



*The lifting power of many wings can achieve twice the distance of flying alone.*

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August 2, 2022

Commissioner Penny Schwinn  
Department of Education  
500 James Robertson Parkway  
Nashville, TN 37243

Dear Commissioner Schwinn,

We appreciate the opportunity to comment on the proposed rules for the Tennessee Investment in Student Achievement (TISA) Act. The Tennessee Disability Coalition is an alliance of organizations and individuals who have joined to promote the full and equal participation of Tennesseans with disabilities in all aspects of life. We work together to advocate for public policy that ensures self-determination, independence, empowerment, and inclusion for people with disabilities.

High quality public schools are incredibly important to the academic, professional and social success of school-aged Tennesseans, but are absolutely vital for young people with disabilities. Students with disabilities rely on the professional expertise of special education teachers, the support of paraprofessionals and the services and therapies furnished by qualified specialists and providers. Given the longstanding and persistent achievement gaps facing students with disabilities, it is clear that more needs to be done to ensure that Tennessee students with disabilities have an equal opportunity to succeed and flourish in our communities.

This is why we are encouraged by the TISA framework passed by the General Assembly. First, we applaud Governor Lee's commitment to improving Tennessee public schools through the addition of \$1 billion annually for funding public schools. We hope that the state continues to evaluate the sufficiency of its financial commitment to top-tier public schools and continues to invest in our future.

We are also very appreciative of the clear and purposeful effort to engage stakeholders by Commissioner Schwinn and the state Department of Education. Our organization had the opportunity to participate in the students with special needs subcommittee prior to the release of the framework, as well as to provide input on an outcomes bonus for students with disabilities. Representatives of the Department have also been open and responsive to our questions and suggestions during both the legislative and rule-making process.

We believe that TISA's weighted funding formula model presents the most equitable and effective financing mechanism for students with disabilities. A weighted funding formula recognizes that Tennessee's diverse body of students have varied individual needs, and that some of those needs may have additional associated costs. Funding based on individual circumstance helps to ensure that students receive the support that they need. It is important that funds earmarked for the specific needs of students with disabilities are used to provide supports and services for the students that generate those funds.

While we believe that TISA represents an immense upgrade from the Basic Education Plan (BEP), there are still aspects of the proposed formula that we believe can be improved upon in the rule-making process.

### **Unique Learning Needs**

First, we are concerned that the way Unique Learning Needs (ULNs) are defined may incentivize schools to place students in more restrictive settings in order to generate a larger weight. The current ULN definitions essentially assign weights based on the amount of time a student receives services. While we recognize that services and placement are ultimately IEP team decisions, the potential financial incentive places a thumb on the scale during that decision-making process that could lead to more restrictive placements. Furthermore, not all services that require the same amount of time require the same resources at the same cost. For example, one hour of one-to-one speech therapy would require substantially more human and financial resources than one hour of paraprofessional support in a general education classroom.

Further, the current ULN definitions lack the accountability that ensures that funds generated by ULN weights are used to provide services and supports for that student. We understand that TISA is a “funding formula, not a spending plan”, but the current structure allows dollars generated for funding special education services to meet the needs of a specific student to be used for any purpose. Thus, the current ULN definitions incentivize over-placement while providing little accountability for ensuring that a student’s placement is in the least restrictive environment or that they receive special education services for which the funds are intended.

There are several options available that could better direct funding generated for students with disabilities and provide parents with some additional means of accountability. First, the Department of Education could adopt a services-based model similar to that used in Florida. In this funding model, special education weights are generated using a “matrix of services”, that differentiates tiers of services based on time and intensity. Completion of the “matrix of services”, usually during an IEP meeting, generates a score that is associated with a weight.

The primary benefit of this model is that it directs ULN funding to students for the services laid out in their IEP and matrix of service, as opposed to the current definitions which only account for time rather than purpose. This helps to ensure that funds intended to support special education programs are sufficient to provide services and that they are used in that manner. Second, it provides a layer of accountability for parents to help ensure that their child’s school is providing services that are iterated in the IEP and funded through TISA. Using the matrix of service, parents would have the opportunity to point to an exact support or service that generated funding.

The Department could also choose to adopt an IEP auditing and monitoring mechanism to ensure that assigning weights based on the amount of time a student receive services doesn’t lead to more restrictive placements. This could be the responsibility of the TISA review committee or become an ongoing function and responsibility of the Department of Education’s Special Education experts. While this option does not provide more targeted funding or parental accountability, it ensures at minimum a backstop against over-placement. A specialized review process could also potentially raise the quality of IEP’s and support improvements in goal and objective achievement.

### **Outcomes Bonuses**

We have several potential concerns with the way that the outcomes bonuses are structured for students with disabilities. First, it would be difficult for a student to achieve 3 of the 4 indicators in order to generate an outcome bonus. For example, it is unlikely that a high school senior would be taking the alternate assessment if they were on track to earn a general education diploma. Similarly, it would be unlikely that a student with a disability spends 80% of their time in a general education classroom if they were set to take the alternate assessment. Furthermore, the US Department of Education recommends that only 1% of a student population take the alternative assessment. Tennessee has repeatedly failed to meet this goal for several years running, and incentivizing the use of the alternate academic assessment does not support meeting this goal.

Qualifying for an outcomes bonus as a student with a disability is also only limited to high school seniors. Given that students must earn achieve 3 of 4 indicators, they must meet the requirements of either graduating with a general education diploma, or an identified post-secondary outcome, to have the opportunity to earn outcomes incentives funds. No other outcomes incentive targeting students in general education is so limited.

Further, while we understand the Department's desire to focus exclusively on "outcomes" as opposed to "processes", this emphasis is incompatible with the most basic concepts and tenets of the IDEA and special education. Schools do not primarily organize special education programs around a uniform set of outcomes, they build a system of processes that allow individual students to achieve their own unique academic and social goals and objectives that most benefit them. Students receive Individualized Education Programs (IEP's) because they have unique abilities, needs and goals that require an alternative education program to the general education setting (where desired outcome is more uniform). An outcomes focus that incentivizes schools to emphasize standardized goals diminishes the right for students receiving special education services to receive a personalized educational program, as required by the Individuals with Disabilities Education Act (IDEA).

In order to ensure that students with disabilities have an equal opportunity to earn outcomes funding, that schools have comparable incentive to improve their special education programs, and that students with disabilities receive an individualized education as they are entitled, we suggest that the Department of Education adopt a single incentive: achievement of goals and objectives iterated in a student's IEP. This incentive bonus has the advantage of being both outcome-oriented and measurable, as well as ensuring that students receive an individualized education. While the Department may not currently have a mechanism in place to review individual IEP's, we are confident that there are available solutions and departmental expertise to address this issue.

### **Direct Funding**

We understand that the purpose of including direct funding outside of the base and weights is to offer opportunities beyond everyday classroom instruction, including large per-student investments in career and technical education (CTE) opportunities. Because CTE funding amounts are calculated based on the needs of the state's business community, we believe that this is an appropriate space to begin to address glaring, long-standing gaps in employment and wages between Tennesseans with and without disabilities. While many students with disabilities have the opportunity to participate in CTE programs,

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other students rely on more specialized employment and post-secondary training opportunities, including Vocational Rehabilitation and Work-Based Learning. We encourage the Department of Education to consider using an equal proportion of direct CTE funding to enhance these programs and help ensure that we are preparing *all* Tennessee students to thrive after graduation.

TISA is a timely and significant improvement over the BEP. We are greatly encouraged by the overall structure of the law that passed in the General Assembly and the currently proposed rules. A weighted funding formula is a far more equitable model for students with disabilities than the BEP's resource-based model. Incentives for districts to improve their special education programs could be vital to closing long-standing achievement gaps for students with disabilities. Direct funding is also a wonderful opportunity to fund innovations and programs that present new and better opportunities for all Tennessee public school graduates to thrive in our state. The development of innovative rules within the bounds of the law are needed to allow our public schools to better meet the needs of students with disabilities. we believe that the adoption of our suggestions would do that. We again thank you for the opportunity to comment on the TISA proposed rules and we look forward to continued collaboration with the Department of Education as we work together to build a top-tier public education system.

Sincerely,

Jeff Strand  
Coordinator of Government and External Affairs  
Tennessee Disability Coalition