

Notice of Rulemaking Hearing
of the
State Board of Education
Chapter 0520-01-09
Special Education Programs and Services

There will be a hearing before the State Board of Education to consider the promulgation of rules pursuant to Tennessee Code Annotated, Section 49-10-101. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the meeting room on the first floor of the Andrew Johnson Tower located at 710 James Robertson Parkway, Nashville, TN, 37243-1050 at 9:00 a.m. CDT on the 26th day of June, 2007. Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the State Board of Education to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the State Board of Education to determine how it may reasonably provide such aid or service. Initial contact may be made with the State Board of Education ADA Coordinator, Vicki Burger, at 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 741-2966.

For a copy of this notice of rulemaking hearing, contact: Mary Jo Howland, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 741-2966.

Substance of Proposed Rules
Chapter 0520-01-09
Special Education Programs and Services

Amendments

Chapter 0520-01-09 Special Education Programs and Services is amended by deleting the chapter in its entirety, and substituting instead the following so that, as amended, Chapter 0520-01-09 shall read:

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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. Parts 300 and 301 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 www.state.tn.us/education/speced/.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.02 Definitions

- (1) "Charter school" means a public charter school as defined at T.C.A. §49-13-104(6).
- (2) "Child with a disability" means, in addition to the definition at 34 C.F.R. §300.8(a), a child evaluated in accordance with 34 C.F.R. §300.304-311 as having developmental delay, intellectual giftedness or a functional delay. Any child with a disability who attains twenty-two (22) years of age subsequent to the commencement of a school year continues to be a child with a disability for the remainder of that school year.
- (3) "Developmental Delay" means a child ages three (3) through nine (9) who is experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: physical, cognitive, communication development, social or emotional, or adaptive development, that adversely affects a child's educational performance. Other disability categories should be used if they are more descriptive of a young child's strengths and needs. Local education agencies have the option of using developmental delay as a disability category.
- (4) "Functional Delay" means a continuing disability in intellectual functioning and achievement which adversely affects the ability to think and/or act in the general school program, but adaptive behavior in the home or community is not significantly impaired.
- (5) "Intellectually Gifted" means a child whose intellectual abilities and potential for achievement are so outstanding that the child's educational performance is adversely affected. 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 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.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.03 Consent

If a parent revokes consent, the revocation must be in writing and the revocation is not effective until it is received by the local education agency to which consent was granted.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.04 Parent

- (1) A foster parent may act as a 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
- (2) The foster parent:
 - (a) Has an ongoing relationship with the child for more than one (1) year in duration;
 - (b) Is willing to make the educational decisions required of parents under the law; and
 - (c) Has no interest that would conflict with the interest of the child.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.05 Free Appropriate Public Education

- (1) A free appropriate public education (FAPE) shall be available to all children with disabilities, ages three (3) through the school year the student turns twenty-two (22), including those children who have been suspended or expelled from school for more than ten (10) school days in a school year. To meet this obligation each local education agency shall:
 - (a) Identify, locate, and evaluate all children with disabilities,
 - (b) Develop and implement child find activities to ensure that all children to include highly mobile children (migrant and homeless children) and those children who are suspected of being a child with a disability, even though they are advancing from grade to grade, are identified, located and evaluated; and
 - (c) Provide services that address all of a child's identified special education and related services needs, based on the child's unique needs and not on the child's disability.
- (2) Facilities.
 - (a) Facilities that serve children with disabilities must be comparable to facilities that serve children without disabilities.
 - (b) Educational programs and facilities must be accessible where children with physical disabilities and children without disabilities are both in attendance.

- (c) Entrance to and from the facility must be accessible. If access is not visible at the front of the facility, signs must be present to indicate where parking and access to the facility for children and other individuals with disabilities are available.

(3) Transportation.

- (a) Local education agencies shall provide children with disabilities with special transportation, where necessary.

1. Children with disabilities shall, whenever appropriate, be provided transportation along with children who are not disabled. 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 on the recommendation of an IEP team.
3. Vehicles used to provide special transportation must meet the requirements established by the state board of education.
4. Operators and attendants of vehicles providing special transportation requirements established by the state board of education 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.
5. It is permissible to 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.

(4) FAPE requirements for children with disabilities in adult prisons.

- (a) The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

1. The requirements relating to participation of children with disabilities in general assessments, and
2. The requirements relating to 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.

- (b) Modifications of IEP or placement.

1. If a child with disabilities is convicted as an adult under Tennessee law and incarcerated in an adult prison, 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.

2. 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.

(5) Charter schools.

- (a) Charter schools must ensure compliance with the IDEA.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.06 Child Find

- (1) Each local education agency shall develop and implement procedures for creating public awareness of special education programs and services. This includes a comprehensive system of child find activities for all children suspected of having a disability in public and private schools and facilities and who are homeless. Any child find activities shall be comparable for children in private schools and facilities.
- (2) A notice must be published or announced in newspapers, other media, or both, with circulation adequate to notify parents of the activities conducted by the local education agency.
- (3) Any child suspected of having a disability may be referred to the local education agency. All referrals shall be in writing to the school principal or director of special education. The local education agency shall establish written procedures for accepting, processing and documenting receipt of each referral. The procedures shall be approved by the state department of education.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.07 Placements

- (1) A homebound placement is instruction 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 homebound placements shall be provided by qualified personnel, pursuant to IDEA and state regulations.
- (2) Eligibility for Homebound Placements
 - (a) Eligibility for instruction as a child with a disability pursuant to IDEA and state regulations shall be established prior to implementation of homebound services. Children with medical conditions of a short duration or temporary nature, and not previously certified as eligible pursuant to IDEA and state regulations, shall not be eligible for homebound placements pursuant to this regulation, and special education funds shall not be used to fund homebound placements for such children.
 - (b) The IEP team shall consider a medical homebound placement only upon certification by a licensed doctor of medicine or osteopathy that a child with a disability needs a homebound placement, is expected to be absent from school due to a physical or mental condition for at least (10) consecu-

tive school days and that the child can receive instruction in a homebound placement without endangering the health of personnel providing it.

(3) Use of Homebound Placement

- (a) All homebound placements shall be temporary. Homebound placements shall not exceed thirty (30) school days duration. The IEP shall contain a goal of returning the child to a less restrictive environment within the school year, unless there is a medical necessity that requires extended homebound instruction, in which case additional homebound placements of thirty (30) school days or less may be instituted.
- (b) An IEP containing a homebound placement shall be reviewed at intervals of thirty (30) school days to ensure appropriateness of the provision of instruction and appropriateness of continuing the homebound placement.
- (c) Where behavioral and/or disciplinary issues cannot be safely addressed in any other educational setting, the IEP team may consider a homebound placement. Such changes in placement may be instituted strictly on an emergency basis and for a temporary period of time not to exceed thirty (30) school days to determine how to best address the child's needs. 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.
- (d) The frequency and duration of instruction necessary to provide a free appropriate public education (FAPE) during a homebound placement will be determined by the IEP team.
- (e) Special education 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. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.08 Parentally placed Private School Children

Private schools, as defined by the IDEA, do not include home schools as defined at T.C.A. §49-6-3050.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.09 State Advisory Panel

- (1) The state has established an advisory council on the education of children with disabilities for special education as provided by T.C.A. §49-10-105. The Governor appoints advisory council members.
- (2) Membership.
 - (a) The advisory council shall be composed of a maximum of twenty-five (25) members appointed by the Governor, the membership shall be representative of the State population and composed of individuals involved in or concerned with the education of children with disabilities, including;

1. Parents of children with disabilities (ages birth through 26);
 2. Individuals with disabilities;
 3. Teachers;
 4. Representatives of institutions of higher education that prepare special education and related services personnel;
 5. State and local education officials including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act;
 6. Administrators of programs for children with disabilities;
 7. Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
 8. Representatives of private schools and public charter schools;
 9. Not less than one (1) representative of a vocational, community or business organization concerned with the provision of transition services;
 10. Representatives from the state juvenile and adult correction agencies; and
 11. A representative from the state child welfare agency responsible for foster care.
- (b) A majority of the council must be individuals with disabilities or parents of children with disabilities.
- (c) The advisory council shall be composed of persons broadly representative of the community organizations interested in the disabled, professions related to the educational needs of the disabled, and the general public.
- (d) The governor shall appoint the members of the advisory council for three-year (3) terms. In making appointments to the advisory council, the governor shall strive to ensure that at least one (1) person serving on the council is sixty (60) years of age or older and that at least one (1) person serving on the council is a member of a racial minority.
- (e) Vacancies shall be filled for the unexpired term in the same manner as original appointments.
- (f) Members of the council may serve in more than one capacity for purposes of fulfilling the membership requirements.
- (3) Advisory council functions.
- (a) The advisory council shall:

1. Consider any problems presented to it by the Governor, the Commissioner of Education, the State Board of Education or the Assistant Commissioner for the Division of Special Education, and give advice thereon;
 2. Comment publicly on any rules and regulations proposed for issuance pursuant to T.C.A. Title 49, Chapter 10;
 3. By July 1 of each year, the advisory council shall make annual report to the Governor and General Assembly, and State Board of Education, and shall present its views of the progress or lack thereof made in special education by the state, its agencies and institutions, and local education agencies during the preceding year. The annual report should include council activities and suggestions to the state department of education. This report must be made available to the public in a manner consistent with other public reporting requirements of IDEA Part B.
 4. Advise the state department of education in developing evaluations and reporting on data to the U.S. Secretary of Education.
 5. Advise the state department of education in developing corrective action plans to address findings identified in federal monitoring reports; and
 6. Advise the state board of education and the state department of education in developing and implementing policies relating to the coordination of services for children with disabilities.
- (4) Advising on children with disabilities in adult prisons.
- (a) The advisory council also shall advise on the education of children with disabilities who have been convicted as adults and incarcerated in adult prisons, even if the Governor (or another individual pursuant to state law) has assigned this authority to another state agency. The state may assign the general supervision responsibility for those students to a public agency other than the state department of education.
- (5) Advisory council procedures.
- (a) The advisory council annually shall elect a chair and a vice chair.
 - (b) The Assistant Commissioner for the Division of Special Education shall meet with and act as secretary to the advisory council, and within available personnel and appropriations, shall furnish meeting facilities and staff services for the advisory council.
 - (c) The advisory council shall meet as often as necessary to conduct its business.
 - (d) The advisory council shall keep official minutes on all council meetings and make the minutes available to the public on request.
 - (e) All advisory council meetings and agenda must give adequate public notice of the meeting to afford interested parties a reasonable opportunity to attend.

- (f) Meetings must be open to the public.
- (g) Interpreters and other necessary services must be provided at council meetings for council members or participants. The state may pay for the services from federal funds.
- (h) The advisory council shall serve without compensation but the state must reimburse the council for reasonable and necessary expenses for attending meetings and performing duties. The state may use federal funds for this purpose.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.10 Local Education Agency Eligibility

- (1) Each local education agency shall demonstrate to the satisfaction of the state department of education that it does the following:
 - (a) Identifies, locates, and evaluates all children who are suspected of having disabilities, including children attending non-public schools, regardless of the severity of their disabilities, and who may be in need of special education and related services. These services may be provided to children with disabilities under early transition agreements who are not yet three (3) years of age. If the child's birthday falls during the summer months, the IEP team will determine when special education services begin but no later than the beginning of the next school year.
 - (b) Makes available a free appropriate public education to all children with disabilities, ages three (3) through the school year in which they reach age twenty-two (22), including children with disabilities who have been suspended or expelled for more than ten (10) school days in a school year.
 - (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/district wide assessments.
 - (d) Ensures that children with disabilities participating in early intervention programs shall experience a smooth and effective transition to preschool programs and, that by the third birthday, an IEP has been developed and implemented for the child. The local education agency shall participate in the transition planning meeting not less than ninety (90) days prior to the third (3rd) 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 local education agency 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 district. 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) Establish and have in effect policies, procedures, and programs that are consistent with 0520-01-09 for implementing the provision of special education and related services. Ensures compliance with applicable state and federal regulations to include:
 - 1. Free appropriate public education;
 - 2. Child Find procedures;
 - 3. Evaluation/reevaluation and determination of eligibility procedures;
 - 4. IEP/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;
 - 9. Interagency agreements to ensure FAPE for all children;
 - 10. Maintenance of effort.
- (h) Supplements the provision of special education funds but does not commingle or supplant the provision of special education funding.
- (i) Annually publicizes information regarding its special education programs and services and child find activities.
- (j) Ensures that both professional and paraprofessionals are included in service training annually.
- (k) Submits to the state department of education a comprehensive application annually on or before July 1 with program narratives and assurances for the provision of special education and related services including the following:
 - 1. A census of children with disabilities showing the total number and distribution of children within its jurisdiction who are provided special transportation.
 - 2. An inventory of the personnel who provide instruction and other services to children with disabilities and a listing of facilities;
 - 3. A description of the extent to which state department of education standards governing special education services will be met including

a goal of providing full educational opportunity to all children with disabilities;

4. 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;
5. An assurance that to the maximum extent appropriate, children with disabilities, including children in public and private facilities, are educated with children without disabilities. Special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in the general education classes with the use of supplementary aids and services cannot be achieved satisfactorily;
6. An assurance that a continuum of alternative placements is available to meet the needs of children with disabilities and related services;
7. A detailed budget and end of the year report of expenditures of all funds available to provide special education and related services is provided; and
8. An assurance that a free appropriate public education is available to all children with disabilities from three (3) through the school year in which the student reaches twenty-two (22) years of age, including children who have been suspended or expelled for more than ten (10) school days in a school year.

(2) Specific funding requirements:

- (a) For the purpose of entitlement to academic program funds from the Basic Education Program (BEP), children with disabilities shall be counted in the same manner as children without disabilities. To supplement the academic program funds earned and paid from the BEP, special education funds from the BEP shall be paid to local education agencies for the purpose of providing special education and related services to children with disabilities.
- (b) Special education funds from the BEP shall be allocated to each local education agency in an amount to be determined by applying the prescribed formula to the number of children with disabilities identified and served during the preceding school year.
- (c) The local education agency complies with maintenance of effort if it budgets at least the same total or per-capita amount from the combination of state and local funds as the local education agency spent for that purpose from the prior year. The local education agency may reduce the level of expenditures below the level for the proceeding year if the reduction is attributable the following:
 1. 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;

2. A decrease in the enrollment of children with disabilities;
 3. The termination of the obligation of the agency, 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 state department of education, because the child:
 - (i) Has left the jurisdiction of the agency;
 - (ii) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
 - (iii) No longer needs the program of special education.
 4. The termination of costly expenditures for long-term high cost purchases.
- (d) Each local education agency 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 division shall notify each local education agency of its allocation of federal funds annually.
- (e) Two or more local education agencies may submit a consolidated annual comprehensive plan, with the approval of the division, under the conditions of federal law:
1. Those participating in a consolidated plan will be jointly responsible for implementing a free appropriate public education program in the participating local education agency; and
 2. The consolidated plan must designate one of the local education agencies as the fiscal agent for the plan.
- (f) Local education agencies shall use IDEA funds for the excess costs of providing special education and related services to children with disabilities. IDEA funds received by the local education agency must not be commingled with state funds.
- (g) Local education agencies must maintain records that demonstrate compliance with the excess cost, non-supplanting, and comparability requirements for at least three years after completion of the project described in the application.
- (h) For children with disabilities unilaterally placed in private 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 private school children with disabilities within the local education agency's jurisdiction. The preceding December 1 census count is used in calculating private and public school ratios to determine the proportionate amount.
- (3) The curriculum adopted by the state board of education shall serve as the basis for developing educational programs. Each local education agency must provide a variety

of programs and services to meet the educational needs of all students including the needs of children with disabilities.

- (a) Alternative programs must be provided when appropriate educational goals cannot be met in the general education program.
- (b) School improvement plans must include a continuum of educational strategies and programs to address the educational needs of all students, including the needs of children with disabilities.
- (c) As a component of child find activities, general education programs within each local education agency have specific responsibilities that include the following:
 - 1. Systematic screening of all children in specific grade levels residing within its jurisdiction;
 - 2. Reviewing the educational performance of children who are high risk;
 - 3. Providing interventions and documentation prior to referral for special education evaluation. These intervention strategies should be implemented in the general education program.
- (d) The state department of education shall make available to the public reports on assessments of all children with the same frequency and in the same detail as it reports on the assessment of children without disabilities to include:
 - 1. The number of children with disabilities participating in:
 - (i) Regular assessments; and
 - (ii) Alternate assessments.
 - 2. Reports to the public must include:
 - (i) The performance results of children with disabilities if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.
 - (ii) Aggregated data that include the performance of children with disabilities together with all other children; and
 - (iii) Disaggregated data on the performance of children with disabilities.
- (4) Each local education agency shall maintain an accurate record of all children with disabilities ages three (3) through the school year a student turns twenty-two (22) years of age who are residing within its jurisdiction. The census shall be taken on December 1 of each year and at other times as required.
- (5) Local education agencies shall evaluate their special education programs and related services according to evaluative criteria issued by federal and state authorities.

(6) Monitoring.

- (a) Local education agencies, state agencies and private schools shall be monitored on a periodic basis by the division 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.
- (b) The state department of education shall provide technical assistance in self-evaluation, program planning and implementation of any necessary corrective action plans.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.11 Initial Evaluations

An initial evaluation must be conducted and an initial educational placement must be made within forty (40) school days of the local education agency's receipt of informed parental consent for an initial evaluation. A reasonable extension may be approved by the state department of education if, based on the unique needs of the child being evaluated, extra time is required. The granting of any extension will be based on the documented individual needs of the child.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.12 Evaluation Procedures

Guidelines and standards will be established for determining program eligibility criteria, evaluation procedures, and evaluation participants. Revisions to the eligibility criteria must be recommended by a task force within the disability category. Upon recommendations from the Advisory Council for the Education of Students with Disabilities, the assistant commissioner for special education will submit the standards to the to the State Board of Education for final review and approval.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.13 When IEPs Must be in Effect

The Individualized Education Program (IEP) must be implemented as soon as possible after completion. If agreement was not reached, no change in the child's IEP or eligibility status will be made for fourteen (14) days, in order to afford a parent time to request a due process hearing.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.14 Parent Participation

The local education agency must notify the parents of a child with a disability at least ten (10) days before an IEP meeting to ensure that a parent will have an opportunity to attend. A meeting conducted pursuant to 34 C.F.R. §300.530(e) may be conducted on at least twenty-four (24) hours notice to the parents.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.15 Prior Notice by Local Education Agency

Written notice must be given to the parents of a child suspected to have a disability or a child with a disability at least ten (10) school days prior to a local education agency either proposing or refusing 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. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.16 Mediation

All mediators shall be trained and certified as Tennessee Supreme Court Rule 31 Mediators. Additional training in state and federal special education laws and regulations may be provided as needed.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.17 Impartial Due Process Hearing

- (1) When a hearing is requested, the director of schools shall contact the parent to establish: a time for the hearing (morning, afternoon, or evening); two possible dates for the hearing to be held; and, whether the hearing will be closed or open. When hearing parameters are established the director shall immediately contact the Division.
- (2) The local education agency 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.
- (3) Expenses for the services of a court reporter, the original copy of the transcript for the hearing officer and one copy for the parents will be reimbursed upon submission of appropriate documentation to the Division. Court reporter fees will not, however, be reimbursed when transcripts are not released within fifteen (15) days after the date of the hearing, except in extraordinary circumstances, as determined by the hearing officer.
- (4) Unless a decision is rendered within thirty (30) days of a due process hearing, or within thirty (30) days of submission of post-hearing briefs, if any, the hearing officer will not be reimbursed, except in extraordinary circumstances as determined by the commissioner of education.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.18 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 T.C.A. § 4-5-322 and T.C.A. §49-10-601 or in a district court of the United States without regard to the amount in controversy.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.19 Surrogate Parents

- (1) Each local education agency shall have written policies and procedures for the recruitment, training and appointment of surrogate parents.
- (2) Each local education agency shall appoint a surrogate parent to represent the child in all matters relating to the identification, assessment, educational placement, and the provision of a free appropriate public education, 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 biological parent or legal guardian by calls, visits and by sending a letter by certified mail (return receipt requested) to the last known address of the biological parent or the guardian 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); or
 - (d) The educational rights of the parents have been terminated or transferred.
- (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 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 no longer to be eligible for, or in need of special education or related services, except when termination from such programs is being contested;
 - (b) The parent, 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;
 - (d) The local education agency determines that the appointed surrogate parent no longer adequately represents the child;
 - (e) The child attains eighteen (18) years of age.
- (5) Criteria for selection of surrogate parents.
 - (a) A person selected as a surrogate parent may not be an employee of the state education agency, the local education agency, 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 local education agency solely because he or she is paid by the local education agency 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 public agency 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.
- (c) Foster parents, selected by state agency as the custodian for a child, who have had a foster child children with disabilities for less than one (1) calendar year, may be appointed by a local education agency 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. Foster parents selected by a state agency as the custodian for a child, who have had a foster child children with disabilities for one (1) calendar year or more may act as a parent for their foster child if they meet the definition of a 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;
 - (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. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.20 Transfer of Parental Rights at Age of Majority

The procedure for determining whether a child with a disability who has attained eighteen (18) years of age is competent to make educational decisions is provided at T.C.A. §34-1-101 et seq. and §34-3-101 et seq. Unless the child has been adjudicated incompetent, all rights vest in the child when the child attains eighteen (18) years of age.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

0520-01-09-.21 Amendment of Records at Parent's Request

The local education agency, upon receiving a request from a parent pursuant to 34 C.F.R. §300.618, shall decide, within ten (10) school days of its receipt of the request, whether to amend the information as requested.

Authority: T.C.A. §§49-1-302, 49-10-101, and 49-10-701.

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of April, 2007. (FS 04-27-07, DBID