

Department of State**Division of Publications**

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Sequence Number: 05-34-23

Rule ID(s): 9882

File Date: 5/26/2023

Effective Date: 8/24/2023

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission: State Board of Education**Division:** N/A**Contact Person:** Angie Sanders**Address:** 500 James Robertson Parkway, 8th Floor**Zip:** 37243**Phone:** 615 253-5707**Email:** Angela.C.Sanders@tn.gov**Revision Type (check all that apply):**☒ Amendment☐ New☐ Repeal☐ Content based on previous emergency rule filed on _____☐ Content is identical to the emergency rule

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0520-01-16	Education Savings Accounts
Rule Number	Rule Title
0520-01-16-.04	Agreement and Funds Transfer
0520-01-16-.06	Term of the ESA
0520-01-16-.10	Return to Local Education Agency

AMENDMENT

AMEND the rules of the State Board of Education Chapter 0520-01-16 Education Savings Accounts, by amending Rules 0520-01-16-.04 Agreement and Funds Transfer, 0520-01-16-.06 Term of the ESA, and 0520-01-16-.10 Return to Local Education Agency, so that the revised rules shall read:

RULES OF THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-16 EDUCATION SAVINGS ACCOUNTS

0520-01-16-.04 AGREEMENT AND FUNDS TRANSFER.

- (1) Upon notification by the Department that an ESA may be established, a parent of an Eligible Student or an Eligible Student who has reached the age of eighteen (18) shall sign an Agreement to:
 - (a) Ensure the provision of an education for the Participating Student that satisfies the compulsory school attendance requirement provided in T.C.A. § 49-6-3001(c)(1) through enrollment in a Category I, II, or III private school as defined by the State Board;
 - (b) Comply with the requirement that Participating Students in grades three through eleven (3-11) participate in the Tennessee comprehensive assessment program ("TCAP") tests for Math and English Language Arts, or successor tests authorized by the State Board, each year of enrollment in the Program;
 - (c) Not enroll the Participating Student in a public school during the time the student is enrolled in the Program;
 - (d) Not enroll the Participating Student in the Individualized Education Account (IEA) Program during the time the student is enrolled in the Program;
 - (e) Release the LEA in which the Participating Student resides and the school for which the Participating Student is zoned to attend from all obligations to educate the Participating Student during the time the Participating Student is enrolled in the Program;
 - (f) Acknowledge that participation in the Program has the same effect as parental refusal to consent to the receipt of services under the Individuals with Disabilities Education Act at 20 U.S.C. § 1414; and
 - (g) Comply with the acceptable uses of ESA funds and the responsibilities of the Parent of a Participating Student or Participating Student who has reached the age of eighteen (18).
- (2) The Agreement and any additional information required by the Department shall be submitted to and received by the Department by the deadlines set by the Department before the first ESA payment is disbursed.

- (3) The Agreement shall be signed by the Parent of an Eligible Student or by the Eligible Student who has reached the age of eighteen (18) and a designee of the Department to be effective.
- (4) The Department shall establish procedures to effectuate the ESA funds transfer process and dates on which each ESA payment shall be disbursed.
- (5) Prior to the first disbursement of ESA funds, the Account Holder must provide proof of enrollment in a Category I, II, or III private school. No funds shall be disbursed to an ESA account without proof of enrollment in a Category I, II, or III private school.
- (6) ESA funds may not be used for Tuition at a non-participating school.
- (7) The maximum annual amount to which a participating student is entitled under the Program shall be equal to the amount representing the per pupil state and local funds generated and required through the state's K-12 education funding formula for the LEA in which the Participating Student resides, or the statewide per pupil average of required state and local funds as determined through the state's K-12 education funding formula, whichever amount is less.
- (8) If a Participating Student enrolls in the Program for less than an entire school year, the ESA amount for that school year shall be reduced on a prorated daily basis.
- (9) After the initial and each subsequent payment to the ESA, the Account Holder shall submit expense reports and receipts for all ESA funds expended in accordance with the procedures set by the Department before the next ESA payment is disbursed.
- (10) In accordance with the procedures set by the Department, the Department may remove any Account Holder from eligibility for an ESA if the Account Holder fails to comply with the terms of the Agreement or applicable laws, rules or procedures, or misuses funds. The Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.
- (11) If the Department determines that ESA funds have been misused, the Department shall notify the Account Holder, and the Account Holder shall repay the misused amount in the manner and within the timeframe set by the Department. Additionally, the Department is authorized to freeze or withdraw funding directly from the student's ESA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with state laws, rules, procedures or the Agreement, the Participating Student's return to the LEA, or the funds having been deposited into the account in error. An Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601 et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.06 TERM OF THE ESA.

- (1) For purposes of continuity of educational attainment, a Participating Student shall remain eligible to participate in the Program until the Participating Student meets one (1) of the following, whichever occurs first:

- (a) Enrolls in a public school;
 - (b) Enrolls in a Category IV or V private school or a private school not approved under the rules of the State Board;
 - (c) Ceases to be a resident of Shelby or Davidson Counties;
 - (d) Is suspended or terminated from participating in the Program in accordance with T.C.A. § 49-6-2808;
 - (e) Graduates or withdraws from high school with no funds remaining in an open ESA account;
 - (f) Reaches twenty-two (22) years of age with no funds remaining in an open ESA account. However, if the Participating Student reaches the age of twenty-two (22) with funds remaining in an open ESA account after the commencement of the school year, the Participating Student may remain in the Program until the conclusion of that school year; or
 - (g) No longer meets or fails to verify that the Participating Student's household income meets the requirements of T.C.A. § 49-6-2602(3)(D) and this rule according to the schedule and income-verification process developed by the Department.
- (2) A Participating Student may voluntarily withdraw from the Program at any time. The Account Holder shall complete the procedures for withdrawal from the Program as set by the Department.
 - (3) If a Participating Student becomes ineligible to participate in the Program for any reason or withdraws from the Program, the Participating Student's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
 - (4) The Account Holder may transfer the Participating Student from the Participating School to another Participating School in accordance with procedures set by the Department.
 - (5) In order for a Participating Student to continue in the Program, the Account Holder shall annually apply to renew the ESA by following the procedures developed by the Department and posted on the Department's website.
 - (6) If a Participating Student graduates high school or reaches twenty-two (22) years of age while enrolled in high school pursuant to T.C.A. § 49-6-2603(d)(1), and has funds remaining in the Participating Student's open ESA, the Participating Student shall become a Legacy Student.
 - (a) A Legacy Student may use ESA funds to attend or take courses from an Eligible Postsecondary Institution and those expenditures are determined to be Qualifying Expenses.
 - (b) A Legacy Student's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358, after the first of the following events:

1. Upon a Legacy Student's graduation from an Eligible Postsecondary Institution;
 2. After four (4) consecutive years elapse immediately after a Legacy Student enrolls in an Eligible Postsecondary Institution; or
 3. After a Legacy Student is not enrolled in an Eligible Postsecondary Institution for twelve (12) consecutive months.
- (7) Account Holders are not required to spend the entire sum each year, however, a portion of the funds must be used each year on approved expenses for the benefit of the student enrolled in the Program.
- (8) The Department shall provide Parents of Participating Students or Participating Students who have reached the age of eighteen (18) with a written explanation of the allowable uses of ESA funds and the responsibilities of Parents of Participating Students and Participating Students who have reached the age of eighteen (18) regarding ESA funds. The Department shall also provide Parents of Participating Students or Participating Students who have reached the age of eighteen (18) with a written explanation of the Department's duties regarding ESA funds, Eligible Students, Participating Students, and Legacy Students.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.10 RETURN TO LOCAL EDUCATION AGENCY.

- (1) A Participating Student who is otherwise eligible to return to the student's LEA may return to the LEA at any time after enrolling in the Program. Upon enrollment in an LEA, the student's participation in the Program shall be terminated.
- (2) If a Participating Student enrolls in an LEA, the Parent of a Participating Student or the Participating Student who has reached the age of eighteen (18) shall notify the Department in accordance with the procedures and timelines set by the Department.
- (3) Upon termination of a student's participation in the Program, the Department shall close the Participating Student's ESA and any remaining funds shall be returned to the state treasurer to be placed in the Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (4) Upon enrollment in the LEA, if the Parent or student who has reached the age of eighteen (18) requests an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Nick Darnell	x				
Jordan Mollenhour	x				
Bob Eby	x				
Ryan Holt	x				
Warren Wells	x				
Lillian Hartgrove	x				
Nate Morrow	x				
Darrell Cobbins			x (PNV)		
Larry Jensen			x (PNV)		
Victoria Harpool, Executive Director's designee, Tennessee Higher Education Commission. Ex-Officio, Non-Voting Member.					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education on 03/23/2023, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/08/2022

Rulemaking Hearing(s) Conducted on: (add more dates). 01/30/2023

Date: 04/10/2023

Signature: 

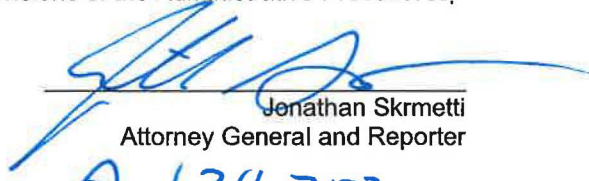
Name of Officer: Angie Sanders

Title of Officer: General Counsel

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-01-16-.04, -.06, -.10

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


Jonathan Skrametti
Attorney General and Reporter
Apr 124, 2023
Date

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Effective on: 8/24/2023



Tre Hargett
Secretary of State

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May 26 2023, 11:34 am

Secretary of State
Division of Publications

Public Hearing Comments

The Tennessee State Board of Education held a public rulemaking hearing on Rules 0520-01-16-.04, -.06, and -.10, on January 30, 2023, at 500 James Robertson Parkway, Nashville, TN and via Webex. No public comments were submitted at the hearing.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule does affect small businesses.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

Some smaller Category I, II, or III eligible private schools would likely qualify as small business as they may employ fewer than 50 people. Additionally, eligible providers such as small tutoring businesses may employ fewer than 50 people. It is not anticipated that there will be any cost to small businesses as the proposed revisions to this rule are technical in nature to reflect the transition from the Basic Education Program to the Tennessee Investment in Student Achievement Act (TISA).

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

There are not projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed changes to this rule. The proposed revisions to the rule are technical in nature to reflect the transition from the Basic Education Program to the Tennessee Investment in Student Achievement Act (TISA).

(3) A statement of the probable effect on impacted small businesses and consumers;

There is not a projected impact on small businesses from this rule revision.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;

There is no less burdensome, less intrusive, or less costly alternative method of achieving the purposes and/or objectives of the proposed rule. Changes are technical in nature to comply with the passage of the TISA.

(5) A comparison of the proposed rule with any federal or state counterparts; and

Federal: The proposed rule has no federal counterpart.

State: In drafting these initial rules, the Department of Education and the State Board utilized similar language from the Individualized Education Account program rules already in effect in Tennessee. Additionally, staff researched how other states handle ESA and voucher programs, including North Carolina, Florida, and Indiana. Given the unique nature of the ESA statute in Tennessee, these rules do not align directly with any other state, but to the extent possible, reflect feedback received from other states regarding best practices and lessons learned.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

The rule does not provide any exemptions for small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

These rules have no fiscal impact on local governments beyond the authorizing legislation.

Additional Information Required by Joint Government Operations Committee

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

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

In the 2022 legislative session, Governor Lee and the Tennessee General Assembly passed the Tennessee Investment in Student Achievement (TISA) Act which will transition the state to a student-based K-12 funding approach starting in the 2023-24 school year.

Due to the passage of TISA, revisions to the Education Savings Accounts Rule sections 0520-01-16-.04, -.06, and -.10 were necessary to remove specific references to the Basic Education Program (BEP) from the rules and align language with TISA. Additional technical edits were made to ensure capitalization of defined terms.

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

The Tennessee Investment in Student Achievement (TISA) Act, Chapter 966 of the Public Acts of 2022.

T.C.A. § 49-6-2610 authorizes the State Board of Education to promulgate rules to effectuate the Education Savings Account Pilot Program.

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

These rules have a direct effect on the Department of Education and State Board of Education and both urge adoption. The rules also have a direct effect on local education agencies and participating private schools. The State Board did not receive any comments from these parties urging adoption or rejection of these rules.

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

None.

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

None beyond the authorizing legislation.

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

Angie Sanders (State Board of Education)
Angela.C.Sanders@tn.gov

Nathan James (State Board of Education)
Nathan.James@tn.gov

Robin Yeh (Department of Education)
Robin.Yeh@tn.gov

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

Angie Sanders (State Board of Education)

Angela.C.Sanders@tn.gov

Nathan James (State Board of Education)

Nathan.James@tn.gov

Robin Yeh (Department of Education)

Robin.Yeh@tn.gov

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

Angie Sanders

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

None.

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-16
EDUCATION SAVINGS ACCOUNTS**

0520-01-16-.04 AGREEMENT AND FUNDS TRANSFER.

- (1) Upon notification by the Department that an ESA may be established, a parent of an Eligible Student or an Eligible Student who has reached the age of eighteen (18) shall sign an Agreement to:
 - (a) Ensure the provision of an education for the Participating Student that satisfies the compulsory school attendance requirement provided in T.C.A. § 49-6-3001(c)(1) through enrollment in a Category I, II, or III private school as defined by the State Board;
 - (b) Comply with the requirement that Participating Students in grades three through eleven (3-11) participate in the Tennessee comprehensive assessment program ("TCAP") tests for Math and English Language Arts, or successor tests authorized by the State Board, each year of enrollment in the Program;
 - (c) Not enroll the Participating Student in a public school during the time the student is enrolled in the Program;
 - (d) Not enroll the Participating Student in the Individualized Education Account (IEA) Program during the time the student is enrolled in the Program;
 - (e) Release the LEA in which the Participating Student resides and the school for which the Participating Student is zoned to attend from all obligations to educate the Participating Student during the time the Participating Student is enrolled in the Program;
 - (f) Acknowledge that participation in the Program has the same effect as parental refusal to consent to the receipt of services under the Individuals with Disabilities Education Act at 20 U.S.C. § 1414; and
 - (g) Comply with the acceptable uses of ESA funds and the responsibilities of the Parent of a Participating Student or Participating Student who has reached the age of eighteen (18).
- (2) The Agreement and any additional information required by the Department shall be submitted to and received by the Department by the deadlines set by the Department before the first ESA payment is disbursed.
- (3) The Agreement shall be signed by the Parent of an Eligible Student or by the Eligible Student who has reached the age of eighteen (18) and a designee of the Department to be effective.

(Rule 0520-01-16-.04, continued)

- (4) The Department shall establish procedures to effectuate the ESA funds transfer process and dates on which each ESA payment shall be disbursed.
- (5) Prior to the first disbursement of ESA funds, the Account Holder must provide proof of enrollment in a Category I, II, or III private school. No funds shall be disbursed to an ESA account without proof of enrollment in a Category I, II, or III private school.
- (6) ESA funds may not be used for Tuition at a non-participating school.
- (7) The maximum annual amount to which a Participating Student is entitled under the Program shall be equal to the amount representing the per pupil state and local funds generated and required through the state's K-12 education funding formula Basic Education Program ("BEP") for the LEA in which the Participating Student resides, or the statewide per pupil average of required state and local BEP funds as determined through the state's K-12 education funding formula, whichever amount is less.
- (8) If a Participating Student enrolls in the Program for less than an entire school year, the ESA amount for that school year shall be reduced on a prorated daily basis.
- (9) After the initial and each subsequent payment to the ESA, the Account Holder shall submit expense reports and receipts for all ESA funds expended in accordance with the procedures set by the Department before the next ESA payment is disbursed.
- (10) In accordance with the procedures set by the Department, the Department may remove any Account Holder from eligibility for an ESA if the Account Holder fails to comply with the terms of the Agreement or applicable laws, rules or procedures, or misuses funds. The Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.
- (11) If the Department determines that ESA funds have been misused, the Department shall notify the Account Holder, and the Account Holder shall repay the misused amount in the manner and within the timeframe set by the Department. Additionally, the Department is authorized to freeze or withdraw funding directly from the student's ESA for reasons including, but not limited to, fraud, misuse of funds, Account Holder failure to comply with state laws, rules, procedures or the Agreement, the Participating Student's return to the LEA, or the funds having been deposited into the account in error. An Account Holder may appeal the Department's decision pursuant to the appeal procedures outlined in this rule.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601 49-10-1401 et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.06 TERM OF THE ESA.

- (1) For purposes of continuity of educational attainment, a Participating Student shall remain eligible to participate in the Program until the Participating Student meets one (1) of the following, whichever occurs first:

(Rule 0520-01-16-.06, continued)

- (a) Enrolls in a public school;
 - (b) Enrolls in a Category IV or V private school or a private school not approved under the rules of the State Board;
 - (c) Ceases to be a resident of Shelby or Davidson Counties;
 - (d) Is suspended or terminated from participating in the Program in accordance with T.C.A. § 49-6-2808;
 - (e) Graduates or withdraws from high school with no funds remaining in an open ESA account;
 - (f) Reaches twenty-two (22) years of age with no funds remaining in an open ESA account. However, if the Pparticipating Sstudent reaches the age of twenty-two (22) with funds remaining in an open ESA account after the commencement of the school year, the Pparticipating Sstudent may remain in the Program until the conclusion of that school year; or
 - (g) No longer meets or fails to verify that the Pparticipating Sstudent's household income meets the requirements of T.C.A. § 49-6-2602(3)(D) and this rule according to the schedule and income-verification process developed by the Department.
- (2) A Pparticipating Sstudent may voluntarily withdraw from the Program at any time. The Account Holder shall complete the procedures for withdrawal from the Program as set by the Department.
- (3) If a Pparticipating Sstudent becomes ineligible to participate in the Program for any reason or withdraws from the Program, the Pparticipating Sstudent's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the ~~BEP account of the~~ Education Trust Fund of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (4) The Account Holder may transfer the Pparticipating Sstudent from the Pparticipating Sschool to another Pparticipating Sschool in accordance with procedures set by the Department.
- (5) In order for a Pparticipating Sstudent to continue in the Program, the Account Holder shall annually apply to renew the ESA by following the procedures developed by the Department and posted on the Department's website.
- (6) If a Pparticipating Sstudent graduates high school or reaches twenty-two (22) years of age while enrolled in high school pursuant to T.C.A. § 49-6-2603(d)(1), and has funds remaining in the Pparticipating Sstudent's open ESA, the Pparticipating Sstudent shall become a Legacy Student.
- (a) A Legacy Student may use ESA funds to attend or take courses from an Eeligible Ppostsecondary Iinstitution and those expenditures are determined to be Qqualifying Eexpenses.

(Rule 0520-01-16-.06, continued)

- (b) A Legacy Student's ESA shall be closed and any remaining funds shall be returned to the State Treasurer to be placed in the ~~BEP account of the Education Trust Fund~~ of 1992 under T.C.A. §§ 49-3-357 and 49-3-358, after the first of the following events:
1. Upon a Legacy Student's graduation from an ~~Eligible Postsecondary Institution~~;
 2. After four (4) consecutive years elapse immediately after a Legacy Student enrolls in an ~~Eligible Postsecondary Institution~~; or
 3. After a Legacy Student is not enrolled in an ~~Eligible Postsecondary Institution~~ for twelve (12) consecutive months.
- (7) Account Holders are not required to spend the entire sum each year, however, a portion of the funds must be used each year on approved expenses for the benefit of the student enrolled in the Program.
- (8) The Department shall provide ~~P~~parents of ~~P~~participating ~~S~~tudents or ~~P~~participating ~~S~~tudents who have reached the age of eighteen (18) with a written explanation of the allowable uses of ESA funds and the responsibilities of ~~P~~parents of ~~P~~participating ~~S~~tudents and ~~P~~participating ~~S~~tudents who have reached the age of eighteen (18) regarding ESA funds. The Department shall also provide ~~P~~parents of ~~P~~participating ~~S~~tudents or ~~P~~participating ~~S~~tudents who have reached the age of eighteen (18) with a written explanation of the Department's duties regarding ESA funds, ~~E~~ligible ~~S~~tudents, ~~P~~participating ~~S~~tudents, and ~~L~~egacy ~~S~~tudents.

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.

0520-01-16-.10 RETURN TO LOCAL EDUCATION AGENCY.

- (1) A ~~p~~~~P~~articipating ~~S~~tudent who is otherwise eligible to return to the student's LEA may return to the LEA at any time after enrolling in the Program. Upon enrollment in an LEA, the student's participation in the Program shall be terminated.
- (2) If a ~~p~~~~P~~articipating ~~S~~tudent enrolls in an LEA, the ~~P~~parent of a ~~p~~~~P~~articipating ~~S~~tudent or the ~~p~~~~P~~articipating ~~S~~tudent who has reached the age of eighteen (18) shall notify the Department in accordance with the procedures and timelines set by the Department.
- (3) Upon termination of a student's participation in the Program, the Department shall close the ~~P~~participating ~~S~~tudent's ESA and any remaining funds shall be returned to the state treasurer to be placed in the ~~BEP account of the Education Trust Fund~~ of 1992 under T.C.A. §§ 49-3-357 and 49-3-358.
- (4) Upon enrollment in the LEA, if the ~~P~~parent or student who has reached the age of eighteen (18) requests an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

(Rule 0520-01-16-.06, continued)

Authority: T.C.A. §§ 49-1-302 and 49-6-2601, et seq. **Administrative History:** Original rules filed November 27, 2019; effective February 25, 2020.