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Sequence Number: 10-18-20  
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File Date: 10/23/2020

# Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.*

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	N/A
<b>Contact Person:</b>	Angie Sanders
<b>Address:</b>	500 James Robertson Parkway, 5 <sup>th</sup> Floor, Nashville, TN 37243
<b>Phone:</b>	(615) 253-5707
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*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	Angie Sanders
<b>Address:</b>	500 James Robertson Parkway, 5 <sup>th</sup> Floor, Nashville, TN 37243
<b>Phone:</b>	(615) 253-5707
<b>Email:</b>	Angela.C.Sanders@tn.gov

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway		
Address 2:	Davy Crockett Building, Conference Room 1C, 1 <sup>st</sup> Floor		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	12/17/2020		
Hearing Time:	1:00 PM	<input type="checkbox"/> _X_ CST/CDT	<input type="checkbox"/> _ _ EST/EDT

**Additional Hearing Information:**

**\*\*\*Anyone wishing to participate electronically may access the hearing using the following information:\*\***

**URL:** <https://tngov.webex.com/tngov/j.php?MTID=me7ef3566e75a9fd7b4d29dbad8257615>

**Password:** SBERules

**Phone:** 1-415-655-0003

**Access Code:** 171 321 8540

Please check the State Board's website at <https://www.tn.gov/sbe/meetings.html> for any additional information regarding this rulemaking hearing. **If prohibitions on in-person gatherings due to COVID-19 prevent this hearing from occurring in-person, such information will be posted on the State Board's website and all attendees will utilize the above information to participate electronically.**

Oral comments are invited at the hearing.

In addition, written comments may be submitted via email at [angela.c.sanders@tn.gov](mailto:angela.c.sanders@tn.gov) or mailed to:

Tennessee State Board of Education  
 Attention: Angie Sanders  
 Davy Crockett Tower, 5<sup>th</sup> Floor  
 500 James Robertson Parkway  
 Nashville, Tennessee 37243.

Written comments must be received by 4:30 PM CT on December 22, 2020 in order to ensure consideration. For further information, please contact Angie Sanders at the above address or by e-mail at [angela.c.sanders@tn.gov](mailto:angela.c.sanders@tn.gov).

If attending the hearing in-person, please bring identification so that you may be checked into the building by security. Conference room 1C is located on the first floor of the building.

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0520-01-02	District and School Operations
Rule Number	Rule Title
0520-01-02-.10	Homebound Instruction

Chapter Number	Chapter Title
0520-01-09	Special Education Programs and Services
Rule Number	Rule Title
0520-01-09-.01	General Regulations, Adoption by Reference
0520-01-09-.02	Definitions
0520-01-09-.03	Consent
0520-01-09-.04	Parent
0520-01-09-.05	Free Appropriate Public Education
0520-01-09-.06	Child Find
0520-01-09-.07	Placements
0520-01-09-.08	State Advisory Panel
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0520-01-09-.12	Individualized Education Program (IEP)
0520-01-09-.13	When IEPs Must Be in Effect
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0520-01-09-.21	Transfer of Parental Rights at Age of Majority
0520-01-09-.22	Amendment of Records at Parent's Request
0520-01-09-.23	Isolation and Restraint for Students Receiving Special Education Services

<b>Chapter Number</b>	<b>Chapter Title</b>
0520-12-01	Standards for School Administered Child Care Programs
<b>Rule Number</b>	<b>Rule Title</b>
0520-12-01-.10	Health and Safety

**AMENDMENT/NEW/REPEAL**

**RULES  
OF  
THE STATE BOARD OF EDUCATION  
  
CHAPTER 0520-01-02  
DISTRICT AND SCHOOL OPERATIONS**

**0520-01-02-.10 HOMEBOUND INSTRUCTION.**

- (1) Definitions. As used in this rule:
- (a) “Homebound Instruction Period” means the number of school days that the medical homebound instruction program shall be provided to the student.
  - (b) “Individualized Education Program (IEP) team” means a group of individuals described in 34 CFR § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.
  - (c) “Medical Condition” means a physical or mental condition, illness, or disorder that prevents a student from attending regular classes and is certified in writing by the student’s treating physician.
  - (d) “Medical Homebound Instruction Program” means an instruction program provided at home, hospital, or other related locations to all students, including students with disabilities, who are unable to attend regular classes due to a medical condition.
  - (e) “Regular Classes” means the classes to which the student has been assigned by the school where the student is enrolled.
  - (f) “Review team” means Local education agency (“LEA”) staff and/or school staff, including the student’s 504 team or IEP team if applicable, who are familiar with the health and educational needs of the student for whom a medical homebound instruction program is being requested.
  - (g) “Student” means a child enrolled in a Tennessee public school in grades kindergarten through grade twelve (K-12).
  - (h) “Treating physician” means a person who is licensed under T.C.A. Title 63, Chapter 6; T.C.A. Title 63, Chapter 9; T.C.A. Title 63, Chapter 11; or T.C.A. § 63-23-105 or similar statute in another jurisdiction and who is the professional treating the student for the medical condition requiring medical homebound instruction.
- (2) Medical Homebound Qualification and Placement
- (a) Each LEA shall establish a medical homebound instruction program for each student who qualifies. A student qualifies for a medical homebound instruction program if the student’s treating physician certifies in writing that the student has a medical condition that prevents the student from attending regular classes. A student is prevented from attending regular classes if the student will miss more than ten (10) consecutive instructional days over the period of the school year due to the medical condition. An LEA may also create a policy that allows students who miss an aggregate number of instructional days over the period of the school year due to a medical condition to be eligible for a medical homebound instruction program.
  - (b) Once a student has qualified for a medical homebound instruction program, the homebound instruction period shall be determined by the student’s review team on a case-by-case basis and shall take into consideration the recommendations of the student’s treating physician, if available.

Educational decisions regarding the student's medical homebound instruction program shall be determined by the student's review team on a case-by-case basis.

- (c) Decisions regarding students with disabilities who require instruction in the home, hospital, or related site pursuant to an IEP team's determination that the home, hospital, or related site is the child's least restrictive environment are governed by the requirements set forth in the Individuals with Disabilities Education Act (34 C.F.R. § 300.39; 34 C.F.R. § 300.115) and State Board Rule 0520-01-09-.07 regarding educational homebound placements.

(3) Medical Homebound Instructional Requirements

- (a) A Medical Homebound instruction program shall consist of a minimum of three (3) hours of instruction per week while school is in session for the homebound instruction period determined by the student's review team.
- (b) The student's review team shall consider the student's grade level, academic status, physical abilities, individual academic needs, homebound instruction period, and similar factors when determining the amount of instructional time per week provided to the student under a medical homebound instruction program. For students receiving special education and related services, the frequency and duration of instruction necessary to provide a free appropriate public education for a student with a disability during a medical homebound instruction program placement shall be determined by the student's IEP team, but shall not be less than the minimum of three (3) hours per week..
- (c) The minimum of three (3)-hours of instruction per week shall not include travel to and from the student or preparation time. Homebound instruction is measured by the amount of time that the student and the homebound teacher are working together; or, if a student is enrolled in a district's virtual program, homebound instruction is only the actual time that the student is engaging in instruction via the virtual program.
- (d) Homebound instruction shall be provided by a teacher holding a valid Tennessee teacher license as provided in T.C.A. Title 49, Chapter 5.
- (e) An adult, other than the homebound teacher/instructor, shall be present during the homebound instruction period.
- (f) The district may provide the homebound instruction program via the district's own online or virtual program, if the review team deems it appropriate for the student. The district shall verify that the student has all the necessary equipment, access, and training for working via the internet at no additional cost to the student.

(4) Recertification for Medical Homebound

- (a) A medical homebound instruction program for longer than the initial medical homebound instruction period shall only be provided to a student who is recertified in writing by his or her treating physician as having a medical condition that, in the student's treating physician's judgment, continues to prevent the student from returning to regular classes.
- (b) The initial medical homebound instruction period and any additional medical homebound instruction period shall be for the number of school days certified by the student's review team.
- (c) Recertification must be obtained upon the expiration of each additional medical homebound instruction period if medical homebound instruction is to be continued beyond the initial medical homebound instruction period.

(5) Re-entry

- (a) Prior to the expiration of the medical homebound instruction period, the review team shall develop a transition plan for the student's reentry into the school environment.
- (6) Attendance and Funding
- (a) Students receiving medical homebound instruction shall not be counted absent from school and shall continue to earn Basic Education Program (BEP) funding for the LEA in which the student is enrolled.
  - (b) IDEA Part B funds may be expended only for instruction of students with disabilities who are placed in a homebound instruction program.

**Authority:** T.C.A. §§ 49-10-1101 and 49-10-1103, 34 C.F.R. § 300.39; 34 C.F.R. § 300.115 . **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 10, 1974; effective July 10, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Repeal and new rule filed March 16, 1992; effective June 29, 1992.

**RULES  
OF  
STATE BOARD OF EDUCATION**

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

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

The State Board of Education adopts by reference the Compilation of Federal Regulations at 34 C.F.R. Parts 300 and 301 in their entirety unless otherwise provided herein as the policies and procedures for administration of special education programs and services in the State. The regulations, evaluation procedures, and eligibility criteria are available from the Division of Special Education, Tennessee Department of Education, 710 James Robertson Parkway, Nashville, TN 37243, or on the internet by accessing the State Department of Education's website at <https://www.tn.gov/education/student-support/special-education.html>.

**Authority:** T.C.A. §§ 49-10-101 and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed June 10, 1974. Amendment filed October 3, 1974; effective November 2, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed January 15, 1976; effective April 15, 1976. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed May 12, 1985; effective August 13, 1985. Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repealed and new rule filed August 18, 1993; effective December 29, 1993. Amendment filed June 21, 1995; effective October 27, 1995. Amendment filed August 7, 1995; effective December 29, 1995. Rule 0520-01-03-.09 removed and new Chapter 0520-01-09 filed per Tennessee State Board of Education letter dated and effective April 29, 1999. Amendment filed June 19, 2001; effective September 2, 2001. Amendment filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

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

- (1) "Child with a Disability" means a child between three (3) and twenty-one (21) years of age, both inclusive, who has been evaluated and determined as having a state-identified disability of functional

delay or intellectually gifted, or as having one (1) or more of the following disabilities as defined in 34 C.F.R. §§ 300.8: an intellectual disability; a hearing impairment, including deafness; a speech or language impairment; a visual impairment, including blindness; emotional disturbance; an orthopedic impairment; autism; traumatic brain injury; other health impairment; a specific learning disability; developmental delay; deaf-blindness; or multiple disabilities and who, by reason thereof, needs special education and related services. Any child with a disability who turns twenty-two (22) years of age between the commencement of the school year and the conclusion of the school year continues to be a child with a disability for the remainder of that school year.

- (2) "FAPE" means a free appropriate public education in compliance with the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq.;
- (3) "Individualized Education Program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR §§ 300.320 through 300.324;
- (4) "IEP Team" means a group of individuals described in 34 CFR § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability;
- (5) "LEA" means a local education agency;
- (6) "Parent" means the natural or adoptive parent, legal guardian, person who has custody of the child, a surrogate parent appointed in accordance with 34 CFR § 300.519 and this rule, or person with caregiving authority for the child.
  - (a) A foster parent may act as a parent if the biological or adoptive parent's authority to make educational decisions on the child's behalf has been terminated under Tennessee law; and
  - (b) The foster parent:
    - 1. Has an ongoing relationship with the child for more than one (1) year in duration;
    - 2. Is willing to make the educational decisions required of parents under the law; and
    - 3. Has no interest that would conflict with the interest of the child.
- (7) "Related services" means:
  - (a) Transportation and such developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education, including speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; transition services, including job placement; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling with a focus on career development, employment preparation, achieving independence, and integration in the workplace and community of a child with a disability; orientation and mobility services; and medical services for diagnostic or evaluation purposes; or
  - (b) School health services and school nurse services, social work services in schools, and parent counseling and training.
- (8) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, home, hospitals, institutions, and other settings, and instruction in physical education.

**Authority:** T.C.A. §§ 49-10-101 and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed August 13, 2010; effective January 29,

**0520-01-09-.03 RECOGNIZED DISABILITY CATEGORIES.**

(1) Autism.

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

- (iii) Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests); or
- (iv) Hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of environment (e.g., apparent indifference to pain/heat/cold, adverse response to sounds or textures, excessive smelling or touching of objects, fascination with lights or spinning objects).

(2) Deaf-Blindness.

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

(3) Deafness.

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

(4) Developmental Delay.

- (a) “Developmental Delay” refers to children aged three years, zero months (3:0) through nine years, eleven months (9:11) who are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas:
  - 1. Physical (gross motor and/or fine motor);
  - 2. Cognitive;
  - 3. Communication;
  - 4. Social or emotional; or
  - 5. Adaptive development that adversely affects a child's educational performance.
- (b) Initial eligibility as Developmental Delay shall be determined before the child’s seventh birthday.

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

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

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

(11) Orthopedic Impairment.

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

(12) Other Health Impairment.

- (a) “Other Health Impairment” means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, Attention Deficit Hyperactivity Disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette’s Syndrome that adversely affects a child’s educational performance.

- (b) A child may be found eligible as having an Other Health Impairment if the child has a chronic or acute health problem that requires specially designed instruction due to:

1. Impaired organizational or work skills;
2. Inability to manage or complete tasks;
3. Excessive health related absenteeism; or
4. Medications that affect cognitive functioning.

(13) Specific Learning Disability.

- (a) “Specific Learning Disability” means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, and that adversely affect a child’s educational performance. Specific Learning Disability includes conditions such as perceptual disabilities (e.g., visual processing), brain injury that is not caused by an external physical force, minimal brain dysfunction, dyslexia, and developmental aphasia.

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

(14) Speech or Language Impairment.

- (a) “Speech or Language Impairment” means a communication disorder, such as stuttering, impaired articulation, a language impairment, or voice impairment that adversely affects a child’s educational performance.

- (b) Speech or Language Impairment includes demonstration of impairments in one (1) or more of the following areas:

1. Language Impairment. A significant deficiency in comprehension and/or use of spoken

language that may also impair written and/or other symbol systems and is negatively impacting the child's ability to participate in the classroom environment. The impairment may involve any or a combination of the following: the form of language (phonology, morphology, and syntax), the content of language (semantics) and/or the use of language in communication (pragmatics) that is adversely affecting the child's educational performance;

2. Articulation (Speech Sound Production) Impairment. A significant deficiency in the ability to produce sounds in conversational speech not consistent with chronological age. This includes a significant atypical production of speech sounds characterized by substitutions, omissions, additions, or distortions that interfere with intelligibility in conversational speech and obstructs learning and successful verbal communication in the educational setting. Speech sound errors may be a result of impaired phonology, oral motor or other issues;
3. Voice Impairment. An excess or significant deficiency in pitch, intensity, resonance, or quality resulting from pathological conditions or inappropriate use of the vocal mechanism; or
4. Fluency Impairment. Abnormal interruption in the flow of speech characterized by an atypical rate or rhythm, and/or repetitions in sounds, syllables, words, and phrases that significantly reduces the speaker's ability to participate within the learning environment.

- (b) Speech or Language deficiencies identified cannot be attributed to characteristics of second language acquisition, cognitive referencing, and/or dialectic differences.

(15) Traumatic Brain Injury.

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

- (b) Traumatic Brain Injury may include all of the following:

1. An insult to the brain caused by an external force that may produce a diminished or altered state of consciousness; and
2. The insult to the brain induces a partial or total functional disability and results in one (1) or more of the following:

- (i) Physical impairments such as, but not limited to:

- (I) Speech, vision, hearing, and other sensory impairments;
- (II) Headaches;
- (III) Fatigue;
- (IV) Lack of coordination;
- (V) Spasticity of muscles;

- (VI) Paralysis of one or both sides; or
  - (VII) Seizure disorder.
  - (ii) Cognitive impairments such as, but not limited to:
    - (I) Attention or concentration;
    - (II) Ability to initiate, organize, or complete tasks;
    - (III) Ability to sequence, generalize, or plan;
    - (IV) Flexibility in thinking, reasoning or problem solving;
    - (V) Abstract thinking;
    - (VI) Judgment or perception;
    - (VII) Long-term or short-term memory, including confabulation;
    - (VIII) Ability to acquire or retain new information; or
    - (IX) Ability to process information/processing speed.
  - (iii) Psychosocial impairments such as, but not limited to:
    - (I) Impaired ability to perceive, evaluate, or use social cues or context appropriately that affect peer or adult relationships;
    - (II) Impaired ability to cope with over-stimulation environments and low frustration tolerance;
    - (III) Mood swings or emotional ability;
    - (IV) Impaired ability to establish or maintain self-esteem;
    - (V) Lack of awareness of deficits affecting performance;
    - (VI) Difficulties with emotional adjustment to injury (anxiety, depression, anger, withdrawal, egocentricity, or dependence);
    - (VII) Impaired ability to demonstrate age-appropriate behavior;
    - (VIII) Difficulty in relating to others;
    - (IX) Impaired self-control (verbal or physical aggression, impulsivity);
    - (X) Inappropriate sexual behavior or disinhibition;
    - (XI) Restlessness, limited motivation and initiation; or
    - (XII) Intensification of pre-existing maladaptive behaviors or disabilities.
  - (c) Traumatic Brain Injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.
- (16) Visual Impairment.

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

**Authority:** T.C.A. §§ 49-10-101 et seq. and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

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

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

services after the child is initially provided special education and related services, the LEA is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

**Authority:** T.C.A. §§ 49-10-10 1 et seq., and 34 C.F.R. Parts 300 and 301 **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

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

##### (1) Child Find

- (a) Every LEA shall develop and implement child find activities to identify, locate, and evaluate all children with disabilities, or who are suspected of having a disability, within its jurisdictional boundaries, ages three (3) through twenty-one (21), both inclusive, who need special education and related services, even though they are advancing from grade to grade. This includes but is not limited to:
  - 1. Children who are enrolled by their parents in a non-public school located within the jurisdictional boundaries of the LEA;
  - 2. Children who are wards of the state; and
  - 3. Children who are highly mobile (migrant and homeless).
- (b) Each LEA shall develop and implement procedures for creating public awareness of special education programs and services. A notice must be published or announced in newspapers, other media (including the LEA's website), or both, with circulation adequate to notify parents of the activities conducted by the LEA.
- (c) Any child suspected of having a disability may be referred to the LEA. The LEA shall establish written procedures for accepting, processing and documenting receipt of each referral. The procedures shall be subject to review by the department of education.
- (d) As a component of child find activities, general education programs within each LEA shall provide interventions implemented in the general education program.
- (e) A Parent may request that the LEA conduct a full and individualized evaluation of the Parent's child to determine if the child has a disability and is eligible for special education and related services.

##### (2) Free Appropriate Public Education (FAPE).

- (a) FAPE shall be made available to all children with disabilities, including children with disabilities including those children who reach twenty-two (22) years of age during the school year and children who have been suspended or expelled from school for more than ten (10) school days in a school year.
- (b) To meet the obligations of FAPE, each LEA or charter school shall provide services that address all of a child's identified special education and related services needs, based on the child's unique needs and not on the child's disability.
- (c) Charter schools shall ensure students with disabilities receive education services required by their IEP. LEAs shall be responsible for ensuring that children with disabilities attending a charter school authorized by the LEA are provided FAPE.

- (d) The Tennessee academic standards adopted by the State Board of Education shall serve as the basis for developing special education programs. Each LEA and charter school shall provide a variety of services, interventions, and programs to meet the educational needs of all students, including the needs of children with disabilities.
- (e) LEAs and charter schools shall provide children with disabilities with special transportation, where necessary.
  - 1. Children with disabilities shall, whenever appropriate, be provided transportation along with children who do not have disabilities. Adaptations shall be made to meet the needs of children with disabilities rather than separate transportation whenever appropriate.
  - 2. Travel time for children with disabilities shall not exceed the travel time for other children, provided that exceptions may be made by the IEP team.
  - 3. Vehicles used to provide special transportation must meet the requirements established by the State Board's Pupil Transportation Rule 0520-01-05.
  - 4. Operators and attendants of vehicles providing special transportation requirements established by the state board of education shall be given special training regarding the needs and special requirements of children with disabilities, except when parents are transporting children with disabilities. Special attendants shall be provided when an IEP team determines that such services are necessary.
  - 5. LEAs may contract for special transportation provided that the operators, attendants, and vehicles used by a contractor meet the requirements established by the state board of education, except when parents are transporting children with disabilities.
- (g) Children with disabilities who are convicted as adults under state law and incarcerated in adult prisons shall be entitled to their rights under IDEA with the following exceptions:
  - 1. The following requirements do not apply:
    - (i) Participation of children with disabilities in general statewide assessments; and
    - (ii) Transition planning and transition services with respect to the students whose eligibility under IDEA Part B will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
  - 2. The IEP team may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The requirements of 34 C.F.R. § 300.320 relating to the definition of an IEP and the general requirements of 34 C.F.R. § 300.114 relating to least restrictive environment do not apply with respect to these modifications.

**Authority:** T.C.A. §§ 49-10-101 et seq., 49-13-111, 49-13-126, and 34 C.F.R. Parts 300 and 301.  
**Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Amendment filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

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

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

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

- (1) Eligibility for Homebound Placements.
  - (a) An educational homebound placement for students with disabilities is made by an IEP team when considering the full continuum of placement options made available pursuant to IDEA. The IEP team must document that a homebound placement is necessary, temporary and consistent with requirements for the provision of a free appropriate public education.
  - (b) Medical Homebound decisions shall be in accordance with the State Board's Homebound Instruction Rule 0520-01-02-.10.
  
- (2) Use of Educational Homebound Placement.
  - (a) Educational homebound instruction is provided at home, hospital or related site to children with disabilities who are eligible pursuant to IDEA and state regulations. Instruction provided to children with disabilities in educational homebound placements shall be provided by qualified personnel, pursuant to IDEA and state regulations.
  - (b) Educational homebound instruction is appropriate if the child's IEP team determines that the student cannot receive an educational benefit in a less restrictive setting. All educational homebound placements shall be temporary. The IEP shall contain a goal of returning the child to a less restrictive environment within the school year.
  - (c) An IEP containing an educational homebound placement shall be reviewed at intervals of thirty (30) school days by the child's IEP team to ensure appropriateness of the provision of instruction and appropriateness of continuing the homebound placement.
  - (d) The frequency and duration of instruction necessary to provide a free appropriate public education (FAPE) during a homebound placement will be determined by the IEP team.
  - (e) IDEA Part B funds may be expended only for instruction in homebound placements of children with disabilities who are eligible for special education pursuant to IDEA and state regulations.

**Authority:** T.C.A. §§ 49-10-101 et seq. and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.

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

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

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

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

- (1) Each LEA shall demonstrate to the satisfaction of the Department of Education that it:
- (a) Complies with all state and federal requirements for child find;
  - (b) Makes available a free appropriate public education to all children with disabilities;
  - (c) Includes children with disabilities in state and district-wide assessments, with appropriate accommodations and modifications where necessary, or in alternate assessments. The type of assessment must be determined by the IEP team consistent with the state guidelines for participation of students with disabilities in state or district-wide assessments.
  - (d) Ensures that children with disabilities participating in early intervention programs experience a smooth and effective transition to preschool programs and that, by the child's third birthday, an IEP has been developed and implemented for the child. The LEA shall participate in the transition planning meeting no less than ninety (90) days prior to the third birthday of a child who may be a child with a disability.
  - (e) Ensures that children with disabilities who are enrolled in private schools or facilities by the LEA are provided special education and related services, in accordance with the IEP, at no cost to them or to their parents.
  - (f) Ensures that children with disabilities who are enrolled in private schools by their parents have an opportunity for special education services and that the amount spent to provide those services is a proportionate amount of the federal funds made available to the LEA. No unilaterally placed private school child with a disability has an individual entitlement to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
  - (g) Establishes and has in effect policies, procedures, and programs that are consistent with this chapter for implementing the provision of special education and related services. Ensures compliance with applicable state and federal regulations including, but not limited to:
    - 1. Free appropriate public education, including interagency agreements to ensure FAPE for all children;
    - 2. Child find procedures;
    - 3. Evaluation, reevaluation and determination of eligibility procedures;
    - 4. IEP/ Individual Family Service Plan (IFSP) procedures;
    - 5. Confidentiality procedures;
    - 6. Private school services procedures;
    - 7. Goals for performance of children with disabilities through school improvement planning;
    - 8. Inclusion of children with disabilities in state and district-wide assessment programs with appropriate accommodations and modifications and the reporting of assessment data; and
    - 9. Maintenance of effort.

- (h) Supplements the provision of special education funds but does not commingle or supplant the provision of special education funding.
  - (i) Publicizes annual information regarding its special education programs and services and child find activities.
  - (j) Ensures that special education professionals and paraprofessionals are provided professional development collaboratively with general education personnel.
  - (k) Ensures that school administrators have professional development, training and the resources to establish challenging expectations and provide access to the general education curriculum in the regular classroom to the maximum extent possible for all children including those eligible for special education.
- (2) Each LEA shall annually submit to the department, at a minimum, the following information in accordance with the department's guidelines:
- (a) A census of children with disabilities showing the total number and distribution of children within the LEA's jurisdiction who are provided special education and related services;
  - (b) An assurance that IDEA funds will be used to supplement, and not to supplant, state and local funds, and will be expended only for the excess cost of providing special education and related services to children with disabilities;
  - (c) An assurance that, to the maximum extent appropriate, children with disabilities are educated with children without disabilities;
  - (d) A detailed budget and end of the year report of expenditures of all funds available to provide special education and related services; and
  - (e) An assurance that a FAPE is available to all children with disabilities between the ages of three (3) and twenty-one (21), inclusive, including children who reach twenty-two (22) years of age during the school year and children who have been suspended or expelled for more than ten (10) school days in a school year.
- (3) Each LEA shall maintain an accurate record of all children with disabilities who are residing within its jurisdiction. The census shall be taken on December 1 of each year and at other times as required by the Department.
- (4) LEAs shall evaluate their special education programs and related services according to federal and state evaluation criteria.
- (5) LEAs, state agencies, and private schools shall be monitored on a periodic basis by the Department of Education to determine the extent to which special education and related services are being implemented in the least restrictive environment and to assure compliance with applicable laws and regulations. The Department of Education shall provide technical assistance in self-evaluation, program planning, and implementation of any necessary corrective action plans.
- (6) The Department shall annually report on the department's website, at a minimum, the following information:
- (a) The number and percentage of children with disabilities in this state;
  - (b) The number and percentage of children with disabilities, disaggregated by disability category;
  - (c) The participation and performance of children with disabilities on state assessments; and

- (d) Other performance indicators for children with disabilities.

**Authority:** T.C.A. §§ 49-10-101 and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

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

- (1) For purposes of the Basic Education Program (BEP), children with disabilities shall be counted in the same manner as children without disabilities.
- (2) BEP funds shall be allocated to each LEA in an amount to be determined by applying the prescribed formula to the number of children with disabilities identified and served during the preceding school year.
- (3) In accordance with T.C.A. § 49-10-109, if an LEA is found by the commissioner of education to have failed to provide a FAPE to all children with disabilities who by law are entitled to receive a FAPE from the LEA, then the commissioner may withhold all or any portion of the basic education program (BEP) funding for the LEA as, in the commissioner's judgment, is warranted.
- (4) Maintenance of effort shall be met if the LEA budgets at least the same total or per-capita amount from the combination of state and local funds as the LEA spent for that purpose from the prior year. The LEA may reduce the level of expenditures below the level for the preceding year if the reduction is attributable to the following:
  - (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower salaried staff;
  - (b) A decrease in the enrollment of children with disabilities;
  - (c) The termination of the obligation of the LEA, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the state department of education, because the child:
    - 1. Has left the jurisdiction of the LEA;
    - 2. Has reached the age at which the obligation of the LEA to provide FAPE to the child has terminated; or
    - 3. No longer needs the program of special education;
  - (d) The termination of costly expenditures for long-term high cost purchases.
- (5) Each LEA shall establish appropriate policies and procedures for the administration of IDEA and preschool funds and shall maintain appropriate records and reports to be used in planning and evaluating special education programs and services. The Department of Education shall notify each LEA of its allocation of federal funds annually.
- (6) LEAs shall use IDEA funds for the excess costs of providing special education and related services to children with disabilities. IDEA funds received by the LEA must not be commingled with state funds.
- (7) LEAs must maintain records that demonstrate compliance with the excess cost, non-supplanting, and comparability requirements for at least three (3) years after completion of the project described in the application.

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

**Authority:** T.C.A. §§ 49-10-101 et seq. and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed August 13, 2010 to be effective January 29, 2011; rule was withdrawn by the State Board of Education on October 15, 2010. Repeal filed August 29, 2013; effective January 29, 2014.

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

The Department of Education, in consultation the Advisory Council for the Education of Students with Disabilities and other stakeholders with expertise in each disability category, shall establish standards for determining program eligibility criteria, evaluation procedures, and evaluation participants. These standards shall be submitted by the Department of Education to the State Board for final review and approval and shall be defined in State Board Policy 3.500.

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

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

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

students of comparable chronological age; and

- (b) Age-appropriate transition assessments to include, at a minimum, education, training, and employment for students age fourteen (14) and older.
- (3) The IEP shall be implemented as soon as possible after development of the IEP. However, if agreement was not reached on the IEP, no change in the child's IEP or eligibility status shall be made for fourteen (14) days, in order to afford a parent time to request a due process hearing.
- (4) Upon written request of any member, the IEP team shall be convened within ten (10) school days or on a mutually agreed upon date and time.

**Authority:** T.C.A. §§ 49-10-101 et seq. and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed October 23, 2013; effective March 31, 2014. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

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

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

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

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

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

- (1) An LEA must notify the parent of a child with a disability at least ten (10) calendar days before an IEP meeting to ensure that the parent has an opportunity to attend.
- (2) If an LEA creates a draft IEP prior to an IEP meeting, a copy of the draft IEP shall be provided to the parent at least forty-eight (48) hours prior to the scheduled meeting time unless the parent provides written notice to the LEA more than forty-eight (48) hours prior to the scheduled meeting declining his or her right to receive a copy of the draft IEP. The parent meeting notification shall advise the parent that they may decline their right to receive a copy of the draft IEP.
  - (a) If a draft IEP is provided it shall become the property of the parent(s).
  - (b) An LEA shall not have the final IEP completed before an IEP meeting and the LEA shall make it clear to the parent at the outset of the meeting that the services proposed by the LEA are preliminary recommendations for review and discussion with the parent.
- (3) An LEA must notify a parent at least twenty-four (24) hours prior to a manifestation determination review conducted pursuant to 34 C.F.R. § 300.530(e).
- (4) Written notice must be given to the parents of a child suspected to have a disability or a child with a disability within at least ten (10) school days of the following:
  - (a) Proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

- (b) Refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

**Authority:** T.C.A. §§ 49-10-101 et seq. and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed December 12, 2018; effective March 12, 2019.

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

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

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

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

**Authority:** T.C.A. §§ 49-10-101 et seq., 49-10-601 et seq. and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

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

- (1) Special education due process cases shall be heard by administrative law judges employed by the secretary of state. Administrative law judges shall have jurisdiction to hear complaints arising under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, et seq., as from time to time amended, and Rules of the State Board of Education. The administrative office of the courts shall provide legal training in special education law to the administrative law judges assigned to hear special education due process cases sufficient to comport with the requirements of 20 U.S.C. § 1415, as from time to time amended.
- (2) When a hearing is requested, the LEA director of schools shall immediately contact the Department of Education Division of Special Education.
- (3) The LEA shall be responsible for providing an appropriate meeting place, a stenographic record of the hearing and a typed transcript of the hearing proceedings, and shall bear the administrative costs of the hearing, with the exception of the services of the hearing officer.
- (4) Expenses, up to \$5,000, for the services of a court reporter, the original copy of the transcript for the hearing officer and one copy for the parents will be reimbursed upon submission of appropriate documentation to the Department of Education.

**Authority:** T.C.A. §§ 49-10-101 et seq., 49-10-601 et seq. and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

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

Any party aggrieved by the findings and decision of an impartial due process hearing has the right to bring a civil action with respect to the complaint presented. The action may be brought in any state court of competent jurisdiction in accordance with Tenn. Code Ann. § 4-5-322 and Tenn. Code Ann. § 49-10-601 or in a district court of the United States without regard to the amount in controversy.

**Authority:** T.C.A. §§ 49-10-101 et seq. 49-10-601 et seq. and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008.

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

- (1) Each LEA shall have written policies and procedures for the recruitment, training and appointment of surrogate parents.
- (2) Each LEA shall appoint a surrogate parent to represent the child in all matters relating to the identification, assessment, educational placement, and the provision of a free appropriate public education, including meetings concerning the individualized education program, and any mediation and due process hearings pertaining to the child when it determines that:
  - (a) No parent can be identified;
  - (b) It is unable to locate a biological parent or legal guardian by calls, visits and by sending a letter by certified mail (return receipt requested) to the last known address of the biological parent or the guardian and allowing thirty (30) days for a response of the intention to appoint a surrogate parent;
  - (c) If the child is a ward of the State (including a ward of the court or a state agency);
  - (d) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).
- (3) If the health or safety of the child or other persons would be endangered by delaying the change in placement, due to the unavailability of a surrogate, the change in educational placement may be made sooner, but without prejudice to any rights that the child and parent may have.
- (4) The surrogate parent shall continue to represent the child until one (1) of the following occurs:
  - (a) The child is determined by the IEP team to no longer be eligible for, or in need of special education or related services, except when termination from such programs is being contested;
  - (b) The parent or guardian, who was previously unknown, or whose whereabouts were previously unknown, becomes known;
  - (c) The legal guardianship of the child is transferred to a person who is able to fulfill the role of the parent;
  - (d) The LEA determines that the appointed surrogate parent no longer has the knowledge and skills that ensure adequate representation of the child;
  - (e) The child attains eighteen (18) years of age.
- (5) Criteria for selection of surrogate parents.
  - (a) A person selected as a surrogate parent may not be an employee of the Department of

Education, the LEA, or any other agency that is involved in the education or care of the child.

1. A person is not considered to be an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.
  2. A person is not considered to be an employee of the State solely because he or she is paid by the State to serve as a foster parent.
- (b) An LEA may select a surrogate parent to represent the child for educational purposes. The selected person may be an employee of a nonpublic agency that only provides non-educational care for the child provided they are able to meet the standards and perform the responsibilities of a surrogate parent.
- (c) Foster parents, selected by a state agency as the custodian for a child, who have had a foster child or children with disabilities for less than one (1) calendar year, may be appointed by a LEA to serve as surrogate parents for their foster child or children and may represent the child for educational purposes, provided that they perform the responsibilities of a surrogate parent.
- (6) Responsibilities of a surrogate parent.
- (a) A surrogate parent must have no interest that would conflict with the interests of the child to be represented;
  - (b) A surrogate parent must have knowledge and skills that ensure adequate representation of the child, including a functional understanding of the educational rights of children with disabilities;
  - (c) A surrogate parent must participate in whatever training program might be offered to ensure that they will have knowledge and skills to provide adequate representation of the child;
  - (d) A surrogate parent must represent the child throughout the special education decision making process of identification, evaluation, program development, initial placement, review of placement, and reevaluation, as appropriate;
  - (e) A surrogate parent must be acquainted with the child and his or her educational needs;
  - (f) A surrogate parent must attempt to ascertain the child's educational needs and concerns;
  - (g) A surrogate parent must respect the confidentiality of all records and information;
  - (h) A surrogate parent must become familiar with the assistance provided by other human service agencies in the community that affects the child or that might be helpful resources; and
  - (i) A surrogate parent must monitor the child's educational program and placement.

**Authority:** T.C.A. §§ 49-10-101 et seq and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

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

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

**Authority:** T.C.A. §§ 49-10-101 et seq. **Administrative History:** Original rule filed November 30, 2007;

effective February 13, 2008.

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

The LEA, upon receiving a request from a parent pursuant to 34 C.F.R. § 300.618, shall decide, within fourteen (14) calendar days of receipt of the request, whether to amend the information as requested. **Authority:** T.C.A. §§ 49-10-101et seq. and 34 C.F.R. Parts 300 and 301. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017.

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

- (1) Definitions:
  - (a) "Extended isolation" means isolation which lasts longer than one (1) minute per year of the student's age or isolation which lasts longer than the time provided in the child's individualized education program (IEP).
  - (b) "Extended restraint" means a physical holding restraint lasting longer than five (5) minutes or a physical holding a restraint which lasts longer than the time provided in the child's IEP.
  - (c) "Noxious substance" means a substance released in proximity to the student's face or sensitive area of the body for the purpose of limiting a student's freedom of movement or action, including but not limited to Mace and other defense sprays.
- (2) LEAs are authorized to develop and implement training programs that include:
  - (a) Use of positive behavioral interventions and supports;
  - (b) Nonviolent crisis prevention and de-escalation;
  - (c) Safe administration of isolation and restraint; and
  - (d) Documentation and reporting requirements.
- (3) LEAs are authorized to determine an appropriate level of training commensurate with the job descriptions and responsibilities of school personnel.
- (4) LEAs shall develop policies and procedures governing:
  - (a) Personnel authorized to use isolation and restraint;
  - (b) Training requirements; and
  - (c) Incident reporting procedures.
- (5) If school personnel impose restraints or isolation, the school personnel shall immediately contact the school principal, or the principal's designee. The principal, the principal's designee, or the school nurse shall see and evaluate the student's condition within a reasonable time after the intervention and the student's parent or guardian shall be notified, orally or by written or printed communication, the same day the isolation or restraint was used.
- (6) When the use of restraint or isolation is proposed at an IEP meeting, the parent shall be advised of the provisions of T.C.A. §§ 49-10-1301, et seq., this rule and the IDEA procedural safeguards.

- (7) An IEP team meeting shall be held within ten (10) days of use of restraint if:
- (a) The student's IEP does not provide for the use of restraint;
  - (b) The student's IEP does not provide for the use of restraint for the behavior precipitating such action; or
  - (c) If school personnel are required to use physical holding restraint that:
    - 1. Lasts longer than five (5) minutes; or
    - 2. Lasts longer than the time provided in the child's IEP.
- (8) An IEP team meeting shall be held within ten (10) days of use of isolation if:
- (a) The student's IEP does not provide for the use of isolation;
  - (b) The student's IEP does not provide for the use of isolation for the behavior precipitating such action; or
  - (c) If school personnel are required to use isolation:
    - 1. Which lasts longer than one (1) minute per year of the student's age; or
    - 2. Which lasts longer than the time provided in the child's IEP.
- (9) State agencies providing educational services within a residential therapeutic setting to children in their legal and physical custody shall develop and adhere to isolation and restraint policies in such educational settings which conform to the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) state standards as applicable and at least one (1) of the following national standards: American Correctional Association (ACA), Council on Accreditation (COA), Centers for Medicare & Medicaid Services (CMS), Joint Commission for Accreditation of Healthcare Organizations (JCAHO), Commission on Accreditation of Rehabilitation Facilities (CARF), as they apply in the educational environment. Development of, and adherence to, such policies shall be overseen by a licensed qualified physician or licensed doctoral level psychologist.
- (10) School personnel who must isolate or restrain a student shall report each individual incident of isolation or restraint to the school principal or the principal's designee. The Department of Education shall develop a report form, which shall be used by school personnel when reporting isolation or restraint to the school principal or the principal's designee.
- (a) The report form shall be submitted for each individual incident and shall include the following information:
    - 1. Student's name, age and disability;
    - 2. Student's school and grade level;
    - 3. Date, time and location of the isolation or restraint;
    - 4. Length of time student was isolated or restrained;
    - 5. Names, job titles and signatures of the personnel who administered the isolation or restraint;
    - 6. Whether the personnel who administered the isolation or restraint were certified for

completing a behavior intervention training program;

7. Names and job titles of other personnel who observed or witnessed the isolation or restraint;
8. Name of the principal or designee who was notified following the isolation or restraint and time of notification;
9. Description of the antecedents that immediately preceded the use of isolation or restraint and the specific behavior being addressed;
10. A certification that any space used for isolation is at least forty (40) square feet;
11. A certification that school personnel are in continuous direct visual contact at all times with a student who is isolated;
12. How the isolation or restraint ended, including the student's demeanor at the cessation of the isolation or restraint;
13. Physical injury or death to the student, school personnel or both during the isolation or restraint;
14. Medical care provided to the student, school personnel or both during the isolation or restraint;
15. Description of property damage, if relevant;
16. Date, time and method of parent notification;
17. Whether an Individualized Education Program (IEP) Team meeting is required pursuant to T.C.A. § 49-10-1304; and
18. A determination whether the student has a functional behavior assessment and behavior intervention plan for the behavior precipitating the use of isolation or restraint.

- (b) A copy of the report must be submitted to the Department of Education within five (5) calendar days of incident.

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

**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 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 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 (1) half 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 year. 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 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.
- (i) Parents of every child enrolled shall be notified immediately if one of the following communicable diseases has been introduced into the program:
  - 1. Hepatitis A;

- 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 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 (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 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 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 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:
    - 1. Times medications administered;
    - 2. Noticeable side effects; and
    - 3. Name of staff person administering medication to child.
  - (d) The parent 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.
  - (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 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 is 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 must be provided with a quiet and private place to speak and the person receiving the information must listen openly and speak at the child's level in a positive, non-judgmental tone
  - (b) The person receiving the information from the child must:
    - 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
- (21) Program personnel should be observant of any bruising, injury, markings, or other unusual behavior that may be the result of child abuse or neglect, and immediately report any suspicions to the child abuse coordinator and coordinate with the program's child abuse coordinator to report any suspicions to the Department of Children's Services and law enforcement.
- (22) 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 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.
- (23) 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 and child sexual abuse;

- (b) Receive training as required by 49-6-1601(c)(2);
  - (c) Be available for program personnel to share information about suspected child abuse and child sexual abuse;
  - (d) Assist program personnel in reporting suspected child abuse 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 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 and child sexual abuse.
- (24) All program staff shall receive annual training regarding the procedures to report child abuse and neglect as is required by T.C.A. § 37-1-408.
- (25) The program shall not attempt to validate the allegation prior to making a report. A final determination of the validity of the report of abuse or neglect shall be made exclusively by the Department of Children's Services and law enforcement upon the report by the program's staff.
- (26) 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 or neglect of a child as required by this Chapter and T.C.A. §§ 37-1-403 and 605, and 49-6-1601 and shall not otherwise directly or indirectly require staff to report to the program management or seek the approval of program management prior to any individual staff member reporting the suspected abuse or neglect.
- (27) A report of suspected child abuse or neglect 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 Chapter.
- (28) 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 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 as required by T.C.A. §§ 37-1-403 and 37-1-605, and 49-6-1601.
- (29) Program personnel should be observant of any bruising, injury, markings, or other unusual behavior that may be the result of child abuse or neglect, 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.
- (30) Any action that does not comply in all respects with these rules, will not fulfill the statutory duty to report child abuse or neglect 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, for children in the care of the program are, by themselves, grounds for suspension, denial or revocation of the program's certificate of approval.

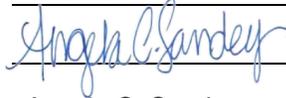
- b. If the facts established by a preponderance of the evidence indicate that there has not been strict compliance with the requirements of this Chapter or that the prohibited procedures been utilized as an alternative means of fulfilling the requirements, these circumstances shall create a rebuttable presumption for the Administrative Law Judge and the Child Care Advisory Council Review Board that the duty to report child abuse or neglect 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. Every operator, owner, director, teacher or staff member of, or substitute staff member or volunteer 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.
  - 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 and neglect 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 abuse or neglect 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. §§ 4-5-201, et seq.; 37-1-113; 37-1-401, et seq.; 37-1-601, et seq.; 49-1-302(l); 49-1-1101 through 49-1-1109; 49-5-415; 49-6-5001 and 5002; 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.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 10/23/20

Signature: \_\_\_\_\_



Name of Officer: Angela C. Sanders

Title of Officer: General Counsel

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Tre Hargett  
Secretary of State

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