 C.F.R. § 300.114 relating to least restrictive environment do not apply with respect to these modifications.

**Authority:** T.C.A. §§ 49-10-101, et seq., 49-13-111, and 49-13-126 and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Amendment filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021. Amendments filed June 21, 2022; effective September 19, 2022.

#### **0520-01-09-.06 REPEALED.**

**Authority:** T.C.A. § 49-10-101. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Repeal filed May 14, 2021; effective August 12, 2021.

#### **0520-01-09-.07 EDUCATIONAL HOMEBOUND PLACEMENTS FOR STUDENTS WITH DISABILITIES.**

- (1) Eligibility for Homebound Placements.
  - (a) An educational homebound placement for students with disabilities is made by an IEP team when considering the full continuum of placement options made available pursuant to IDEA. The IEP team must document that a homebound placement is necessary, temporary and consistent with requirements for the provision of a free appropriate public education.
  - (b) Medical Homebound decisions shall be in accordance with the State Board's Homebound Instruction Rule 0520-01-02-.10.
- (2) Use of Educational Homebound Placement.

(Rule 0520-01-09-.07, continued)

- (a) Educational homebound instruction is provided at home, hospital or related site to children with disabilities who are eligible pursuant to IDEA and state regulations. Instruction provided to children with disabilities in educational homebound placements shall be provided by qualified personnel, pursuant to IDEA and state regulations.
- (b) Educational homebound instruction is appropriate if the child's IEP team determines that the student cannot receive an educational benefit in a less restrictive setting, including as a result of the student's behavior. All educational homebound placements shall be temporary. The IEP shall contain a goal of returning the child to a less restrictive environment within the school year.
- (c) An IEP containing an educational homebound placement shall be reviewed at intervals of thirty (30) school days by the child's IEP team to ensure appropriateness of the provision of instruction and appropriateness of continuing the homebound placement.
- (d) The frequency and duration of instruction necessary to provide FAPE during a homebound placement will be determined by the IEP team.
- (e) IDEA Part B funds may be expended only for instruction in homebound placements of children with disabilities who are eligible for special education pursuant to IDEA and state regulations.

**Authority:** T.C.A. §§ 49-10-101, et seq., and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendments filed May 14, 2021; effective August 12, 2021.

#### **0520-01-09-.08 STATE ADVISORY COUNCIL.**

The state shall establish an advisory council on the education of children with disabilities for special education as provided by T.C.A. § 49-10-105. The Governor shall appoint the members of the advisory council on the education of children with disabilities.

**Authority:** T.C.A. § 49-10-105. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Amendment filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendments filed May 14, 2021; effective August 12, 2021.

#### **0520-01-09-.09 LEA ELIGIBILITY FOR FEDERAL IDEA PART B FUNDS.**

- (1) Each LEA shall demonstrate to the satisfaction of the Department of Education that it:
  - (a) Complies with all state and federal requirements for child find;
  - (b) Makes available a FAPE to all children with disabilities;
  - (c) Includes children with disabilities in state and district-wide assessments, with appropriate accommodations and modifications where necessary, or in alternate assessments. The type of assessment must be determined by the IEP team consistent with the state guidelines for participation of students with disabilities in state or district-wide assessments.
  - (d) Ensures that children with disabilities participating in early intervention programs experience a smooth and effective transition to preschool programs and that, by the child's third birthday, an IEP has been developed and implemented for the child. The

(Rule 0520-01-09-.09, continued)

LEA shall participate in the transition planning meeting no less than ninety (90) days prior to the third birthday of a child who may be a child with a disability.

- (e) Ensures that children with disabilities who are enrolled in private schools or facilities by the LEA are provided special education and related services, in accordance with the IEP, at no cost to them or to their parents.
- (f) Ensures that children with disabilities who are enrolled in private schools by their parents have an opportunity for special education services and that the amount spent to provide those services is a proportionate amount of the federal funds made available to the LEA. No unilaterally placed private school child with a disability has an individual entitlement to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
- (g) Establishes and has in effect policies, procedures, and programs that are consistent with this chapter for implementing the provision of special education and related services in order to ensure compliance with applicable state and federal regulations including, but not limited to:
  - 1. Free appropriate public education, including interagency agreements to ensure FAPE for all children;
  - 2. Child find procedures;
  - 3. Evaluation, reevaluation and determination of eligibility procedures;
  - 4. IEP/Individual Family Service Plan (IFSP) procedures;
  - 5. Confidentiality procedures;
  - 6. Private school services procedures;
  - 7. Goals for performance of children with disabilities through school improvement planning;
  - 8. Inclusion of children with disabilities in state and district-wide assessment programs with appropriate accommodations and modifications and the reporting of assessment data; and
  - 9. Maintenance of effort.
- (h) Supplements the provision of special education funds but does not commingle or supplant the provision of special education funding.
- (i) Publicizes annual information regarding its special education programs and services and child find activities.
- (j) Ensures that special education professionals and paraprofessionals are provided professional development collaboratively with general education personnel.
- (k) Ensures that school administrators have professional development, training and the resources to establish challenging expectations and provide access to the general education curriculum in the regular classroom to the maximum extent possible for all children including those eligible for special education.



(Rule 0520-01-09-.09, continued)

- (l) Ensures that a continuum of alternative placements and related services are available to meet the needs of children with disabilities.
- (2) Each LEA shall annually submit to the Department, at a minimum, the following information in accordance with the Department's guidelines:
  - (a) A census of children with disabilities showing the total number and distribution of children within the LEA's jurisdiction who are provided special education and related services;
  - (b) An assurance that IDEA funds will be used to supplement, and not to supplant, state and local funds, and will be expended only for the excess cost of providing special education and related services to children with disabilities;
  - (c) An assurance that, to the maximum extent appropriate, children with disabilities are educated with children without disabilities;
  - (d) A detailed budget and end of the year report of expenditures of all funds available to provide special education and related services; and
  - (e) An assurance that a FAPE is available to all children with disabilities between the ages of three (3) and twenty-one (21), inclusive, including children who reach twenty-two (22) years of age during the school year and children who have been suspended or expelled for more than ten (10) school days in a school year.
- (3) Each LEA shall maintain an accurate record of all children with disabilities who are residing within its jurisdiction. The census shall be taken on December 1 of each year and at other times as required by the Department.
- (4) LEAs shall evaluate their special education programs and related services according to federal and state evaluation criteria.
- (5) LEAs, state agencies, and private schools shall be monitored on a periodic basis by the Department of Education to determine the extent to which special education and related services are being implemented in the least restrictive environment and to assure compliance with applicable laws and regulations. The Department of Education shall provide technical assistance in self-evaluation, program planning, and implementation of any necessary corrective action plans.
- (6) The Department shall annually report on the Department's website, at a minimum, the following information:
  - (a) The number and percentage of children with disabilities in this state;
  - (b) The number and percentage of children with disabilities, disaggregated by disability category;
  - (c) The participation and performance of children with disabilities on state assessments; and
  - (d) Other performance indicators for children with disabilities.

**Authority:** T.C.A. § 49-10-101 and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June

(Rule 0520-01-09-.09, continued)

29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021.

**0520-01-09-.10 FUNDING REQUIREMENTS.**

- (1) State funds shall be allocated to each LEA in an amount to be determined by applying the applicable State funding formula to the children with disabilities identified and served during the preceding school year.
- (2) In accordance with T.C.A. § 49-10-109, if an LEA is found by the Commissioner of Education ("Commissioner") to have failed to provide a FAPE to all children with disabilities who by law are entitled to receive a FAPE from the LEA, then the Commissioner may withhold all or any portion of the State funding for the LEA as, in the Commissioner's judgment, is warranted.
- (3) Pursuant to 34 § C.F.R. 300.203, maintenance of effort shall be met if the LEA budgets at least the same total or per-capita amount from the combination of state and local funds as the LEA spent for that purpose from the prior year. The LEA may reduce the level of expenditures below the level for the preceding year if the reduction is attributable to the following:
  - (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower salaried staff;
  - (b) A decrease in the enrollment of children with disabilities;
  - (c) The termination of the obligation of the LEA, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the Department, because the child:
    1. Has left the jurisdiction of the LEA;
    2. Has reached the age at which the obligation of the LEA to provide FAPE to the child has terminated; or
    3. No longer needs the program of special education; or
  - (d) The termination of costly expenditures for long-term high-cost purchases.
- (4) Each LEA shall establish appropriate policies and procedures for the administration of IDEA and preschool funds and shall maintain appropriate records and reports to be used in planning and evaluating special education programs and services. The Department shall notify each LEA of its allocation of federal funds annually.
- (5) LEAs shall use IDEA funds for the excess costs of providing special education and related services to children with disabilities. IDEA funds received by the LEA shall not be commingled with state funds.
- (6) LEAs shall maintain records that demonstrate compliance with the excess cost, non-supplanting, and comparability requirements for at least three (3) years after completion of the project described in the LEA's application for federal funds.
- (7) Subject to the availability of federal funds, the Department shall establish a process for LEAs to request reimbursement for high-cost children with disabilities.

(Rule 0520-01-09-.10, continued)

- (a) An LEA shall include qualifying services provided to children with disabilities in each public school in the LEA, including charter schools authorized by the LEA, in the LEA's annual request for high-cost reimbursement.
  - (b) An LEA shall coordinate with public charter schools authorized by the LEA in the same manner that the LEA coordinates with its other public schools in requesting reimbursement for high-cost children with disabilities.
  - (c) An LEA shall provide to public charter schools authorized by the LEA applicable high-cost reimbursement funds received by the LEA for any qualifying special education expenditures incurred directly by the public charter school.
- (8) Two (2) or more LEAs may submit a consolidated annual comprehensive plan, with the approval of the Department, under the conditions of federal law:
- (a) Those participating in a consolidated plan will be jointly responsible for implementing a FAPE program in the participating LEA; and
  - (b) The consolidated plan must designate one (1) of the LEAs as the fiscal agent for the plan.
- (9) For children with disabilities unilaterally placed in non-public schools, the same proportionate amount that is spent on public school children with disabilities from IDEA and preschool grants is allocated for the number of non-public school children with disabilities within the LEA's jurisdiction. The preceding December 1st special education child count is used in calculating non-public and public school ratios to determine the proportionate amount.

**Authority:** T.C.A. §§ 49-10-101, et seq., and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed August 13, 2010 to be effective January 29, 2011; rule was withdrawn by the State Board of Education on October 15, 2010. Repeal filed August 29, 2013; effective January 29, 2014. Amendments filed May 14, 2021; effective August 12, 2021. Amendments filed January 6, 2023; effective April 6, 2023.

#### **0520-01-09-.11 EVALUATION PROCEDURES.**

The Department, in consultation with the Advisory Council for the Education of Students with Disabilities and other stakeholders with expertise in each disability category, shall establish standards for determining program eligibility criteria, evaluation procedures, and evaluation participants. These standards shall be submitted by the Department to the State Board for final review and approval.

**Authority:** T.C.A. §§ 49-10-101, et seq. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendments filed May 14, 2021; effective August 12, 2021. Amendments filed January 6, 2023; effective April 6, 2023.

#### **0520-01-09-.12 INDIVIDUALIZED EDUCATION PROGRAM (IEP) REQUIREMENTS.**

- (1) Special education and related services must be determined by the child's individualized education program (IEP) team based on the individual needs of the child.
- (2) Except when a written explanation to the contrary is included, the IEP of a child with a disability must include:
  - (a) Pre-vocational assessments for students in kindergarten through grade six (K-6), inclusive, or students of comparable chronological age;

(Rule 0520-01-09-.12, continued)

- (b) Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills for the first IEP that will be in effect when the student turns fourteen (14) years old as part of the IEP transition plan; and
  - (c) Courses of study, transition services, and annual IEP goals that will reasonably enable the student to meet the postsecondary goal in the first IEP that will be in effect when the student turns fourteen (14) years old as part of the IEP transition plan.
- (3) To ensure timely access to FAPE, the IEP shall be implemented as soon as possible after development of the IEP. However, if agreement was not reached on the IEP, no change in the child's IEP or eligibility status shall be made for fourteen (14) days, in order to afford a parent time to request a due process hearing.
  - (4) Upon written request of any member, the IEP team shall be convened within ten (10) school days or on a mutually agreed upon date and time.
  - (5) A child with a disability must be educated in the least restrictive environment. Special classes, separate schooling, or other removals of a child with a disability from the regular educational environment must occur only when, and to the extent that, the student's IEP team determines that the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. To the maximum extent appropriate, a child with a disability must be educated alongside the child's typically developing peers.

**Authority:** T.C.A. §§ 49-10-101, et seq., and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed October 23, 2013; effective March 31, 2014. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021. Amendments filed July 18, 2024; effective October 16, 2024.

#### **0520-01-09-.13 REPEALED.**

**Authority:** T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Repeal filed May 14, 2021; effective August 12, 2021.

#### **0520-01-09-.14 REPEALED.**

**Authority:** T.C.A. §§ 49-10-101 and 49-10-701. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Repeal filed May 14, 2021; effective August 12, 2021.

#### **0520-01-09-.15 PARENT PARTICIPATION IN IEP MEETINGS.**

- (1) An LEA shall notify the Parent of a child with a disability at least ten (10) calendar days before an IEP meeting to ensure that the Parent has an opportunity to attend, unless the Parent and LEA mutually agree to meet prior to ten (10) calendar days pursuant to Rule 0520-01-09-.12.
- (2) If an LEA creates a draft IEP prior to an IEP meeting, a copy of the draft IEP shall be provided to the Parent at least forty-eight (48) hours prior to the scheduled meeting time unless the Parent provides written notice to the LEA more than forty-eight (48) hours prior to

(Rule 0520-01-09-.15, continued)

the scheduled meeting declining his or her right to receive a copy of the draft IEP. The Parent meeting notification shall advise the Parent that they may decline their right to receive a copy of the draft IEP.

- (a) If a draft IEP is provided it shall become the property of the Parent(s).
  - (b) An LEA shall not have the final IEP completed before an IEP meeting and the LEA shall make it clear to the Parent at the outset of the meeting that the services proposed by the LEA are preliminary recommendations for review and discussion with the Parent.
- (3) An LEA shall notify a Parent at least twenty-four (24) hours prior to a manifestation determination review conducted pursuant to 34 C.F.R. § 300.530(e).
- (4) Written notice shall be given to the Parents of a child suspected to have a disability or a child with a disability within at least ten (10) school days of the following:
- (a) Proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
  - (b) Refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

**Authority:** T.C.A. §§ 49-10-101, et seq., and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed December 12, 2018; effective March 12, 2019. Amendments filed May 14, 2021; effective August 12, 2021. Amendments filed June 21, 2022; effective September 19, 2022.

#### **0520-01-09-.16 REPEALED.**

**Authority:** T.C.A. § 49-10-101. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Repeal filed May 14, 2021; effective August 12, 2021.

#### **0520-01-09-.17 MEDIATION.**

All special education mediations shall be conducted by mediators listed by the Alternative Dispute Resolution Commission as general civil or family mediators pursuant to Tennessee Supreme Court Rule 31 and employed by or contracted by the secretary of state. The administrative office of the courts shall provide legal training in special education law to the mediators who conduct special education mediations. All parties shall participate in mediation in good faith.

**Authority:** T.C.A. §§ 49-10-101, et seq., and 49-10-601, et seq.; and 34 C.F.R. Part 300. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

#### **0520-01-09-.18 IMPARTIAL DUE PROCESS HEARING.**

- (1) Special education due process cases shall be heard by administrative law judges employed by the secretary of state. Administrative law judges shall have jurisdiction to hear complaints arising under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, et seq., state special education law, and the Rules of the State Board of Education. The administrative

(Rule 0520-01-09-.18, continued)

office of the courts shall provide legal training in special education law to the administrative law judges assigned to hear special education due process cases sufficient to comport with the requirements of 20 U.S.C. § 1415, as from time to time amended.

- (2) When a hearing is requested, the LEA director of schools shall immediately contact the Department of Education Division of Special Education.
- (3) The LEA shall be responsible for providing an appropriate meeting place, a stenographic record of the hearing and a typed transcript of the hearing proceedings, and shall bear the administrative costs of the hearing, with the exception of the services of the hearing officer.
- (4) Expenses, up to \$5,000, for the services of a court reporter, the original copy of the transcript for the hearing officer and one (1) copy for the parents will be reimbursed upon submission of appropriate documentation to the Department of Education.

**Authority:** T.C.A. §§ 49-10-101, et seq., and 49-10-601, et seq.; and 34 C.F.R. Part 300. **Administrative**

**History:** Original rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021. Amendments filed July 18, 2024; effective October 16, 2024.

#### **0520-01-09-.19 CIVIL ACTION.**

Any party aggrieved by the findings and decision of an impartial due process hearing has the right to bring a civil action with respect to the complaint presented. The action may be brought in any state court of competent jurisdiction in accordance with Tenn. Code Ann. § 4-5-322 or in a district court of the United States without regard to the amount in controversy.

**Authority:** T.C.A. §§ 49-10-101, et seq., and 49-10-601, et seq.; and 34 C.F.R. Part 300. **Administrative**

**History:** Original rule filed November 30, 2007; effective February 13, 2008. Amendments filed July 18, 2024; effective October 16, 2024.

#### **0520-01-09-.20 SURROGATE PARENTS.**

- (1) Each LEA shall have written policies and procedures for the recruitment, training and appointment of surrogate parents.
- (2) Each LEA shall appoint a surrogate parent to represent the child in all matters relating to the identification, assessment, educational placement, and the provision of a FAPE, including meetings concerning the individualized education program, and any mediation and due process hearings pertaining to the child when it determines that:
  - (a) No parent can be identified;
  - (b) It is unable to locate a parent by calls, visits and by sending a letter by certified mail (return receipt requested) to the last known address of the parent and allowing thirty (30) days for a response of the intention to appoint a surrogate parent;
  - (c) If the child is a ward of the State (including a ward of the court or a state agency); and/or
  - (d) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).
- (3) If the health or safety of the child or other persons would be endangered by delaying the change in placement, due to the unavailability of a surrogate, the change in educational

(Rule 0520-01-09-.20, continued)

placement may be made sooner, but without prejudice to any rights that the child and parent may have.

- (4) The surrogate parent shall continue to represent the child until one (1) of the following occurs:
  - (a) The child is determined by the IEP team to no longer be eligible for, or in need of special education or related services, except when termination from such programs is being contested;
  - (b) The parent or guardian, who was previously unknown, or whose whereabouts were previously unknown, becomes known;
  - (c) The legal guardianship of the child is transferred to a person who is able to fulfill the role of the parent; or
  - (d) The child attains eighteen (18) years of age.
- (5) Criteria for selection of surrogate parents.
  - (a) A person selected as a surrogate parent shall not be an employee of the Department of Education, the LEA, or any other agency that is involved in the education or care of the child.
    - 1. A person is not considered to be an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.
    - 2. A person is not considered to be an employee of the State solely because he or she is paid by the State to serve as a foster parent.
  - (b) A person selected as a surrogate parent must have knowledge and skills that ensure adequate representation of the child.
  - (c) An LEA may select a surrogate parent to represent the child for educational purposes. The selected person may be an employee of a nonpublic agency that only provides non-educational care for the child provided they are able to meet the standards and perform the responsibilities of a surrogate parent.
  - (d) Foster parents, selected by a state agency as the custodian for a child, who have had a foster child or children with disabilities for less than one (1) calendar year, may be appointed by an LEA to serve as surrogate parents for their foster child or children and may represent the child for educational purposes, provided that they perform the responsibilities of a surrogate parent.
- (6) Responsibilities of a surrogate parent.
  - (a) A surrogate parent must have no interest that would conflict with the interests of the child to be represented;
  - (b) A surrogate parent must have knowledge and skills that ensure adequate representation of the child, including a functional understanding of the educational rights of children with disabilities;
  - (c) A surrogate parent must participate in whatever training program might be offered to ensure that they will have knowledge and skills to provide adequate representation of the child;

(Rule 0520-01-09-.20, continued)

- (d) A surrogate parent must represent the child throughout the special education decision making process of identification, evaluation, program development, initial placement, review of placement, and reevaluation, as appropriate;
- (e) A surrogate parent must be acquainted with the child and his or her educational needs;
- (f) A surrogate parent must attempt to ascertain the child's educational needs and concerns;
- (g) A surrogate parent must respect the confidentiality of all records and information;
- (h) A surrogate parent must become familiar with the assistance provided by other human service agencies in the community that affects the child or that might be helpful resources; and
- (i) A surrogate parent must monitor the child's educational program and placement.

**Authority:** T.C.A. §§ 49-10-101, et seq., and 34 C.F.R. Part 300. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021.

#### **0520-01-09-.21 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.**

All special education related rights vest in the child when the child attains eighteen (18) years of age, unless a determination otherwise has been made in accordance with T.C.A. §§ 34-1-101 et seq. and §§ 34-3-101 et seq.

**Authority:** T.C.A. §§ 49-10-101, et seq. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008. Amendments filed May 14, 2021; effective August 12, 2021.

#### **0520-01-09-.22 AMENDMENT OF RECORDS AT PARENT'S REQUEST.**

The LEA, upon receiving a request from a parent pursuant to 34 C.F.R. § 300.618, shall decide, within fourteen (14) calendar days of receipt of the request, whether to amend the information as requested.

**Authority:** T.C.A. §§ 49-10-101, et seq., and 34 C.F.R. Part 300. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021.

#### **0520-01-09-.23 ISOLATION AND RESTRAINT FOR STUDENTS RECEIVING SPECIAL EDUCATION SERVICES.**

##### **(1) Definitions:**

- (a) "Extended Isolation" means isolation which lasts longer than one (1) minute per year of the student's age or isolation which lasts longer than the time provided in the child's IEP.
- (b) "Extended Restraint" means a physical holding restraint lasting longer than five (5) minutes or a physical holding restraint which lasts longer than the time provided in the child's IEP.
- (c) "Noxious Substance" means a substance released in proximity to the student's face or sensitive area of the body for the purpose of limiting a student's freedom of movement



(Rule 0520-01-09-.23, continued)

or action, including but not limited to Mace and other defense sprays. Pursuant to T.C.A. § 49-10-1305, administering a Noxious Substance to a student receiving special education services is prohibited.

- (2) LEAs are authorized to develop and implement training programs that include:
  - (a) Use of positive behavioral interventions and supports;
  - (b) Nonviolent crisis prevention and de-escalation;
  - (c) Safe administration of isolation and restraint; and
  - (d) Documentation and reporting requirements.
- (3) LEAs are authorized to determine an appropriate level of training commensurate with the job descriptions and responsibilities of school personnel.
- (4) LEAs shall develop policies and procedures governing:
  - (a) Personnel authorized to use isolation and restraint;
  - (b) Training requirements; and
  - (c) Incident reporting procedures.
- (5) If school personnel impose isolation or restraint, then the school personnel shall immediately contact the school principal, or the principal's designee. The principal or the principal's designee shall observe and evaluate the student's condition within a reasonable time after the isolation or restraint was used. As needed, the school nurse shall also observe and evaluate the student's condition within a reasonable time after the isolation and restraint was used. The school principal, or principal's designee, shall notify the student's parent or guardian orally or by written or printed communication the same day the isolation or restraint was used.
- (6) When the use of isolation or restraint is proposed at an IEP meeting, the parent shall be advised of the provisions of T.C.A. §§ 49-10-1301, et seq., this rule, and the IDEA procedural safeguards.
- (7) An IEP team meeting shall be convened within ten (10) days of use of restraint if:
  - (a) The student's IEP does not provide for the use of a physical holding restraint generally;
  - (b) The student's IEP does not provide for the use of restraint for the behavior precipitating the use of the restraint; or
  - (c) An Extended Restraint is used.
- (8) An IEP team meeting shall be convened within ten (10) days of use of isolation if:
  - (a) The student's IEP does not provide for the use of an isolation generally;
  - (b) The student's IEP does not provide for the use of isolation for the behavior precipitating the use of the isolation; or
  - (c) An Extended Isolation is used.

(Rule 0520-01-09-.23, continued)

- (9) State agencies providing educational services within a residential therapeutic setting to children in their legal and physical custody shall develop and adhere to isolation and restraint rules and policies in such educational settings which conform to the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) state standards as applicable and at least one (1) of the following national standards: American Correctional Association (ACA), Council on Accreditation (COA), Centers for Medicare & Medicaid Services (CMS), Joint Commission for Accreditation of Healthcare Organizations (JCAHO), Commission on Accreditation of Rehabilitation Facilities (CARF), as they apply in the educational environment. Development of, and adherence to, such rules and policies shall be overseen by a licensed qualified physician or licensed doctoral level psychologist.
- (10) School personnel who must isolate or restrain a student receiving special education services shall report each individual incident of isolation or restraint to the school principal or the principal's designee. The Department shall develop a report form, which shall be used by school personnel when reporting isolation or restraint to the school principal or the principal's designee.
  - (a) The report form shall be submitted for each individual incident and shall include the following information:
    1. Student's name, age, and disability;
    2. Student's school and grade level;
    3. Date, time and location of the isolation or restraint;
    4. Length of time student was isolated or restrained;
    5. Names, job titles, and signatures of the school personnel who administered the isolation or restraint;
    6. Whether the school personnel who administered the isolation or restraint were certified for completing a behavior intervention training program;
    7. Names and job titles of other school personnel who observed or witnessed the isolation or restraint;
    8. Name of the principal or designee who was notified following the isolation or restraint and time of notification;
    9. Description of the antecedents that immediately preceded the use of isolation or restraint and the specific behavior being addressed;
    10. A certification that any space used for isolation is at least forty (40) square feet;
    11. A certification that school personnel were in continuous direct visual contact at all times with a student who was isolated;
    12. How the isolation or restraint ended, including the student's demeanor at the cessation of the isolation or restraint;
    13. Physical injury or death to the student, school personnel or both during the isolation or restraint;
    14. Medical care provided to the student, school personnel or both during the isolation or restraint;

(Rule 0520-01-09-.23, continued)

15. Description of property damage, if relevant;
  16. Date, time, and method of parent notification;
  17. Whether an IEP team meeting is required pursuant to T.C.A. § 49-10-1304; and
  18. A determination whether the student has a Functional Behavior Assessment and Behavior Intervention Plan for the behavior precipitating the use of isolation or restraint.
- (b) A copy of the report must be submitted to the Department within five (5) calendar days of incident.

**Authority:** T.C.A. §§ 49-10-1301, et seq. **Administrative History:** Original rule filed October 20, 2009; effective January 18, 2010. Amendments filed March 21, 2012; effective August 29, 2012. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021. Amendments filed March 29, 2022; effective June 27, 2022.

**0520-01-09-.24 FUNCTIONAL BEHAVIOR ASSESSMENTS AND BEHAVIOR INTERVENTION PLANS.**

- (1) A Functional Behavior Assessment shall be conducted by a group of at least three (3) individuals knowledgeable about the student, which may include as appropriate:
  - (a) The Parent of the child;
  - (b) At least one (1) special education teacher of the child;
  - (c) At least one (1) general education teacher of the child;
  - (d) Related Service provider(s);
  - (e) School psychologist;
  - (f) Other school personnel; and
  - (g) The student.
- (2) To the extent possible, the FBA process shall be led by a school psychologist, Licensed Behavior Analyst, or other school personnel trained to conduct FBAs.
- (3) An FBA shall be conducted to inform the development or revision of a Behavior Intervention Plan in any of the following situations:
  - (a) When a student receiving Special Education and Related Services engages in conduct that results in a change of placement as defined by 34 C.F.R. 300.536 and the LEA, the Parent, and relevant members of the IEP team determine that the student's conduct that gave rise to the change in placement was a manifestation of the child's disability;
  - (b) When an IEP provides for the use of restraint or isolation, as required by T.C.A. 49-10-1304(b);

(Rule 0520-01-09-.24, continued)

- (c) When the student exhibits a pattern of behaviors that impede their learning or that of others;
  - (d) When the student exhibits a pattern of behavior that places the student or others at risk of harm or injury;
  - (e) When the student's IEP team is considering a more restrictive placement as a result of the student's behavior; or
  - (f) When determined appropriate by the student's IEP team.
- (4) An FBA shall be conducted, as appropriate, to inform the development or revision of a BIP in the following situations:
  - (a) When a student receiving Special Education and Related Services is removed from their current placement for more than ten (10) consecutive school days for behavior not determined to be a manifestation of the student's disability; or
  - (b) When a student receiving Special Education and Related Services is removed to an interim alternative education setting for up to forty-five (45) school days for weapons, drugs, or serious bodily injury, irrespective of whether the student's behavior is a manifestation of the student's disability;
- (5) An FBA shall include, at a minimum:
  - (a) Description of the problem or targeted behavior(s);
  - (b) Systematic observation of the events that immediately precede each display of the targeted behavior(s) and are associated with the display of the behavior(s);
  - (c) Systematic observation and analysis of the consequences following the display of the targeted behavior(s);
  - (d) Analysis of the antecedent/setting(s) or environment(s) in which the targeted behavior(s) occurs and the frequency of those behavior(s);
  - (e) Review of the student's educational and disciplinary records;
  - (f) Structured interviews with or surveys completed by the student's teachers, Parents, or school personnel, as determined by the group of individuals conducting the FBA, who regularly interact with the student, and when applicable, a student interview;
  - (g) Review of the history of the targeted behavior(s) to include the effectiveness of any intervention previously used; and
  - (h) Determination of whether a skill deficit is a contributing factor to the behavior(s).
    - 1. If the results of the FBA determine that a skill deficit is contributing to the target behavior(s), the IEP must include measurable annual goal(s) to address the skill deficit.
- (6) The group of individuals that conducts the FBA shall review the description of the problem or targeted behavior(s), the results of the assessment, and a hypothesis of the function of the behavior to develop a BIP.
- (7) The BIP shall include, at a minimum:

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- (a) A description of the behavior(s) and the frequency;
  - (b) A restatement of the hypothesized function of behavior(s);
  - (c) Measurable replacement behavior goals that align to the hypothesized function of behavior(s);
  - (d) Strategies for intervention, including but not limited to antecedent-based interventions, mitigating the consequences that reinforce the targeted behavior(s), and/or reinforcing identified replacement behavior(s) based on the results of the FBA;
  - (e) Identification of team members to teach appropriate replacement behaviors;
  - (f) A progress monitoring plan, including regular and frequent data collection and fidelity checks;
  - (g) A plan to train school personnel who interact regularly with the student on the intervention strategies identified in the student's BIP; and
  - (h) A description of the responses (i.e., consequences) or strategies required when the challenging behavior occurs (responses or strategies may include, but are not limited to extinction procedures, de-escalation, re-direction, or cost-response).
- (8) The BIP shall be based on the student's most recent FBA.
  - (9) The student's IEP team shall review the BIP at least annually during the student's annual IEP team meetings and revise the BIP as needed.
  - (10) Nothing in this chapter shall prohibit an LEA from developing an informal behavior plan for a student when the IEP team determines an FBA is not warranted due to the student's lower intensity behaviors.

**Authority:** T.C.A. §§ 49-10-1301, et seq.; Executive Order No. 14 of 2020 (and applicable, subsequent Executive Orders addressing COVID-19 relief); Public Chapter 652 of 2020; and 34 C.F.R. § 300.301(c).  
**Administrative History:** Emergency rules filed April 16, 2020; effective through October 13, 2020. Emergency rules expired effective October 14, 2020, and the rules reverted to their previous statuses. Emergency rule filed June 10, 2020; effective through December 7, 2020. Emergency rule expired effective December 8, 2020, and the rule reverted to its previous status. New rule filed March 29, 2022; effective June 27, 2022.