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**Division of Publications**  
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Sequence Number: 07-13-24  
Rule ID(s): 10125  
File Date: 7/18/2024  
Effective Date: 10/16/2024

## Rulemaking Hearing Rule(s) Filing Form

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

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

**Agency/Board/Commission:** State Board of Education  
**Division:** N/A  
**Contact Person:** P. Danielle Nellis  
**Address:** 500 James Robertson Parkway, 8<sup>th</sup> Floor  
**Zip:** 37243  
**Phone:** 615-483-0268  
**Email:** [Danielle.Nellis@tn.gov](mailto:Danielle.Nellis@tn.gov)

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

☒ Amendment ☐ Content based on previous emergency rule filed on \_\_\_\_\_  
☐ New ☐ Content is identical to the emergency rule  
☐ Repeal

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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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

| Chapter Number | Chapter Title                                       |
|----------------|-----------------------------------------------------|
| 0520-01-09     | Special Education Programs and Services             |
| Rule Number    | Rule Title                                          |
| 0520-01-09-.12 | Individualized Education Program (IEP) Requirements |
| 0520-01-09-.18 | Impartial Due Process Hearing                       |
| 0520-01-09-.19 | Civil Action                                        |

## AMENDMENT

**AMEND** the rules of the State Board of Education Chapter 0520-01-09 Special Education Programs and Services, Rule sections .12, .18, and .19, so that as amended, the revised Rule sections shall read:

### RULES OF THE STATE BOARD OF EDUCATION CHAPTER 0520-01-09 SPECIAL EDUCATION PROGRAMS AND SERVICES

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

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

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

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

**Authority:** T.C.A. §§ 49-10-101 et seq, 49-10-601 et seq. and 34 C.F.R. Part 300. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021.

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

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

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

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

| Board Member                                                                                                                                            | Aye | No | Abstain | Absent | Signature<br>(if required) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|---------|--------|----------------------------|
| Jordan Mollenhour                                                                                                                                       | x   |    |         |        |                            |
| Bob Eby                                                                                                                                                 | x   |    |         |        |                            |
| Ryan Holt                                                                                                                                               |     |    |         | x      |                            |
| Warren Wells                                                                                                                                            | x   |    |         |        |                            |
| Lillian Hartgrove                                                                                                                                       | x   |    |         |        |                            |
| Marsha Johnson                                                                                                                                          | x   |    |         |        |                            |
| Darrell Cobbins                                                                                                                                         |     |    |         | x      |                            |
| Larry Jensen                                                                                                                                            |     |    |         | x      |                            |
| Krissi McInturff                                                                                                                                        | x   |    |         |        |                            |
| Laurel Cox                                                                                                                                              | x   |    |         |        |                            |
| Victoria Harpool,<br>designee for Steven<br>Gentile, Executive<br>Director, Tennessee<br>Higher Education<br>Commission<br><b>Non-Voting Ex-Officio</b> |     |    |         |        |                            |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education on 5/31/2024 and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/23/2024

Rulemaking Hearing(s) Conducted on: (add more dates). 04/16/2024

Date: 07/15/2024

Signature: 

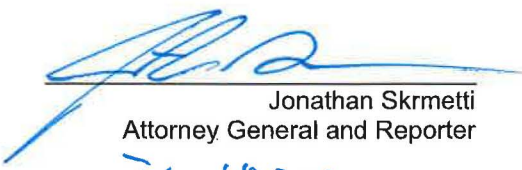
Name of Officer: P. Danielle Nellis

Title of Officer: Deputy General Counsel

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-01-09

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

  
Jonathan Skrmetti  
Attorney General and Reporter  
July 18, 2024  
Date

**Department of State Use Only**

Filed with the Department of State on: 7/18/2024

Effective on: 10/16/2024



Tre Hargett  
Secretary of State

**RECEIVED**

Jul 18 2024, 12:28 pm

Secretary of State  
Division of Publications

**Public Hearing Comments**

The Tennessee State Board of Education held a public rulemaking hearing on Chapter 0520-01-09 on April 16, 2024, at 500 James Robertson Parkway, Nashville, TN and via Webex. No public comments were submitted at the hearing regarding this rule.

**Regulatory Flexibility Addendum**

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

This rule does not affect small businesses.

**Impact on Local Governments**

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

This rule has no fiscal impact on local governments.

### Additional Information Required by Joint Government Operations Committee

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

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

The State Board of Education Special Education Program and Services Rule Chapter 0520-01-09 previously required LEAs to develop a four-year plan of focused and purposeful high school study, including any necessary transition services, that connected the student's goals for high school to the student's postsecondary goals no later than when the student turned 14 years old or began 9th grade. In 2021, the rule was amended and the requirement to develop a four-year plan of focused and purposeful high school study was eliminated. Currently, State Board of Education Rule 0520-01-09-.12(b) only requires LEAs to include "age-appropriate transition assessments to include, at a minimum, education, training, and employment for students age fourteen (14) and older."

In an effort to increase the percentage of students with disabilities who enroll in a postsecondary education or training program or who are employed, Section -.12 of the rule is revised to once again require LEAs to include courses of study, transition services, and annual IEP goals that will reasonably enable the student to meet their postsecondary goals in the first IEP that will be in effect when the student turns 14 years old.

Additionally, two minor edits to Section -.18 and Section -.19 of the Rule were made to align them with state law. First, Impartial Due Process Hearing Rule 0520-01-09-.18 is amended to clarify that the state's administrative law judges also have jurisdiction to hear complaints arising under state special education statutes in alignment with Tenn. Code Ann. § 49-10-606(a), in addition to complaints arising under IDEA. Second, Civil Action Rule 0520-01-09-.19 currently allows parties filing due process complaints to bring an action in a court of competent jurisdiction "in accordance with Tenn. Code Ann. § 4-5-322 and Tenn. Code Ann. § 49-10-601." This proposed amendment would strike the reference to Tenn. Code Ann. § 49-10-601 since that statute merely establishes the procedural safeguards for students with disabilities.

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

T.C.A. § 49-10-106 vests the State Board of Education with authority to establish rules and regulations to effectuate Title 49, Chapter 10 governing the provision of special education services to students in Tennessee.

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

These rules have a direct effect on the State Board and the State Board urges adoption. These rules also have a direct effect on LEAs and students with disabilities enrolled in Tennessee public schools. The State Board did not hear from any LEAs or citizens urging adoption or rejection of the rules.

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

None.

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

None.

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

P. Danielle Nellis (State Board of Education)  
[Danielle.Nellis@tn.gov](mailto:Danielle.Nellis@tn.gov)

Nathan James (State Board of Education)  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Jack Powers (Department of Education)  
[Jack.Powers@tn.gov](mailto:Jack.Powers@tn.gov)

Robin Yeh (Department of Education)  
[Robin.Yeh@tn.gov](mailto:Robin.Yeh@tn.gov)

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

P. Danielle Nellis (State Board of Education)  
[Danielle.Nellis@tn.gov](mailto:Danielle.Nellis@tn.gov)

Nathan James (State Board of Education)  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Jack Powers (Department of Education)  
[Jack.Powers@tn.gov](mailto:Jack.Powers@tn.gov)

Robin Yeh (Department of Education)  
[Robin.Yeh@tn.gov](mailto:Robin.Yeh@tn.gov)

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

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[Robin.Yeh@tn.gov](mailto:Robin.Yeh@tn.gov)

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

None.

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

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

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

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

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

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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~~ state special education law, and ~~the~~ 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 (1) copy for the parents will be reimbursed upon submission of appropriate documentation to the Department of Education.

**Authority:** T.C.A. §§ 49-10-101 et seq, 49-10-601 et seq. and 34 C.F.R. Part 300. **Administrative History:** Original rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021.

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