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Sequence Number: 07-12-23
Rule ID(s): 9910
File Date: 7/20/2023
Effective Date: 10/18/2023

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
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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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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
0520-12-01	Standards for School Administered Child Care Programs
Rule Number	Rule Title
0520-12-01-.10	Health and Safety

AMENDMENT

AMEND the rules of the State Board of Education Chapter 0520-12-01 Standards for School Administered Child Care Programs, by amending Rule 0520-12-01-.10 Health and Safety, so that the revised rule shall read:

RULES OF THE STATE BOARD OF EDUCATION

CHAPTER 0520-12-01 STANDARDS FOR SCHOOL ADMINISTERED CHILD CARE PROGRAMS

0520-12-01-.10 HEALTH AND SAFETY.

- (1) Current and comprehensive first aid information shall be available to all staff who interact with children. A standard first aid kit (for example, one (1) approved by the American Red Cross) shall be available to all staff, and all staff shall be familiar with its contents and use. Each Program shall provide periodic training and updates on basic first aid and the use of the first aid kit.
- (2) At least one (1) staff member who has current certification in first aid from a certifying organization recognized by the Department shall be on duty at all times. The first aid certification course shall be a minimum of three (3) hours and shall be taught by a certified first aid instructor.
- (3) At least one half (1/2) of the staff members on duty shall hold current certification in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization, as recognized by the Department.
 - (a) The initial CPR course shall be a minimum of four (4) hours and shall be taught by an individual currently certified, as recognized by the Department, to provide CPR instruction.
 - (b) When school-age children are present, and/or in a school-age only Program, at least one (1) staff member shall hold current certification in adult CPR.
- (4) Each Program, in consultation with appropriate local authorities, shall develop a written plan to protect children in the event of disaster such as, but not limited to, fire, tornado, earthquake, chemical spills, floods, etc. and shall inform parents of the plan.
 - (a) The Program shall implement these emergency procedures through timely practice drills to meet local regulations and local emergency services plans and shall maintain documentation of drills for one (1) year.
 - (b) Extended Care: At least one (1) of these drills shall be conducted during extended care hours.
- (5) Smoking is not permitted on the premises of a childcare Program.

- (6) The consumption or possession of alcohol is not permitted on the premises of a childcare Program.
- (7) Firearms shall not be on the premises of a childcare Program, or in any vehicle used to transport children or in the presence of a child.
- (8) Kitchen knives and other potentially dangerous utensils or tools shall be secured so that they are not accessible to children.
- (9) Staff's personal belongings (such as, but not limited to, contents of purses, backpacks, coat pockets, diaper bags, etc.) shall be inaccessible to children at all times.
- (10) The following emergency telephone numbers shall be posted next to all telephones and be readily available to any staff member:
 - (a) Fire department;
 - (b) Police department/sheriff;
 - (c) Nearest hospital emergency room;
 - (d) Child abuse hotline;
 - (e) Local emergency management agency;
 - (f) Ambulance or rescue squad;
 - (g) Poison control center;
 - (h) 911 or a similar generic number operated in the community; and
 - (i) Contact numbers for parents.
- (11) Programs shall comply with the following rules for the health of children:
 - (a) All children shall be checked upon arrival and observed for signs of communicable disease during the day.
 - (b) A child's temperature should be taken using a non-invasive method unless otherwise prescribed by a physician. Symptomatic children shall be removed from the group until parents are contacted and health issues are resolved.
 - (c) Impetigo and diagnosed strep shall be treated appropriately for twenty-four (24) hours prior to readmission of the child to the Program.
 - (d) Children diagnosed with scabies or lice shall have proof of treatment prior to readmission.
 - (e) The Program may not provide care and/or isolation for a child with contagious condition unless written instructions are obtained from a licensed physician or certified health care provider.

- (f) All children born in countries other than the United States, Canada, Western Europe, Australia, New Zealand, and Japan shall present evidence of a tuberculin skin test performed in the United States at any time after twelve (12) months of age. Any child with a positive tuberculin skin test shall be referred to a physician for evaluation. After the initial evaluation, future periodic screening is not required unless the child develops persistent pulmonary symptoms or there is contact with tuberculosis.
- (g) Staff shall make every reasonable attempt to notify parents or guardians immediately when a child shows signs of serious illness, including but not limited to, high temperature, disorientation, coughing, vomiting or diarrhea with blood present, severe difficulty breathing, seizure, etc. to arrange for emergency treatment.
- (h) In no event shall the Program delay seeking emergency treatment due to a delay in making contact with the parent or guardian.
- (i) Parents or guardians of every child enrolled shall be notified immediately if one (1) of the following communicable diseases has been introduced into the Program:
 - 1. Hepatitis A;
 - 2. Food borne outbreaks;
 - 3. Salmonella;
 - 4. Shigella;
 - 5. Measles, mumps, and/or rubella;
 - 6. Pertussis;
 - 7. Polio;
 - 8. Influenza type A or B;
 - 9. Meningococcal meningitis;
 - 10. Staphylococcus aureus; and
 - 11. Any other illness identified by the state or local Department of Health.
- (j) The Program shall report the occurrence of any of the above diseases to the local health department as soon as possible, but no later than the end of the day in which it occurred.
- (12) Program staff shall make every reasonable attempt to notify parents or guardians immediately when a child sustains serious injury/injuries, including but not limited to, massive bleeding, broken bones, head injuries, possible internal injury, etc., to arrange for emergency treatment.
- (13) Tuberculosis (TB) screening prior to on-going contact with children is recommended for any individual who:

- (a) Was born in a country other than the United States, Canada, Western Europe, Australia, New Zealand, and Japan;
 - (b) Has a weakened immune system (including but not limited to Human Immunodeficiency Virus (HIV), cancer, taking chemotherapy drugs, etc.); or
 - (c) Has been recently exposed to tuberculosis.
- (14) The administration of medication shall be in compliance with the following:
- (a) All medications, prescription and non-prescription shall be received from the parent or guardian by a designated staff person or management level staff person. An alternate staff person shall be available to administer medication in the event the designated staff person is absent.
 - (b) The designated staff person shall document verification of the following:
 - 1. The parent's or guardian's written authorization to administer medication and instructions on the methods of administration;
 - 2. That medicines or drugs are in the original prescription container, are not out of date, and are labeled with the child's name; and
 - 3. The specific dosage and times medication is to be administered to the child.
 - (c) The following documentation of administration shall be maintained in the child's file and a copy provided to the parent or guardian:
 - 1. Times medications administered;
 - 2. Noticeable side effects; and
 - 3. Name of staff person administering medication to child.
 - (d) The parent or guardian of a child receiving medication shall sign documentation verifying the receipt of documentation of administration required by subparagraph (c) above and that all unused medication was returned to the parent or guardian.
 - (e) Medication shall not be handled by children, with the exception of children with a physician's authorization for the self-administration of a medication. Assistance to school-age children self-administering medication must be in accordance with Guidelines for Use of Health Care Professionals and Health Care Procedures in a School Setting.
 - (f) Medication shall never be administered in bottles or infant feeders unless authorized by a physician.
 - (g) All medicines, prescription and non-prescription shall be stored in a locked compartment or container.

1. If medicine requiring refrigeration is kept in a refrigerator the medicine shall be put in a leak-proof locked container.
 2. Keys for these compartments shall be inaccessible to children.
 3. Medication requiring emergency administration, as directed by the physician, nurse practitioner or physician's assistant, e.g., "EpiPen," asthma inhaler, etc., may be kept in an unlocked container that is inaccessible to children.
- (h) Public school-administered Programs shall follow the procedures for student medications defined in the School Health policy, adopted by the Local Education Agency.
- (15) The following safe sleep practices shall be followed:
- (a) Infants shall be positioned on their backs when placed in a crib for sleeping.
 - (b) A crib shall only have a tight-fitting sheet; soft bedding for infants is prohibited.
 - (c) Infants shall not be wrapped tightly or swaddled in blankets for sleeping.
 - (d) Infants should be dressed lightly for sleep and the room temperature shall be in a range that is comfortable for a lightly clothed adult. Infants may be clothed in sleep sacks that have been approved by the Consumer Product Safety Commission and the Tennessee Department of Health as long as the sleep sack is not handmade, not on the recall list, and children are able to move their arms freely while wearing the sleep sack.
 - (e) Infants that fall asleep during tummy time shall be placed in their crib immediately.
 - (f) Infants shall be touched by a teacher every fifteen (15) minutes in order to check breathing and body temperature.
 - (g) Pillows and blankets shall be prohibited for infants.
 - (h) If a child appears not to be breathing, the Program must immediately begin CPR and call for emergency medical assistance.
 - (i) Before any teacher can assume duties of any type in an infant room they must be oriented in the foregoing sudden infant death syndrome (SIDS) procedures.
 - (j) The areas where infants sleep shall have adequate lighting which allows the teacher to quickly, at a glance, verify that the child's head is uncovered, that the child is breathing, and otherwise visually verify the child's condition.

- (16) For the protection of children and adults, the Centers for Disease Control guidelines for hand washing and diapering procedures shall be followed. Hand Sanitizer shall not be a substitute for soap and water and shall be kept out of reach of children.
- (17) Diapering shall comply with the following:
- (a) Children shall be diapered/changed and cleaned immediately when wet or soiled.
 - (b) The diapering area and/or toilet training area shall be located near a hand washing lavatory and shall be located in a separate area from the food preparation/service area.
 - (c) All diapering surfaces must be off the floor, and nonporous and shall be sanitized using solutions for general cleaning and sanitizing purposes, including:
 - 1. For general cleaning and sanitizing purposes, a fresh solution of one quarter (1/4) cup chlorine bleach to one (1) gallon of water (or one (1) tablespoon bleach to one (1) quart of water) shall be made daily.
 - 2. Substitutions for the bleach solution required in part 1. above that are approved for the childcare setting by the Department of Health are permissible.
 - 3. The solution required in part 1. above is not appropriate for items associated with food preparation or for items that children frequently place in their mouths, and the Health Department does not permit the use of higher concentrations than these in food preparation areas. Specific jurisdictions may have even more stringent requirements; therefore, the local health department should be consulted.
 - (d) A tightly covered container with plastic liner shall be used for diaper disposal and shall be inaccessible to children. This container shall be emptied by closing the liner and disposing of it in an outside receptacle.
- (18) Program equipment shall meet the following safety requirements:
- (a) Manufacturer's safety instructions shall be followed for the use and/or installation of all indoor and outdoor equipment and appliances. Such instructions shall be retained and communicated to all appropriate staff.
 - (b) All indoor and outdoor equipment shall be well made and safe. There shall be no dangerous angles, sharp edges, splinters, nails sticking out, open S-hooks or pinch points within children's reach.
 - (c) Electrical cords on equipment for children shall be inaccessible to the children.
 - (d) Damaged equipment shall be repaired or removed from the room or playground immediately.

- (e) Equipment shall be kept clean by washing frequently with soap and water.
- (f) There shall be developmentally appropriate equipment and furnishings for each age group in attendance.
- (g) Individual lockers, separate hooks and shelves or other containers, placed at children's reaching level, shall be provided for the belongings of each child, ages infant – preschool.
- (h) In infant/toddler rooms, equipment and space shall be provided for climbing, crawling, and pulling without the restraint of playpens or cribs.
- (i) A place shall be provided for each school-age child's belongings.
- (j) There shall be equipment for napping or sleeping for each preschool child who is in care for six (6) hours or more.
 - 1. A quiet rest area and cots or mats shall be available for children who want to rest or nap. However, no child shall be forced to nap.
 - 2. No child shall be forced to stay on a cot or on a mat for an extended period of time.
 - 3. In order to avoid the spread of airborne diseases, children shall be positioned on mats in a face-to-feet alternating pattern.
 - 4. Spacing of cots, cribs, and mats shall allow sufficient space to walk between them.
 - 5. All nap/sleep equipment shall be in good condition and comply with the following requirements:
 - (i) Individual cots or two-inch (2") mats shall be provided for children ages twelve (12) months to five (5) years.
 - (ii) Individual beds or cots shall be provided for children sleeping for extended periods of more than two and one half (2-1/2) hours, such as during nighttime care.
 - (iii) Each child under twelve (12) months shall have an individual, free-standing, crib at least twenty-two inches (22") x thirty-six inches (36") with an open top.
 - (iv) Mattresses and foam pads shall be covered with safe, waterproof material.
 - (v) A clean sheet or towel shall be used to cover whatever the child sleeps on.
 - (vi) A clean coverlet shall be available to each child.

- (vii) Soiled sheets and coverlets shall be replaced immediately.
 - (viii) Each crib, cot, bed or mat shall be labeled to assure that each child naps on his own bedding.
- 6. Crib mattress shall not be positioned directly on the floor for napping. Pack 'n plays may be used for naptime.
- (19) All Program staff, including volunteers, are individually responsible, and are required by T.C.A. §§ 37-1-403, 37-1-605, and 49-6-1601 to immediately report any knowledge or reasonable cause for suspicion of child abuse or neglect, or child sexual abuse, including, but not limited to, any statement from a child reasonably indicating abuse/neglect of that child or another child or any evidence of abuse or neglect observed on a child, to the Department of Children's Services and law enforcement.
- (20) If the information is received from a child, the following procedures shall be followed:
 - (a) If a child voluntarily discloses information about possible abuse to Program staff or a volunteer in a Program, then the child shall be provided with a quiet and private place to speak and the person receiving the information shall listen openly and speak at the child's level in a positive, non-judgmental tone.
 - (b) The person receiving the information from the child shall:
 - 1. Allow the child to say what happened in the child's own words;
 - 2. Avoid conducting an investigation by asking the child detailed questions;
 - 3. Make every effort to write down the child's exact words;
 - 4. Refrain from making any statements to the child about the alleged abuse, the alleged abuser, or the consequences of the child reporting the alleged abuse; and
 - 5. Immediately notify the Program child abuse coordinator and report the information to the Department of Children's Services and law enforcement, provided, however, when the alleged abuse involves someone employed by, previously employed by, or otherwise affiliated with the Program, the report may be made directly to the Department of Children's Services and law enforcement prior to notifying the Program child abuse coordinator. This requirement does not relieve a Program teacher, Program official, or other Program personnel from the duty to report alleged abuse under federal law.
- (21) If a third party informs a Program personnel of a reasonable suspicion that a child at the Program may be the victim of child abuse or neglect, or child sexual abuse, then the Program personnel must:
 - (a) Encourage the third party to report the suspicion to the Department of Children's Services and law enforcement;
 - (b) Notify the Program's child abuse coordinator; and

- (c) Report all information received from the third party to the Department of Children's Services and law enforcement.
- (22) Each Program shall designate a child abuse coordinator and an alternate child abuse coordinator. The designation of an alternative child abuse coordinator is not required when only one (1) adult is employed by or responsible for the care of children at the Program. The child abuse coordinator and alternative child abuse coordinator must:
- (a) Have access to an area providing privacy and access to a telephone for reporting suspected child abuse, neglect, and child sexual abuse;
 - (b) Receive training as required by T.C.A. § 49-6-1601(c)(2);
 - (c) Be available for Program personnel to share information about suspected child abuse, neglect, and child sexual abuse;
 - (d) Assist Program personnel in reporting suspected child abuse, neglect, and child sexual abuse to the Department of Children's Services and law enforcement;
 - (e) Serve as a liaison between the Program, the Department of Children's Services, and law enforcement;
 - (f) Assist the Department of Children's Services and law enforcement by sharing available information regarding suspected child abuse, neglect, and child sexual abuse, and by providing a private area within the Program for Department of Children's Services and law enforcement personnel to meet with the child and the reporting Program personnel as a group or individually if required; and
 - (g) Maintain confidential files in accordance with T.C.A. §§ 37-5-107 and 37-1-612 regarding all reported suspicions of child abuse, neglect, and child sexual abuse.
- (23) All Program staff shall receive annual training regarding the procedures to report child abuse, neglect, and child sexual abuse as is required by T.C.A. § 37-1-408.
- (24) The Program shall not attempt to validate the allegation prior to making a report. A final determination of the validity of the report of child abuse or neglect, or child sexual abuse shall be made exclusively by the Department of Children's Services and law enforcement upon the report by the Program's staff.
- (25) The Program shall not develop or implement policy that inhibits, interferes with or otherwise affects the duty of any staff, including substitutes and volunteers, to report suspected abuse, neglect, or sexual abuse of a child as required by this rule and T.C.A. §§ 37-1-403, 37-1-605, and 49-6-1601 and shall not otherwise directly or indirectly require staff to report to the Program management or child abuse coordinator or seek the approval of Program management or child abuse coordinator prior to any individual staff member reporting the suspected abuse, neglect, or sexual abuse to the Department of Children's Services and law enforcement.
- (26) A report of suspected child abuse or neglect, or sexual abuse of a child enrolled in the Program by a Program staff member or volunteer shall not be made to any other entities or persons, including, but not limited to, hospitals, physicians, or educational institutions as an alternative to or substitute for the reporting requirements to the persons or entities specifically listed in this rule.
- (27) A Program staff member or volunteer shall not suggest to, advise or direct a parent or caretaker of a child enrolled in the Program to make a report of suspected child abuse or

neglect, or child sexual abuse regarding that parent's or caretaker's own child who is enrolled in the Program as a means of fulfilling the duty of the Program staff member or volunteer to report child abuse or neglect, or child sexual abuse as required by T.C.A. §§ 37-1-403, 37-1-605, and 49-6-1601.

- (28) Program personnel should be observant of any bruising, injury, markings, or other unusual behavior that may be the result of child abuse or neglect, or child sexual abuse, and immediately coordinate with the Program's child abuse coordinator to report any suspicions to the Department of Children's Services and law enforcement. However, photographs of such bruising, injury, or markings shall not be taken by any Program personnel.
- (29) Any action that does not comply in all respects with these rules, will not fulfill the statutory duty to report child abuse or neglect, or child sexual abuse and the certification of approval requirements of this Chapter.
 - (a) Failure to make the reports required by this Chapter or the use of prohibited methods as an attempt to fulfill the duty to report suspected child abuse or neglect, or child sexual abuse, for children in the care of the Program are, by themselves, grounds for suspension, denial or revocation of the Program's certificate of approval.
 - (b) If the facts established by a preponderance of the evidence indicate that there has not been strict compliance with the requirements of this Chapter or that the prohibited procedures have been utilized as an alternative means of fulfilling the requirements, these circumstances shall create a rebuttable presumption for the Administrative Law Judge and the Child Care Advisory Council Review Board that the duty to report child abuse or neglect, or child sexual abuse, has not been fulfilled, and this ground for suspension, denial, or revocation of the Program's certificate of approval by the Department of Education shall be sustained unless such presumption is rebutted by a preponderance of the evidence.
 - (c) All Program staff and volunteers in a Program certified as approved by the Department of Education shall fully cooperate with all agencies involved in the investigation of child abuse or neglect, or child sexual abuse.
 - 1. The Program shall provide access to records of children and staff.
 - 2. The Program shall allow appropriate investigators to interview children and staff.
 - 3. The Program shall not interfere with a child abuse or neglect, or child sexual abuse, investigation.
 - 4. The Program shall protect the child by requesting the investigator's identification.
 - 5. The Program shall maintain confidentiality of the investigation and shall not disclose the investigation or details of the investigation except as required to carry out procedures for the protection of children or as otherwise directed by the Department of Children's Services, law enforcement or the Department of Education.
 - (d) Upon notification of a pending child abuse or neglect, or child sexual abuse investigation of any Program staff member, the Program shall enter into a safety plan with the Department regarding the individual's access to the Program and

the children in the care of the Program.

Authority: T.C.A. §§ 37-1-401, et seq., 37-1-601, et seq., 49-1-302, 49-1-1101 through 49-1-1109, 49-6-5001 and 5002; 49-6-1601, and 20 U.S.C. § 6081. **Administrative History:** Original rule filed April 30, 2002; effective July 14, 2002. Amendment repealing and replacing rule filed March 15, 2010; effective August 29, 2010. Amendment filed June 18, 2013; effective November 28, 2013. Amendments filed November 2, 2017; effective February 1, 2018. Amendments filed May 3, 2018; effective August 1, 2018. Amendments filed January 25, 2019; effective April 25, 2019. Amendments filed April 1, 2021; effective June 30, 2021.

* 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				
Larry Jensen	x				
Robert Smith, Interim Executive Director, 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 2/10/2023, 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: 11/15/2022

Rulemaking Hearing(s) Conducted on: (add more dates). 01/06/2023

Date: Angie C. Sanders

Signature: 7/13/2023


Name of Officer: Angie Sanders

Title of Officer: General Counsel

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-12-01-.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 Skrmetti
Attorney General and Reporter
July 13, 2023
Date

Department of State Use Only

Filed with the Department of State on: 7/20/2023

Effective on: 10/18/2023


Tre Hargett
Secretary of State

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Public Hearing Comments

The Tennessee State Board of Education held a public rulemaking hearing on Rule 0520-12-01-.10 on January 6, 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;

School-administered childcare programs which include public and private school-administered infant/toddler, preschool, before- and after-school programs, approved Montessori programs, school-based and community-based Lottery Education Afterschool Programs, and 21st Century Community Learning Centers may qualify as small businesses and would be required to comply with the amended provisions of this rule. This rule is revised in accordance with changes to state law made to align with Chapter 781 of the Public Acts of 2022 (PC 781). PC 781 revised the requirements of child abuse reporting for schools to clarify that if a person suspects child abuse, the individual may report the information directly to the Department of Children Services and law enforcement before notifying the designated child abuse coordinator.

(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;

No additional reporting, recordkeeping, or other administrative costs are required for compliance with this rule.

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

There is no probable fiscal effect on school administered childcare programs.

(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 rule as the rule reflects requirements outlined in law via Public Chapter 781 of 2022.

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

This rule language reflects the requirements outlined in Public Chapter 781, passed by the General Assembly in 2022.

(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. As provided above, these requirements are outlined in state law via Public Chapter 781 of 2022 and the State Board does not have the ability to grant exemptions.

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."

This rule has no fiscal impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

Revisions to the Health and Safety Rule section -.10 are proposed to align the rule with Chapter 781 of the Public Acts of 2022 (PC 781). PC 781 revised the requirements of child abuse reporting for schools to clarify that if a person suspects child abuse, the individual may report the information directly to the Department of Children Services and law enforcement before notifying the designated child abuse coordinator

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

T.C.A. §§ 49-1-1101 through 1108 allows the State Board of Education through the Commissioner of Education to set rules for all school-administered childcare programs.

T.C.A. § 49-6-1601 requires all schools and child care programs to designate a child abuse coordinator.

Chapter 781 of the Public Acts of 2022 (PC 781) revised the requirements of child abuse reporting for schools to clarify that if a person suspects child abuse, the individual may report the information directly to the Department of Children Services and law enforcement before notifying the designated child abuse coordinator

- (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;

This rule has a direct effect on the Department of Education and State Board of Education and both urge adoption. This rule also has a direct effect on school-administered childcare programs approved by the Department of Education. The State Board did not receive any comments from school-administered childcare programs urging adoption or rejection of the rule.

- (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.

- (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

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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 0520-12-01
STANDARDS FOR SCHOOL ADMINISTERED CHILD CARE PROGRAMS**

0520-12-01-.10 HEALTH AND SAFETY.

- (1) Current and comprehensive first aid information shall be available to all staff who interact with children. A standard first aid kit (for example, one (1) approved by the American Red Cross) shall be available to all staff, and all staff shall be familiar with its contents and use. Each Pprogram shall provide periodic training and updates on basic first aid and the use of the first aid kit.
- (2) At least one (1) staff member who has current certification in first aid from a certifying organization recognized by the Department shall be on duty at all times. The first aid certification course shall be a minimum of three (3) hours and shall be taught by a certified first aid instructor.
- (3) At least one half (1/2) of the staff members on duty shall hold current certification in Infant/Pediatric Cardiopulmonary Resuscitation (CPR) from the American Red Cross, the American Heart Association, or other certifying organization, as recognized by the Department.
 - (a) The initial CPR course shall be a minimum of four (4) hours and shall be taught by an individual currently certified, as recognized by the Department, to provide CPR instruction.
 - (b) When school-age children are present, and/or in a school-age only Pprogram, at least one (1) staff member shall hold current certification in adult CPR.
- (4) Each Pprogram, in consultation with appropriate local authorities, shall develop a written plan to protect children in the event of disaster such as, but not limited to, fire, tornado, earthquake, chemical spills, floods, etc. and shall inform parents of the plan.
 - (a) The Pprogram shall implement these emergency procedures through timely practice drills to meet local regulations and local emergency services plans and shall maintain documentation of drills for one (1) year.
 - (a)(b) Extended Care: At least one (1) of these drills shall be conducted during extended care hours.
- (5) Smoking is not permitted on the premises of a childcare Pprogram.
- (6) The consumption or possession of alcohol is not permitted on the premises of a childcare Pprogram.
- (7) Firearms shall not be on the premises of a childcare Pprogram, or in any vehicle used to transport children or in the presence of a child.
- (8) Kitchen knives and other potentially dangerous utensils or tools shall be secured so that they are not accessible to children.
- (9) Staff's personal belongings (such as, but not limited to, contents of purses, backpacks, coat pockets, diaper bags, etc.) shall be inaccessible to children at all times.

(Rule 0520-12-01-.10, continued)

- (10) The following emergency telephone numbers shall be posted next to all telephones and be readily available to any staff member:
- (a) Fire department;
 - (b) Police department/sheriff;
 - (c) Nearest hospital emergency room;
 - (d) Child abuse hotline;
 - (e) Local emergency management agency;
 - (f) Ambulance or rescue squad;
 - (g) Poison control center;
 - (h) 911 or a similar generic number operated in the community; and
 - (i) Contact numbers for parents.
- (11) Programs shall comply with the following rules for the health of children:
- (a) All children shall be checked upon arrival and observed for signs of communicable disease during the day.
 - (b) A child's temperature should be taken using a non-invasive method unless otherwise prescribed by a physician. Symptomatic children shall be removed from the group until parents are contacted and health issues are resolved.
 - (c) Impetigo and diagnosed strep shall be treated appropriately for twenty-four (24) hours prior to readmission of the child to the **P**rogram.
 - (d) Children diagnosed with scabies or lice shall have proof of treatment prior to readmission.
 - (e) The **P**rogram may not provide care and/or isolation for a child with contagious condition unless written instructions are obtained from a licensed physician or certified health care provider.
 - (f) All children born in countries other than the United States, Canada, Western Europe, Australia, New Zealand, and Japan shall present evidence of a tuberculin skin test performed in the United States at any time after twelve (12) months of age. Any child with a positive tuberculin skin test shall be referred to a physician for evaluation. After the initial evaluation, future periodic screening is not required unless the child develops persistent pulmonary symptoms or there is contact with tuberculosis.
 - (g) Staff shall make every reasonable attempt to notify parents **or guardians** immediately when a child shows signs of serious illness, including but not limited to, high temperature, disorientation, coughing, vomiting or diarrhea with blood present, severe difficulty breathing, seizure, etc. to arrange for emergency treatment.

(Rule 0520-12-01-.10, continued)

- (h) In no event shall the Program delay seeking emergency treatment due to a delay in making contact with the parent or guardian.
- (i) Parents or guardians of every child enrolled shall be notified immediately if one (1) of the following communicable diseases has been introduced into the Program:
 - 1. Hepatitis A;
 - 2. Food borne outbreaks;
 - 3. Salmonella;
 - 4. Shigella;
 - 5. Measles, mumps, and/or rubella;
 - 6. Pertussis;
 - 7. Polio;
 - 8. Influenza type A or B;
 - 9. Meningococcal meningitis;
 - 10. Staphylococcus aureus; and
 - 11. Any other illness identified by the state or local Department of Health.
- (j) The Program shall report the occurrence of any of the above diseases to the local health department as soon as possible, but no later than the end of the day in which it occurred.
- (12) Program staff shall make every reasonable attempt to notify parents or guardians immediately when a child sustains serious injury/injuries, including but not limited to, massive bleeding, broken bones, head injuries, possible internal injury, etc., to arrange for emergency treatment.
- (13) Tuberculosis (TB) screening prior to on-going contact with children is recommended for any individual who:
 - (a) Was born in a country other than the United States, Canada, Western Europe, Australia, New Zealand, and Japan;
 - (b) Has a weakened immune system (including but not limited to Human Immunodeficiency Virus (HIV), cancer, taking chemotherapy drugs, etc.); or
 - (c) Has been recently exposed to tuberculosis.
- (14) The administration of medication shall be in compliance with the following:
 - (a) All medications, prescription and non-prescription shall be received from the parent or guardian by a designated staff person or management level staff person. An alternate staff

(Rule 0520-12-01-.10, continued)

person shall be available to administer medication in the event the designated staff person is absent.

(b) The designated staff person shall document verification of the following:

1. The parent's or guardian's written authorization to administer medication and instructions on the methods of administration;
2. That medicines or drugs are in the original prescription container, are not out of date, and are labeled with the child's name; and
3. The specific dosage and times medication is to be administered to the child.

(c) The following documentation of administration shall be maintained in the child's file and a copy provided to the parent or guardian:

1. Times medications administered;
2. Noticeable side effects; and
3. Name of staff person administering medication to child.

(d) The parent or guardian of a child receiving medication shall sign documentation verifying the receipt of documentation of administration required by subparagraph (c) above and that all unused medication was returned to the parent or guardian.

(e) Medication shall not be handled by children, with the exception of children with a physician's authorization for the self-administration of a medication. Assistance to school-age children self-administering medication must be in accordance with Guidelines for Use of Health Care Professionals and Health Care Procedures in a School Setting.

(f) Medication shall never be administered in bottles or infant feeders unless authorized by a physician.

(g) All medicines, prescription and non-prescription shall be stored in a locked compartment or container.

1. If medicine requiring refrigeration is kept in a refrigerator the medicine shall be put in a leak-proof locked container.
2. Keys for these compartments shall be inaccessible to children.
3. Medication requiring emergency administration, as directed by the physician, nurse practitioner or physician's assistant, e.g., "EpiPen," asthma inhaler, etc., may be kept in an unlocked container that is inaccessible to children.

(h) Public school-administered Programs shall follow the procedures for student medications defined in the School Health policy, adopted by the Local Education Agency.

(15) The following safe sleep practices shall be followed:

(Rule 0520-12-01-.10, continued)

- (a) Infants shall be positioned on their backs when placed in a crib for sleeping.
 - (b) A crib shall only have a tight-fitting sheet; soft bedding for infants is prohibited.
 - (c) Infants shall not be wrapped tightly or swaddled in blankets for sleeping.
 - (d) Infants should be dressed lightly for sleep and the room temperature shall be in a range that is comfortable for a lightly clothed adult. Infants may be clothed in sleep sacks that have been approved by the Consumer Product Safety Commission and the Tennessee Department of Health as long as the sleep sack is not handmade, not on the recall list, and children are able to move their arms freely while wearing the sleep sack.
 - (e) Infants that fall asleep during tummy time shall be placed in their crib immediately.
 - (f) Infants shall be touched by a teacher every fifteen (15) minutes in order to check breathing and body temperature.
 - (g) Pillows and blankets shall be prohibited for infants.
 - (h) If a child appears not to be breathing, the ~~P~~program must immediately begin CPR and call for emergency medical assistance.
 - (i) Before any teacher can assume duties of any type in an infant room they must be oriented in the foregoing sudden infant death syndrome ~~-(SIDS)~~ procedures.
 - (j) The areas where infants sleep shall have adequate lighting which allows the teacher to quickly, at a glance, verify that the child's head is uncovered, that the child is breathing, and otherwise visually verify the child's condition.
- (16) For the protection of children and adults, the Centers for Disease Control guidelines for hand washing and diapering procedures shall be followed. Hand Sanitizer shall not be a substitute for soap and water and shall be kept out of reach of children.
- (17) Diapering shall comply with the following:
- (a) Children shall be diapered/changed and cleaned immediately when wet or soiled.
 - (b) The diapering area and/or toilet training area shall be located near a hand washing lavatory and shall be located in a separate area from the food preparation/service area.
 - (c) All diapering surfaces must be off the floor, and nonporous and shall be sanitized using solutions for general cleaning and sanitizing purposes, including:
 - 1. For general cleaning and sanitizing purposes, a fresh solution of one quarter (1/4) cup chlorine bleach to one (1) gallon of water (or one (1) tablespoon bleach to one (1) quart of water) shall be made daily.
 - 2. Substitutions for the bleach solution required in part 1. above that are approved for the childcare setting by the Department of Health are permissible.

(Rule 0520-12-01-.10, continued)

3. The solution required in part 1. above is not appropriate for items associated with food preparation or for items that children frequently place in their mouths, and the Health Department does not permit the use of higher concentrations than these in food preparation areas. Specific jurisdictions may have even more stringent requirements; therefore, the local health department should be consulted.
- (d) A tightly covered container with plastic liner shall be used for diaper disposal and shall be inaccessible to children. This container shall be emptied by closing the liner and disposing of it in an outside receptacle.
- (18) Program equipment shall meet the following safety requirements:
 - (a) Manufacturer's safety instructions shall be followed for the use and/or installation of all indoor and outdoor equipment and appliances. Such instructions shall be retained and communicated to all appropriate staff.
 - (b) All indoor and outdoor equipment shall be well made and safe. There shall be no dangerous angles, sharp edges, splinters, nails sticking out, open S-hooks or pinch points within children's reach.
 - (c) Electrical cords on equipment for children shall be inaccessible to the children.
 - (d) Damaged equipment shall be repaired or removed from the room or playground immediately.
 - (e) Equipment shall be kept clean by washing frequently with soap and water.
 - (f) There shall be developmentally appropriate equipment and furnishings for each age group in attendance.
 - (g) Individual lockers, separate hooks and shelves or other containers, placed at children's reaching level, shall be provided for the belongings of each child, ages infant – preschool.
 - (h) In infant/toddler rooms, equipment and space shall be provided for climbing, crawling, and pulling without the restraint of playpens or cribs.
 - (i) A place shall be provided for each school-age child's belongings.
 - (j) There shall be equipment for napping or sleeping for each preschool child who is in care for six (6) hours or more.
 1. A quiet rest area and cots or mats shall be available for children who want to rest or nap. However, no child shall be forced to nap.
 2. No child shall be forced to stay on a cot or on a mat for an extended period of time.
 3. In order to avoid the spread of airborne diseases, children shall be positioned on mats in a face-to-feet alternating pattern.
 4. Spacing of cots, cribs, and mats shall allow sufficient space to walk between them.

(Rule 0520-12-01-.10, continued)

5. All nap/sleep equipment shall be in good condition and comply with the following requirements:
 - (i) Individual cots or two-inch (2") mats shall be provided for children ages twelve (12) months to five (5) years.
 - (ii) Individual beds or cots shall be provided for children sleeping for extended periods of more than two and one half (2-1/2) hours, such as during nighttime care.
 - (iii) Each child under twelve (12) months shall have an individual, free-standing, crib at least twenty-two inches (22") x thirty-six inches (36") with an open top.
 - (iv) Mattresses and foam pads shall be covered with safe, waterproof material.
 - (v) A clean sheet or towel shall be used to cover whatever the child sleeps on.
 - (vi) A clean coverlet shall be available to each child.
 - (vii) Soiled sheets and coverlets shall be replaced immediately.
 - (viii) Each crib, cot, bed or mat shall be labeled to assure that each child naps on his own bedding.
6. Crib mattress shall not be positioned directly on the floor for napping. Pack 'n plays may be used for naptime.

(19) -All Pprogram staff, including volunteers, are individually responsible, and are required by T.C.A. §§ 37-1-403, 37-1-605, and 49-6-1601 to immediately report any knowledge or reasonable cause for suspicion of child abuse or neglect, or child sexual abuse, including, but not limited to, any statement from a child reasonably indicating abuse/neglect of that child or another child or any evidence of abuse or neglect observed on a child, to the Department of Children's Services and law enforcement.

(20) If the information is received from a child, the following procedures shall be followed:

- (a) If a child voluntarily discloses information about possible abuse to Pprogram staff or a volunteer in a Pprogram, then the child ~~must shall~~ be provided with a quiet and private place to speak and the person receiving the information ~~must shall~~ listen openly and speak at the child's level in a positive, non-judgmental tone.
- (b) The person receiving the information from the child ~~mustshall~~:
 1. Allow the child to say what happened in the child's own words;
 2. Avoid conducting an investigation by asking the child detailed questions;
 3. Make every effort to write down the child's exact words;
 4. Refrain from making any statements to the child about the alleged abuse, the

(Rule 0520-12-01-.10, continued)

alleged abuser, or the consequences of the child reporting the alleged abuse; and

5. Immediately notify the Pprogram child abuse coordinator and report the information to the Department of Children's Services and law enforcement, provided, however, when the alleged abuse involves someone employed by, previously employed by, or otherwise affiliated with the Program, the report may be made directly to the Department of Children's Services and law enforcement prior to notifying the Program child abuse coordinator. This requirement does not relieve a Program teacher, Pprogram official, or other Program personnel from the duty to report alleged abuse under federal law.
- (21) If a third party informs a Pprogram personnel of a reasonable suspicion that a child at the Pprogram may be the victim of child abuse or neglect, or child sexual abuse, then the Pprogram personnel must:
- (a) Encourage the third party to report the suspicion to the Department of Children's Services and law enforcement;
 - (b) Notify the Pprogram's child abuse coordinator; and
 - (c) Report all information received from the third party to the Department of Children's Services and law enforcement.
- (22) Each Pprogram shall designate a child abuse coordinator and an alternate child abuse coordinator. The designation of an alternative child abuse coordinator is not required when only one (1) adult is employed by or responsible for the care of children at the Pprogram. The child abuse coordinator and alternative child abuse coordinator must:
- (a) Have access to an area providing privacy and access to a telephone for reporting suspected child abuse, neglect, and child sexual abuse;
 - (b) Receive training as required by T.C.A. § 49-6-1601(c)(2);
 - (c) Be available for Pprogram personnel to share information about suspected child abuse, neglect, and child sexual abuse;
 - (d) Assist Pprogram personnel in reporting suspected child abuse, neglect, and child sexual abuse to the Department of Children's Services and law enforcement;
 - (e) Serve as a liaison between the Pprogram, the Department of Children's Services, and law enforcement;
 - (f) Assist the Department of Children's Services and law enforcement by sharing available information regarding suspected child abuse, neglect, and child sexual abuse, and by providing a private area within the Pprogram for Department of Children's Services and law enforcement personnel to meet with the child and the reporting Pprogram personnel as a group or individually if required; and
 - (g) Maintain confidential files in accordance with T.C.A. §§ 37-5-107 and 37-1-612 regarding all reported suspicions of child abuse, neglect, and child sexual abuse.
- (23) All Pprogram staff shall receive annual training regarding the procedures to report child abuse, neglect, and child sexual abuse as is required by T.C.A. § 37-1-408.

(Rule 0520-12-01-.10, continued)

- (24) The Pprogram shall not attempt to validate the allegation prior to making a report. A final determination of the validity of the report of child abuse or neglect, or child sexual abuse shall be made exclusively by the Department of Children's Services and law enforcement upon the report by the Pprogram's staff.
- (25) The Pprogram shall not develop or implement policy that inhibits, interferes with or otherwise affects the duty of any staff, including substitutes and volunteers, to report suspected abuse, neglect, or sexual abuse of a child as required by this rule and T.C.A. §§ 37-1-403, 37-1-605, and 49-6-1601 and shall not otherwise directly or indirectly require staff to report to the Pprogram management or child abuse coordinator or seek the approval of Pprogram management or child abuse coordinator prior to any individual staff member reporting the suspected abuse, neglect, or sexual abuse to the Department of Children's Services and law enforcement.
- (26) A report of suspected child abuse or neglect, or sexual abuse of a child enrolled in the Pprogram by a Pprogram staff member or volunteer shall not be made to any other entities or persons, including, but not limited to, hospitals, physicians, or educational institutions as an alternative to or substitute for the reporting requirements to the persons or entities specifically listed in this rule.
- (27) A Pprogram staff member or volunteer shall not suggest to, advise or direct a parent or caretaker of a child enrolled in the Pprogram to make a report of suspected child abuse or neglect, or child sexual abuse regarding that parent's or caretaker's own child who is enrolled in the Pprogram as a means of fulfilling the duty of the Pprogram staff member or volunteer to report child abuse or neglect, or child sexual abuse as required by T.C.A. §§ 37-1-403, 37-1-605, and 49-6-1601.
- (28) Program personnel should be observant of any bruising, injury, markings, or other unusual behavior that may be the result of child abuse or neglect, or child sexual abuse, and immediately coordinate with the Pprogram's child abuse coordinator to report any suspicions to the Department of Children's Services and law enforcement. However, photographs of such bruising, injury, or markings shall not be taken by any Pprogram personnel.
- (29) Any action that does not comply in all respects with these rules, will not fulfill the statutory duty to report child abuse or neglect, or child sexual abuse and the certification of approval requirements of this Chapter.
 - (a) Failure to make the reports required by this Chapter or the use of prohibited methods as an attempt to fulfill the duty to report suspected child abuse or neglect, or child sexual abuse, for children in the care of the Pprogram are, by themselves, grounds for suspension, denial or revocation of the Pprogram's certificate of approval.
 - (b) If the facts established by a preponderance of the evidence indicate that there has not been strict compliance with the requirements of this Chapter or that the prohibited procedures have been utilized as an alternative means of fulfilling the requirements, these circumstances shall create a rebuttable presumption for the Administrative Law Judge and the Child Care Advisory Council Review Board that the duty to report child abuse or neglect, or child sexual abuse, has not been fulfilled, and this ground for suspension, denial, or revocation of the Pprogram's certificate of approval by the Department of Education shall be sustained unless such presumption is rebutted by a preponderance of the evidence.
 - (c) All Pprogram staff and volunteers in a Pprogram certified as approved by the Department of Education shall fully cooperate with all agencies involved in the investigation of child abuse or neglect, or child sexual abuse.
 - 1. The Pprogram shall provide access to records of children and staff.

(Rule 0520-12-01-.10, continued)

2. The **P**program shall allow appropriate investigators to interview children and staff.
 3. The **P**program shall not interfere with a child abuse or neglect, or child sexual abuse, investigation.
 4. The **P**program shall protect the child by requesting the investigator's identification.
 5. The **P**program shall maintain confidentiality of the investigation and shall not disclose the investigation or details of the investigation except as required to carry out procedures for the protection of children or as otherwise directed by the Department of Children's Services, law enforcement or the Department of Education.
- (d) Upon notification of a pending child abuse or neglect, or child sexual abuse investigation of any **P**program staff member, the **P**program shall enter into a safety plan with the Department regarding the individual's access to the **P**program and the children in the care of the **P**program.

Authority: T.C.A. §§ ~~4-5-201, et seq.; 37-1-113;~~ 37-1-401, et seq.; 37-1-601, et seq.; ~~49-1-302(f);~~ 49-1-1101 through 49-1-1109; ~~49-5-415;~~ 49-6-5001 and 5002; 49-6-1601, and 20 U.S.C. § 6081.

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