

INTERAGENCY AGREEMENT

AMONG

TENNESSEE DEPARTMENT OF EDUCATION,

TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES,

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION,
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION,
BUREAU OF TENNCARE,**

**TENNESSEE DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL
DISABILITIES,**

TENNESSEE DEPARTMENT OF HEALTH,

TENNESSEE DEPARTMENT OF HUMAN SERVICES,

**TENNESSEE DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE
ABUSE SERVICES,**

AND

TENNESSEE DEPARTMENT OF CORRECTION

Effective Date: July 1, 2012

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Article One Parties to Agreement

This Amended and Restated Interagency Agreement (Agreement) supersedes and replaces all prior Individuals with Disabilities Education Act (IDEA) Interagency Agreements between the parties hereto, and is entered into as of July 1, 2012 by the Tennessee Department of Education (DOE), as lead agency, the Tennessee Department of Children's Services (DCS), Tennessee Department of Intellectual and Developmental Disabilities (DIDD), the Tennessee Department of Health (TDH), the Tennessee Department of Human Services/Division of Rehabilitation Services (DHS/DRS), and the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS), the Tennessee Department of Correction (TDOC) and the Tennessee Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare (TennCare). The Participating Agencies to this Agreement agree that each Participating Agency will be responsible for the duties and obligations set forth herein that are to be carried out by the respective offices, divisions, bureaus, units and programs referred to in this Agreement for which each Participating Agency provides oversight.

Article Two Purpose

This Agreement is intended to fulfill the requirements of Part B (Part B) and Part C (Part C) of the Individuals with Disabilities Education Act, *20 U.S.C. § 1400 et seq.* (IDEA or the Act). The purpose of this Agreement is to identify and define the financial responsibilities of the Parties to this Agreement and to facilitate the provision and coordination of services for all infants, toddlers, children, youth and adults who are IDEA eligible. This Agreement formalizes policies, procedures, and fiscal responsibilities of the parties relating to IDEA. For purposes of this Agreement, the term "Child with a Disability" shall always be defined as set forth in Article Three below and in accordance with *34 C.F.R. §300.8(a)* unless otherwise specified.

Article Three Definitions

For purposes of this Agreement, the terms set forth below in bold lettering shall be defined and have the meanings contained in this Article Three unless otherwise specified. The information appearing in italics in this Article Three and elsewhere in this Agreement is a reference to the source of the information immediately preceding the italicized cite.

1. **Assessment:** For Part B purposes, assessment means the collection and integration of information to determine a student's current level of emotional, behavioral, academic, and intellectual functioning, educational needs, and strategies for remediation to promote effective treatment. For Part C purposes, assessment means the ongoing procedures used by qualified personnel throughout the period of a child's eligibility under Part C to identify: (a) the child's unique strengths and needs and the services appropriate to meet those needs; and (b) the resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their Infant or Toddler with a Disability. *See 34 C.F.R. §303.321(a)(2)(ii).*

2. **Brian A. vs. Sundquist:** Means the Order no. 300-0445 entered in the U.S. District case of *Brian A ex rel, Brooks, et al. v. Sundquist*, 149 F. Supp. 2d 941, (M.D. Tenn. 2000).

3. **Child Find:** Child Find is the collective name for Tennessee's policies and procedures, coordinated with all other major efforts conducted by Participating Agencies, designed and implemented to ensure that all Children with Disabilities (including Children with Disabilities attending private schools); underserved populations such as children in rural and urban areas; and highly mobile Children with Disabilities (e.g. migrant and homeless children) residing in Tennessee, regardless of the severity of their disability, and who are in need of Early Intervention Services or Special Education and Related Services, are identified, located, and evaluated. Child Find includes the process developed and implemented to determine which children are currently receiving Early Intervention Services or Special Education and Related Services. *See 34 C.F.R. §§300.111 and 303.302.*

4. **Child with a Disability or Child(ren) with Disabilities:** For IDEA purposes, means a child evaluated as having Intellectual Disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, an emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, deaf blindness, or multiple disabilities consistent with IDEA and in need of Special Education and Related Services. *See 34 C.F.R. §300.8(a).*

5. **Child with A Physical Disability:** A child with a physical disability under twenty-one (21) years of age who is deemed to have a physical disability by any reason, whether congenital or acquired, as a result of accident, or disease, that requires medical, surgical, or dental treatment and rehabilitation, and who is or may be totally or partially incapacitated for the receipt of a normal education or for self-support. This definition shall not include those children whose sole diagnosis is blindness or deafness; nor shall this definition include children who are diagnosed as psychotic. This definition does not prohibit CSS from accepting for treatment children with acute conditions such as, but not necessarily limited to, fractures, burns and osteomyelitis.

6. **Children's Special Services (CSS):** Means one program within TDH that provides care coordination services to children with special health care needs, especially those who are uninsured with access to insurance through TennCare. CSS program serves a broader group of children with special health care needs who meet the *T.C.A §68-12-102* definition of "child with a physical disability". Program resources will provide for diagnostically related necessary services for enrolled children when other payors will not provide coverage.

7. **Corrective Action Plan (CAP):** Means the steps and timelines identified by a facility or school to correct exceptions to IDEA requirements.

8. **Custody:** Means the control of actual physical care of the child and includes the right and responsibility to provide for the physical, mental, and moral well-being of the child. *See T.C.A. §37-1-102(b)(8).*

9. **Department of Education (DOE) Resolution Committee:** Means the committee of DOE members formed to resolve IDEA Part C and Part B disputes issues, and priorities. If a dispute cannot be resolved by this committee within fifteen (15) calendar days of the referral, the issue shall be forwarded to the Commissioners Task Force.

10. Detention Center: Means a place or facility operated by any entity or person, governmental or otherwise, for the confinement in a hardware secure facility of a child or children who meet the criteria of *T.C.A. § 37-1-114(c)* or other applicable laws and who: (a) are in need of legal temporary placement; (b) are awaiting adjudication of a pending petition; or (c) are awaiting disposition and/or placement. *See T.C.A. § 37-5-501(10)*.

11. Developmental Center: Means a Department of Intellectual and Developmental Disabilities facility or part of it that provides residential and habilitation services to persons with intellectual disabilities. *See T.C.A. §33-1-101(10)*.

12. Developmental Delay: Means delays in one (1) or more of the following areas: physical, cognitive, communication, social or emotional, or adaptive development that adversely affects a child's educational performance in children aged three (3) through nine (9). These delays are measured by appropriate diagnostic instruments and procedures. Other disability categories shall be used if they are more descriptive of a young child's strengths and needs. Local school systems have the option of using Developmental Delay as a disability category. Initial eligibility as Developmental Delay shall be determined before the child's seventh (7th) birthday. *See TN Rules & Regs. Chap. 0520-1-9-.02(7)*.

13. Durable Medical Equipment (DME): Means equipment that can stand repeated use, (is primarily and customarily used to serve a medical purpose), generally is not useful to a person in the absence of an illness or injury, is appropriate for and used in the patient's home, and is related to the patient's physical disorder. An institution is not considered a patient's or member's home if it meets the definition of a hospital or skilled facility. Orthotics and prosthetic devices, and artificial limbs and eyes are considered DME. *See TN Rules & Regs. Chap. 1200-13-13-.01 and 1200-13-14-.01*.

14. Early Intervention System: Means a comprehensive, interagency, multidisciplinary, family centered and community based services system that is acceptable to all infants and toddlers birth to age three (3) with disabilities and their families that in this state is named Tennessee's Early Intervention System (TEIS). *See 34 C.F.R. §303.11*.

15. Early Periodic Screening, Diagnosis and Treatment (EPSDT): A covered benefit for TennCare Medicaid-enrolled children only, shall mean: (a) screening in accordance with professional standards, and interperiodic, diagnostic services to determine the existence of physical or mental illnesses or conditions of TennCare Medicaid enrollees under age twenty-one (21); and (b) health care, treatment, and other measures, described in *42 U.S.C. §1396a(a)* to correct or ameliorate any defects and physical and mental illnesses and conditions discovered. *See TN Rules & Regs. Chap. 1200-13-13-.01 and 1200-13-14-.01*.

16. Education Records: Means those records, files, documents, and other materials which contain information directly related to a student and are maintained in an educational agency or institution or by a person acting for such agency or institution which are not specifically excluded under the four categories of exceptions set out in *20 U.S.C. § 1232g(a)(4)(B)(FERPA-Exceptions)*.

17. Emergency Medical Condition: For TennCare purposes, which includes emergency mental health and substance abuse emergency treatment services, means the sudden and unexpected onset of a medical condition that manifests itself by symptoms of sufficient severity including severe pain that a prudent lay person, who possesses an average

knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to potentially result in: (a) placing the person's health (or, with respect to a pregnant woman, potentially her unborn child's health) in serious jeopardy; or (b) serious impairment to bodily functions; or (c) serious dysfunction of any bodily organ or part. For Medicaid enrollees only, copayments are not required for emergency services. *See TN Rules & Regs. Chap. 1200-13-13-.01 and 1200-13-14-.01.*

18. Evaluation: For the purposes of Part B, means the procedures used to determine whether a child has a disability and the nature and extent of the Special Education and related services that the child needs. *See 34 C.F.R. §300.15.* For Part C purposes, it means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility, consistent with the definition of "Infants or Toddlers with Disabilities" in Tennessee, including determining the status of the child in each of the following developmental areas: (a) cognitive development; (b) physical development, including vision and hearing; (c) communication development; (d) social-emotional development; and (e) adaptive skills. *See 34 C.F.R. §§303.21 and 303.321(b).*

19. Family Educational Rights and Privacy Act (FERPA): Means the federal legislation prohibiting educational agencies or institutions from releasing Education Records of students unless consistent with the terms set forth therein. *See 20 U.S.C. §1232g.*

20. Foster Care: Means the temporary placement of a child in the Custody of DCS or any agency, institution, or home, whether public or private, for care outside the home of a Parent or relative (by blood or marriage) of the child, whether such placement is by court order, voluntary placement agreement, surrender of parental rights or otherwise. Foster Care shall cease at such time as the child is placed with an individual for the purpose of the child's adoption by the individual or at such time as a petition to adopt is filed, whichever occurs first, or at such time as the child is returned to or placed in the care of a Parent or relative. *See T.C.A. §§ 37-1-102(15) and 37-2-403.*

21. Foster Home: Means a private home that is approved by DCS or other licensed child-placing agency and provides full time care for up to six (6) children at a time. This maximum includes birth, adopted or foster children.

22. Foster Parent: Means that an adult may act as a Parent if:

- (a) The natural Parent's authority to make educational decisions on the child's behalf has been extinguished under Tennessee law; and
- (b) The Foster Parent:
 - (i) Has an ongoing, long-term parental relationship with the child;
 - (ii) Is willing to make the educational decisions required of Parents under the IDEA; and
 - (iii) Has no interest that would conflict with the interests of the child.

See TN Rules & Regs. Chap. 0520-01.09-.04. and 34 C.F.R. §300.30(a).

23. Free Appropriate Public Education (FAPE): Means regular and Special Education and Related Services which:

- (a) Are provided at public expense, under public supervision and direction, and without charge to the Parent;
- (b) Meet the standards established by state law, including the requirements of IDEA Part B and the *Rules, Regulations and Minimum Standards for the Governance of Tennessee Public Schools*, issued by DOE;

- (c) Include preschool, elementary school, and secondary school (including appropriate vocational, career or work experience education) and
- (d) Are provided in conformity with an individualized education program (IEP).
See 34 C.F.R. §300.17.

24. Functional Delay: Means continuing significant disability in intellectual functioning and achievement which adversely affects the student's ability to progress in the general school program, but adaptive behavior in the home or community is not significantly impaired and is at or near a level appropriate to the students chronological age, including:

- (a) Significantly impaired intellectual functioning is two (2) or more standard deviations below the mean, and difficulties in these areas cannot be the primary reason for significantly impaired scores on measures of intellectual functioning;
- (b) Limited English proficiency;
- (c) Cultural factors;
- (d) Medical conditions that impact school performance;
- (e) Environmental factors;
- (f) Communication, sensory or motor disabilities;
- (g) Deficient academic achievement which is at or below the fourth percentile in the following.

Two (2) or more total or composite scores in the following areas:

1. Basic reading skills;
2. Reading fluency skills;
3. Reading comprehension;
4. Mathematics calculation;
5. Mathematics problem solving;
6. Written expression; or
7. Home or school adaptive behavior scores that fall above the level required for meeting Intellectual Disability eligibility standards.
See TN Rules & Regs. Chap. 0520-1-9-.02(9).

25. Grier Revised Consent Decree (Modified): Means the controlling U.S. District Court Order entered in the case of *Grier v. Emkes*, No. 79-3107 (M.D. Tenn. 2008) (Order entered to Amend Revised Consent Decree (Modified)) and all later revisions and modifications of such Amended Revised Consent Decree (Modified) entered by the Court.

26. Group Care Home: A home operated by any person, agency, corporation, or institution or any group which receives seven (7) to twelve (12) children under seventeen (17) years of age for full-time care outside their own homes in facilities owned or rented and operated by the organization. *See DCS Glossary page 24.*

27. Inmate: For TennCare purposes, Inmate means an individual confined in a local, state, or federal prison, jail, YDC, or other penal or correctional facility, including a furlough from such facility. *See TN Rules & Regs. Chap. 1200-13-13-.01 and 1200-13-14-.01.*

28. Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA or the Act): Means the federal legislation codified at 20 U.S.C. § 1400 *et seq.* as amended, providing federal

funds for Special Education and related services and Early Intervention Services to Children with Disabilities in accordance with standards set by the Act.

29. Individuals with Disabilities Education Act (IDEA) Services: Means the group of services comprised of Special Education, Related Services and Early Intervention Services provided to Children with Disabilities in accordance with standards set by the Act.

30. Individualized Education Program (IEP): Means a written statement that is developed, reviewed, and revised in a meeting of the IEP Team, in accordance with *34 C.F.R. § 300.320-300.324*, for a Child with a Disability who qualifies for Special Education and Related Services under IDEA Part B.

31. Individualized Education Program Team (IEP Team): Means a statutorily defined group of individuals under *34 C.F.R. § 300.321* with the responsibility for determining eligibility and/or Special Education and related services under IDEA Part B.

32. Individualized Family Service Plan (IFSP): Means written plan for providing early intervention and other services to an Infant or Toddler with a Disability and his family under IDEA Part C which:

- (a) Is developed jointly by the family and appropriate qualified personnel involved in the provision of Early Intervention Services;
- (b) Is based on the multidisciplinary evaluation and Assessment of the child and the Assessment of the child's family;
- (c) Includes services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child;
- (d) Contains a statement of the Natural Environment in which Early Intervention Services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a Natural Environment; and
- (e) Reviewed by interactive means acceptable to all parties, and at least on a six (6) month interval. *See 34 C.F.R. §§303.340 - 346.*

33. Individual Support Plan (ISP): Means a written document central for planning, providing and reviewing the supports and services to be provided by DIDD through its contract agencies for those in the DIDD Waiver.

34. Individualized Transition Plan (ITP): The plan formulated by the IEP team for a child with a disability no later than age fourteen (14). The plan will include identification of the transition service needs of the child. *See TN Rules & Regs. Chap. 0520-01-09.12(4).*

35. Individually Identifiable Health Information: Means information that is a subset of health information, including demographic information collected from an individual and:

- (a) Is created or received by a health care provider, health plan, employer, or health care clearing house; and
- (b) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - (i) That identifies the individual; or
 - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual. *See 45 C.F.R. 160.103*

36. Infant or Toddler with a Disability: Means an individual birth to age three (3) who qualifies for Early Intervention Services under IDEA Part C because he/she:

- (a) Is experiencing Developmental Delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development; physical development, including vision and hearing; communicative development; social or emotional development; adaptive development; or
- (b) Has a diagnosed physical or mental condition that has a high probability of resulting in Developmental Delay and includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome. *See 34 C.F.R. §303.21.*

37. In-House Schools: Means on-site schools operated by DCS or by agencies that contract with DCS to provide educational services including Special Education services. These schools must follow the procedures outlined in *DCS Policy 21.20 Non Traditional Educational Settings*, and be DOE category 1, 2, 3, or 7 approved. There are instances when an agency under contract with DCS will sub-contract for educational services. These schools must also meet the DOE school approval standard and comply with *DCS Policy 21.20*. In-House School also means a self-contained educational program provided at a Residential Treatment facility.

38. Intellectual Disability: Means substantial limitations in functioning:

- (a) As shown by significantly sub-average intellectual functioning, as shown by:
 - (i) An I.Q. of seventy (70) or below on an individually-administered I.Q. test; or
 - (ii) Such other, specific evidence as determined exclusively by DIDD that establishes an I.Q. of seventy (70) or below; and
- (b) That exists concurrently with related limitations in two (2) or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work; and
- (c) That is established before eighteen (18) years of age.

39. Interagency Coordinating Council (ICC): Means the IDEA Part C State ICC established pursuant to *34 C.F.R. §303.600* to permit the state to receive financial assistance from the federal government.

40. Interagency Dispute: Means any disagreement between two (2) or more Participating Agencies concerning the responsibility for coordination of services, provision of appropriate services, payment for appropriate services or any other matter related to this Agreement for an eligible child under IDEA Part B and C.

41. Intra-agency Dispute: Means the inability of the Participating Agencies' divisions, offices, bureaus, units or programs within a department or agency to agree as to which Participating Agency is responsible for coordinating services; providing appropriate services; paying for appropriate services or any other matter related to the department's or agencies statutory responsibilities. *See 34 C.F.R. 300.154 (a)(3).*

42. **John B. Consent Decree:** Means the controlling U.S. District Court Order entered in the case *John B. v. Emkes*, No. 98-0168 (M.D. Tenn. 1998) (Order for a Consent Decree for Medicaid-Based Early and Periodic Screening, Diagnosis and Treatment Services), and all later revisions and modifications of such Consent Decree entered by the Court.

43. **Least Restrictive Environment:** Means to the maximum extent appropriate, an environment where Children with Disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled. *See 34 C.F.R. §300.114(a) (2).*

44. **Local Educational Agency (LEA):** Means a public board of education or other public authority legally constituted within Tennessee for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of Tennessee, or for a combination of school districts or counties that are recognized in Tennessee as an administrative agency for its public elementary or secondary schools. *See 34 C.F.R. §300.28(a).*

45. **Managed Care Contractor (MCC):** MCC means:

- (a) A MCO, pharmacy benefits manager, and/or a dental benefits manager which has signed a TennCare contractor risk agreement with the state and operates a provider network and provides covered health services to TennCare Enrollees; or
- (b) A pharmacy benefits manager or dental benefits manager which subcontracts with a MCO to provide services; or
- (c) A state government agency (i.e., DCS or DIDD) that contracts with TennCare for the provision of services. *See TN Rules & Regs. Chap. 1200-13-13-.01 and 1200-13-14-.01.*

46. **Managed Care Organization (MCO):** MCO means, an appropriately licensed health maintenance organization approved by TennCare as capable of providing Medical Services in the TennCare program. *See TN Rules & Regs. Chap. 1200-13-13-.01 and 1200-13-14-.01.*

47. **Medical Assistance:** As defined in the TennCare Rules and for purposes of this Agreement, includes healthcare, services, and supplies furnished to an enrollee and funded in whole or in part under Title XIX of the Social Security Act (Medicaid), 42 U.S.C. 1396 *et seq.*, and T.C.A. §71-5-101 *et seq.* (*Welfare-Programs and Services for Poor Persons-Medical Assistance*). Medical assistance includes the payment of the cost of care, services, drugs, and supplies. Such care, services, drugs, and supplies shall include services of qualified providers who have contracted with an MCC or are otherwise authorized to provide services to TennCare Enrollees (e.g., Emergency Medical Services provided out of network or medically necessary services obtained out of network because of an MCC's failure to provide adequate access to services in network). *See TN Rules & Regs. Chap. 1200-13-13-.01 and 1200-13-14-.01.*

48. **Medical Services:** Means those medical health and behavioral services provided by an appropriately qualified provider to fulfill the requirements of IDEA in order to determine a child's disability that results in the child's need for Special Education and Related Services. *See 34 C.F.R. §300.34(c)(5).* TennCare Medical Services for the

purposes of this Agreement means Medically Necessary services to address medical and behavioral diagnosis and treatment.

49. **Medically Necessary:** Means a medical item or Medical Service that meets the criteria set forth in the *T.C.A. §71-5-144*. For TennCare purposes, the term “Medically Necessary” is provided in the *TN Rules & Regs. Chap. 1200-13-16*. Implementation of the term “medically necessary” is provided in the TennCare Rules, consistent with the statutory provisions, which control in the case of ambiguity. No enrollee shall be entitled to receive and TennCare shall not be required to pay for any items or services that fail fully to satisfy all criteria of “Medically Necessary” items or services, as defined either in statute or in *See TN Rules & Regs. Chap. 1200-13-16.01, 1200-13-13-.01 and 1200-13-14-.01*.

50. **Natural Environments:** For IDEA Part C purposes, means settings that are natural or normal for a child's peers of the same age who have no disability. *See 34 C.F.R. §303.26*.

51. **Parent(s):** For IDEA purposes, means:

- (a) A biological or adoptive Parent of a child;
- (b) A guardian but not the state if the child is a ward of the state;
- (c) A person acting in the place of a Parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare);
- (d) A Surrogate Parent who has been appointed in accordance with *34 C.F.R. § 300.519 and TN Rules & Regs. Chap. 0520-01-09-.20*. ; or
- (e) A person specifically identified by judicial decree or order to act as a Parent of a child or to make educational decisions on behalf of a child in accordance with *34 C.F.R. § 300.30(b)(2)*.
See 34 C.F.R. § 300.30 and TN Rules & Regs. Chap. 0520-01-09-.04.

52. **Participating Agencies:** Means DOE (as lead agency), DCS, DIDD, and TDH, DHS/DRS (the Tennessee Department of Finance and Administration (TDFA), TDMHSAS, TDOC, and TennCare. TennCare joins herein only for the specific purpose of carrying out the specific duties and responsibilities set forth herein.

53. **Payor of Last Resort:** Means the Participating Agency that has responsibility for paying for a service authorized pursuant to statute or TennCare Rules for a Child with a Disability or his family after all other potential resources have been exhausted.

54. **Permanency Planning:** Means the process of engagement, intervention and decisive casework on the part of the DCS family service worker. Such intervention focuses on choosing the least restrictive permanent outcome for the child, (e.g. return to parent, relative placement, adoption, in a timely manner).

55. **Personal Information:** Means individually identifiable information including –

- (i) a student’s or parent’s first and last name;
- (ii) a home or other physical address (including street name and the name of the city or town);
- (iii) a telephone number; or
- (iv) a Social Security identification number. *See 20 U.S.C.A. §1232h*.

56. **Personally Identifiable:** Means information that contains (a) the name of the child, the child's parent, or other family members; (b) the address of the child, (c) a personal identifier, such as the child's social security number or student numbers; or (d) a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. *See 34 C.F.R. §300.32.*

57. **Primary Care Physician (PCP):** Means the physician responsible for supervising, coordinating, and providing initial and primary care to patients; for initiating referrals for specialist care; and for maintaining the continuity of patient care. Also means a physician who has limited his practice of medicine to general practice or who is a Board Certified or Eligible Internist, Pediatrician, Obstetrician/Gynecologist, or Family Practitioner. *See TN Rules & Regs. Chap. 1200-13-13-.01 and 1200-13-14-.01.*

58. **“PII”:** Personal Information and Personally Identifiable Information shall be known collectively as “PII”.

59. **Primary Referral Source(s):** Means hospitals including prenatal and postnatal care facilities; physicians; parents, including parents of infants and toddlers; child care programs and early learning programs; LEAs and schools; public health facilities; other public health or social service agencies; other clinics and health care providers; public agencies and staff in the child welfare system, including child protective service and foster care; homeless family shelters; and domestic violence shelters and agencies. *See 34 C.F.R. §303.303(c).*

60. **Protected Health Information (PHI):** Means individually identifiable health information that is transmitted or maintained by electronic media or any other form or medium, PHI excludes individually identifiable information in Education Records covered by FERPA, 20 U.S.C. 1232g. *See 45 C.F.R. 160.103. See Personal Information.*

61. **Regional Mental Health Institute (RMHI):** Means a mental health hospital over which TDMHSAS has exclusive jurisdiction and control. *See T.C.A. §4-3-1603(a).*

62. **Related Services:** Means transportation and such developmental, corrective, and other supportive services that are required to assist a Child with a Disability to benefit from Special Education. It includes speech-language pathology and audiology services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and Medical Services for diagnostic or evaluation purposes. The term also includes School Health Services, social work services in schools, and Parent counseling and training. *See 34 C.F.R. §300.34(a).* TennCare will only pay for covered Medically Necessary services in accordance with TennCare policies for children who are TennCare Enrollees. Medical Services for children who are not TennCare Enrollees will not be paid by TennCare. Services supplied to children who are TennCare Enrollees, but which are not Medically Necessary services, or not covered by the TennCare program, will not be paid by TennCare. These will be paid for by other appropriate agencies as set forth herein.

63. **Residential Facility:** Means a facility providing twenty-four (24) hour living arrangements on-site, with more comprehensive services than a non-residential contract. Residential Facilities are required to operate “In House Schools” and must be DOE

category 1, 2, 3, or 7 approved. They also must comply with *DCS Policy 21.20 Non-Traditional Educational Settings*.

64. Residential Treatment: Means planned and Medically Necessary treatment in a Residential facility licensed to provide treatment for emotional, behavioral or mental health issues. The facility must establish a treatment plan and goals. *DCS Glossary page 48*. Also means behavioral treatment services provided in a twenty-four (24) hour residential setting; an individual treatment plan to address mental health and behavioral needs is developed and treatment is provided which may include individual, group, and supportive therapies.

65. Runaway House/Shelter: Means any house or institution giving sanctuary or housing to any person under eighteen (18) years of age who is away from the home or residence of his/her parent or guardians without the parents' or guardians' consent. *See T.C.A. §37-2-502(3)*.

66. School Health Services and School Nurse Services: Means health services that are designed to enable a Child with a Disability to receive FAPE as described in the child's IEP. School Nurse Services are services provided in school or at school sponsored events by a qualified school nurse. School Health Services are services that may be provided by either a qualified school nurse or other qualified health care professional. *See 34 C.F.R. §300.34(c)(13)*.

67. Service Coordinator(s): Means the individual appointed by a public agency or selected by the IFSP team and designated in the IFSP to carry out service coordination activities. Service Coordinators shall have demonstrated knowledge and understanding about: IDEA eligibility; IDEA Part C; the nature, scope, and availability of services within the Early Intervention System; the system of payments for Early Intervention Services; and other pertinent information. *See 34 C.F.R. §303.34*.

68. Special Education: Means specially designed instruction, at no cost to the Parents, to meet the unique needs of a Child with a Disability, including (i) instruction conducted in the classroom, in the home, in hospitals, in institutions, and in other settings; and (ii) instruction in physical education. *See 34 C.F.R. §300.39(a)(1)*.

69. Surrogate Parent: Means a person appointed when a child is a ward of the state or when the Parent or legal guardian is unable to be located after reasonable efforts by the public agency. For IDEA purposes, the Surrogate Parent may represent a child in all matters relating to: (a) the identification, evaluation, and educational/early intervention placement of the child; and (b) the provision of FAPE and Early Intervention Services to the child. *See 34 C.F.R. § 300.519 and TN Rules & Regs. Chap. 0520-01-09-.20*. Under current interpretation "ward of the state" is any child in legal Custody of DCS where Parents have had their parental rights terminated by a court. *See Tenn. Op. Atty. Gen. No. 02-22 (Feb. 26, 2002)*.

70. TennCare: Means the program administered by the Single State Agency as designated by the state and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 and 1915(c) Research and Demonstration Waivers granted to the State of Tennessee. *See TN Rules & Regs. Chap. 1200-13-13-.01 and 1200-13-14-.01*.

71. **TennCare Enrollee:** Means an individual eligible for and enrolled in the TennCare program or in any Tennessee federal Medicaid program approved by the Secretary of the US Department of Health and Human Services pursuant to Section 1115 or Section 1915(c) Waivers granted under the Social Security Act. As concerns MCC compliance with TennCare Rules, TennCare Enrollee only applies to an individual for whom the MCC has received at least one (1) day's prior written or electronic notice from the TennCare Bureau of the individual's assignment to the MCC. *See TN Rules & Regs. Chap. 1200-13-13-.01 and 1200-13-14-.01.*

72. **TennCare Medicaid:** Means that part of the TennCare program, which covers persons eligible for Medicaid under Tennessee's Title XIX State Plan for Medical Assistance. The following persons are eligible for TennCare Medicaid:

- (a) Tennessee residents determined to be eligible for Medicaid in accordance with *TN Rules & Regs. Chap. 1240-03-03* of the Tennessee Department of Human Services-Division of Medical Services.
- (b) Individuals who qualify as dually eligible for Medicare and Medicaid are enrolled in TennCare Medicaid.
- (c) A Tennessee resident who is an uninsured woman, under age of sixty-five (65), a US citizen or qualified alien, is not eligible for any other category of Medicaid, has been diagnosed as the result of a screening at a Centers for Disease Control and Prevention (CDC) site with breast or cervical cancer, including pre-cancerous conditions.
- (d) Tennessee residents determined eligible for SSI benefits by the Social Security Administration are automatically enrolled in TennCare Medicaid. *See TN Rules & Regs. Chap. 1200-13-13-01.*

73. **TennCare Provider:** Shall mean a provider who accepts as payment in full for furnishing benefits to a TennCare enrollee, the amounts paid pursuant to an approved agreement with an MCC or TennCare. Such payment may include copayments from the enrollee or the enrollee's responsible party. Except in the case of Out-of-State Emergency Providers, as defined in *TennCare Rules 1200-13-13-.01 and 1200-13-14-.01*, a TennCare provider must be enrolled with TennCare. TennCare Providers must abide by all TennCare rules and regulations, including requirements regarding provider billing of patients as found in *TennCare Rule 1200-13-13-.08*. TennCare Providers must be appropriately licensed for the services they deliver and must not be providers who have been excluded from participation in Medicare or Medicaid. *See TN Rules & Regs. Chaps. 1200-13-13-.01 and 1200-13-14-.01.*

74. **TennCare Rules:** Means the rules and regulations promulgated by TennCare pursuant to *T.C.A. §71-5-102* for the purpose of establishing or modifying benefits or cost-sharing requirements, defining categories or eligible enrollees, and establishing eligibility requirements to make medical assistance possible for those recipients determined to be eligible under *T.C.A. Chapter 6 Programs and Services for Poor Persons* in conformity with the requirements of Title XIX of the Social Security Act and the Section 1115 and Section 1915(c) Research and Demonstration Waivers granted to the State of Tennessee.

75. **TENNderCare Connection:** Means a process within the TENNderCare Program that provides information with parental consent to MCCs when children are identified as needing to receive medically Related Services in an educational setting.

76. Tennessee’s Early Intervention System (TEIS): The name for the statewide program of services identified in an Individualized Family Service Plan (IFSP) to assist eligible families. Early intervention services are those provided to children, birth to three years, which are funded by the State but which may also be funded by Federal Part C funds as Payor of Last Resort. Part C is an entitlement program for families whose children, age birth to three years, are eligible because of developmental delays or diagnosed medical conditions that meet Tennessee’s Part C eligibility criteria.

77. Transition Services: For IDEA Part B means a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post school activities, including postsecondary education, vocational training, integrated employment including supported employment, continuing education, adult education, adult services, independent living, and community participation. *See 34 C.F.R. §300.43 and Rehabilitation Act of 1973 as amended, §7(37).*

78. Vocational Rehabilitation Employment Services: Any services provided by DHS/DRS described in an individualized plan for employment (IPE) necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. *See Rehabilitation Act of 1973 as amended, §103.*

79. Youth Development Center (YDC): Means hardware secure facility that houses children who have been adjudicated delinquent and who meet the criteria as established by DCS for placement at such facility. *See T.C.A. §37-5-103(16).* Children in a YDC may be covered under the provisions stated in *Grier Revised Consent Decree (Modified) C.15.f.*

Article Four IDEA PART B SERVICES

A. Department of Education, Division of Special Education

1. DOE will coordinate the provision of services under this Agreement to ensure that IDEA eligible children receive FAPE in the Least Restrictive Environment.
2. The use of an interagency agreement does not alter or diminish the responsibility of DOE to ensure compliance of all public agencies serving Children with Disabilities with the requirements of IDEA. This will be accomplished through compliance monitoring. Although no LEAs are parties to this Agreement, DOE is the Participating Agency with oversight of LEAs. Therefore, whenever an LEA is designated herein to carry out a specific function or is tasked with a specific obligation, it is understood by the parties hereto that DOE shall be responsible for such function or obligation to be performed by the LEA.
3. Each LEA will file with DOE an annual comprehensive plan for providing Special Education and Related Services to Children with Disabilities who reside within its jurisdiction. DOE will ensure that the comprehensive plan is in compliance with IDEA Part B and all state and federal statutes and regulations. It shall be the

responsibility of the LEA or responsible state agency to determine eligibility, provide the appropriate Special Education and Related Services, and to fulfill the requirements of IDEA Part B for all IDEA eligible children. *See 34 C.F.R. §300.301(a)*. If DOE determines that a LEA or responsible state agency is unable to meet its obligations under IDEA, DOE shall use IDEA Part B funds that would otherwise have been available to a LEA or state agency and provide or cause to be provided Special Education and Related Services directly to IDEA eligible children. *See 34 C.F.R. §300.227(a)*.

4. Every state agency or private school shall comply with the DOE's *Rules, Regulations, and Minimum Standards for the Governance of Tennessee Public Schools* in the establishment of an educational program. Every facility or LEA that serves an IDEA eligible child must also meet the standards established by IDEA and *T.C.A. Title 49 Chapter 10* (Special Education). DOE will monitor all state agencies providing educational programs, and private schools to ensure compliance with applicable federal and state regulations. Each facility will be monitored on an ongoing basis. All agencies and private schools will be provided technical assistance by DOE. DOE will conduct on-site reviews of the educational programs at the facility or school. Once the review is complete DOE will issue a letter (Determination Letter) stating the agency "Meets Requirements", "Needs Assistance", "Needs Intervention", or "Needs Substantial Intervention". DOE will identify specific technical assistance or enforcement actions aligned with each of the determinations, with the exception of "Meets Requirements". When a Determination Letter indicating the need for assistance or the need for intervention is issued, the facility or school shall be required to provide a CAP to DOE within thirty (30) calendar day of the receipt of the letter. The outline steps and timelines for correcting the exceptions. DOE shall review the CAP to assure that it is adequate to ameliorate the exceptions and will follow up with an on-site visit to ensure compliance.
5. DOE is responsible for maintaining a database of information regarding Children with Disabilities, known as a census, with the information being provided by the LEAs. DOE shall provide census information to the U.S. Department of Education as required by federal law.
6. DOE shall ensure that all due process hearings requested by Parents to resolve issues of IDEA eligibility, placement, or the provision of FAPE will be conducted in accordance with all applicable state and federal statutes and regulations. All due process hearings under IDEA shall be conducted consistently with state and federal law. *See T.C.A. §49-10-606, et seq.*
7. In accordance with IDEA, DOE will investigate all administrative complaints filed by parties to this Agreement which relate to compliance and provision of Special Education and Related Services for IDEA eligible children. Within sixty (60) calendar days of receipt of a complaint, DOE will conduct an independent investigation; give the complainant an opportunity to submit additional information; and make an independent determination of the issue. DOE will issue a written decision that addresses each of the complainant's allegations and contains findings of fact and conclusions of law as well as the reasons for its final decision. When appropriate, DOE shall conduct on-site investigations to gather additional data and resolve complaints. Upon request and as deemed necessary by DOE, DOE will grant

an extension of up to sixty (60) calendar days for the resolution of the complaint in order for the parties to submit additional information. *See 34 C.F.R. §300.151-153, T.C.A. §49-10-604.*

8. Upon request and with the consent of both the Parent and the LEA, DOE will assign a mediator to resolve disputes arising under IDEA. Consent to mediation by the Parent of an IDEA eligible child is voluntary and will not delay or deny a parent's right to a due process hearing nor shall it deny Parents any other rights afforded them under IDEA Part B. DOE shall bear the cost of the mediation process. Consistent with IDEA, all discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process are required to sign a confidentiality pledge prior to the commencement of the process. *See 34 C.F.R. §300.506, T.C.A. §49-10-605.*
9. DOE encourages LEAs to participate in the School to Work Case Manager's Grant Program administered by DHS/DRS. This grant provides the LEA with federal funding to employ a transition case manager to work with DHS/DRS eligible students in the LEA. The LEA is required to provide state or local match dollars. *See Article Four Section G – DHS/DRS.*
10. DOE has developed a departmental policy that allows for the reimbursement of the LEA for thirty to one hundred percent (30%-100%) of the cost for services provided to high cost/medically fragile children based on the availability of federal funds within any given fiscal year. Criteria established by DOE will be used to determine the priority of disbursement of funds. To apply for these funds, the LEA shall file a request with DOE for reimbursement. The request shall be reviewed by the Assistant Commissioner of the DOE Division of Special Education or his/her designee. The funds shall be distributed to the LEA based on Special Education expenditures from the General Purpose School Fund and not IDEA Part B, and/or Preschool Grant funds. The DOE Division of Special Education shall make the final decision regarding the amount of reimbursement and allotment of funds.
11. DOE, in conjunction with the other Participating Agencies to the extent required by state or federal law, shall provide technical assistance and training to the LEAs as it relates to the billing of other public agencies that are providing services to IDEA eligible children and provide any other training and assistance as necessary. For this purpose, DOE will be responsible for coordinating the provision of services with LEAs to be supported by the Participating Agencies to the extent required by state or federal law DOE shall ensure that technical assistance is provided to LEAs in areas such as evaluation, appeals, best practices, reporting procedures, appropriate provision of Special Education and Related Services for individual children, and any other identified areas as needed.
12. DOE shall furnish TennCare MCCs with criteria and training concerning IDEA requirements. TennCare, through its MCCs, will provide training to the TennCare Providers concerning EPSDT requirements. TennCare will be responsible for its MCCs providing appropriate technical assistance to TennCare Providers in the coordination of services for children who are IDEA eligible

13. Through state statute, Tennessee has extended eligibility for Special Education and Related Services to children identified as Functionally Delayed in accordance with *Rules, Regulations, and Minimum Standards for the Governance of Tennessee Public Schools*. Although not entitled to services under IDEA, a child identified as Functionally Delayed is considered a child with a disability for purposes of this Agreement and shall receive the same services and protections as a Child with a Disability under IDEA.

B. Department of Education, Local Educational Agency

1. Although no LEAs are parties to this Agreement, DOE is the Participating Agency with oversight of LEAs. Therefore, whenever an LEA is designated herein to carry out a specific function or is tasked with a specific obligation, it is understood by the parties hereto that DOE will be responsible for such function or obligation being performed by the LEA. When the LEA finds or suspects that a child may be eligible for Special Education and Related Services under the IDEA, the LEA, with the permission of the Parent or legal guardian, shall secure an appropriate evaluation to determine if a child is eligible for Special Education and Related Services. If the child is a TennCare Enrollee, portions of the evaluation that focus on medical and behavioral issues (not educational issues) may be reimbursed by TennCare, using TennCare Providers. The LEA can accomplish this by referring the child, with the permission of the Parent or legal guardians, to the child's PCP for an EPSDT periodic or inter-periodic screening. *See Article Four Section C – Bureau of TennCare*. When a LEA suspects that a TennCare enrolled child may have a particular medical or behavioral health problem and the child is up-to-date on his/her EPSDT screenings, the LEA should refer the child to the child's PCP for an EPSDT inter-periodic screening. It should be noted that both the periodic nor and the inter-periodic screening are only a portion of the complete IDEA evaluation. The results of the medical evaluation may be incorporated into the LEA's evaluation of the child with the permission of the Parents or legal guardians. However, the LEA must complete the evaluation process within the timelines promulgated by DOE in *Rules, Regulations and Minimum Standards for the Governance of Tennessee Public Schools*. This provision does not alter the timeliness requirements for EPSDT screenings by which the MCCs are bound. Although the PCPs are not parties to this Agreement, TennCare is the Participating Agency with oversight of PCPs through its contracts with the MCCs. Therefore, whenever a PCP is designated herein to carry out a specific function or is tasked with a specific obligation, it is understood by the parties hereto that TennCare, through its MCCs, shall be responsible for the PCP performing such function or obligation.
2. Parents of IDEA eligible students and students referred for an IDEA eligibility evaluation and TennCare eligible will be asked to complete a TENNderCare Connection IEP Release Form (*See Attachment Two*) to indicate if the child is receiving services from a MCC. All information provided by the Parents of an IDEA eligible child will be provided voluntarily, and used only to determine eligibility for services in accordance with the IDEA. IDEA services provided by the LEA to IDEA eligible children will not be reduced nor will IDEA eligibility be

affected if the child is enrolled in the TENNderCare Program. TennCare may not disqualify a Medically Necessary covered service for reimbursement because that service is provided in accordance with an IEP. *See 34 C.F.R. §300.154(b)(1)(i)*. Individual TennCare information including but not limited to, identity of the enrollee's MCC, PCP, and related medical information shall be kept strictly confidential as required by FERPA, IDEA, HIPAA and all applicable state and federal laws. Such information will only be used by the LEA to coordinate the appropriate Special Education, Related Services, and Medically Necessary services for each IDEA and TennCare enrolled child. All records and information shall only be disclosed to the extent allowed by IDEA, FERPA, HIPAA and all other applicable state and federal laws. *See Article Seven - Records*. When a child identified as IDEA eligible is also a TennCare Enrollee, the LEA will ask the Parent to notify the child's PCP and MCC that the child is receiving Special Education and has an IEP. The LEA shall also request that the Parent agree to share the child's IEP with his/her PCP and MCC. TennCare developed the TENNderCare Connection IEP Release Form (*See Attachment Two*) to help facilitate the disclosure of the IEP to the PCP so that he/she can help IDEA eligible children to receive Medically Necessary TennCare services, if appropriate.

3. In order to ensure that FAPE is provided to eligible children at no cost to Parents, Parents shall not be required to use private insurance to pay for Special Education and Related Services. *See 34 C.F.R. §300.154(e)*. The use of private insurance must be voluntary and the parents must provide consent. If a Parent elects to access private insurance, the LEA may pay the family's copayment assessed by the insurance company using Part B funds. If a TennCare Enrollee is assessed a copayment, the LEA may pay that copayment to ensure that FAPE is provided to children with disabilities at no cost to Parents.
4. Services and evaluations for IDEA eligible children must be provided within a reasonable time period. *See 34 C.F.R. §300.154(b)(2)*. In order to provide Special Education and Related Services in a timely and efficient manner to IDEA eligible students, a LEA may contract with appropriate providers or provide the needed services itself. If the child is a TennCare Enrollee, TennCare will be responsible for its MCCs either accepting medical information in the IEP as proof of the existence of a medical problem or having the child appropriately tested. *See John B. Consent Decree, paragraph 81*. TennCare MCCs will provide all periodic and inter-periodic EPSDT screenings that the child may need and all Medically Necessary covered Medical Services. If the child is a TennCare Enrollee and non-emergency Medical Services which are identified in the IEP as "Related Services" are provided by the LEA, the LEA or the actual provider in the schools (e.g. a physical therapist) must be a TennCare Provider enrolled with the child's MCCs in order to seek reimbursement from the TennCare MCCs consistent with policies and procedures adopted by TennCare, DOE, and this Agreement. It should be noted that the period of approval for TennCare covered services might not be the same as the period of approval for an IEP. As an example, the IEP could be developed with a mention of speech therapy to address a particular issue. At the time that the IEP is written, the MCC may agree that speech therapy is Medically Necessary and proceed to make arrangement for that service to be covered. However, the MCC's approval of a service does not mean that the service will be automatically covered beyond the period of time when it is Medically Necessary. Upon later evaluation, the MCC could determine the service is no longer Medically Necessary. In this case, unless

a new IEP is written that can show the service is still Medically Necessary the school system would have to assume responsibility for payment of the service if it is continued because TennCare will not pay for a service that is not Medically Necessary.

5. Once a child is evaluated, the LEA will convene an IEP Team meeting to determine if the child is eligible to receive special education. If a child is eligible to receive Special Education, the child is also eligible to receive related services that are necessary for the child to benefit from Special Education. The IEP Team will create an appropriate IEP meeting. The Special Education teacher or person responsible for facilitating the IEP Team meeting will send an invitation to the child's Parents, make a personal call, and/or an email message will be sent to the child's Family Service Worker (FSW) ten (10) days before the meeting unless waived. *See T.C.A. § 37-1-130(a)(2)(B)*. The Special Education teacher or person responsible for facilitating the IEP meeting will send a copy of the invitation, personally call, and/or email a message to any representatives from agencies that participate in the IEP Team meeting. If any other agencies are required to provide services to the child that are listed in a child's IEP, such other agencies will also need a copy of the invitation to the IEP Team meeting. The LEA will provide all Special Education or Related Services to Children with Disabilities that are part of the IEP and necessary for FAPE in the Least Restrictive Environment. *See 34 C.F.R. §§300.14 and 300.324*.
6. All LEAs and Participating Agencies that have chosen to provide Special Education and Related Services to IDEA eligible children in Residential Facilities within the State of Tennessee are responsible, to the extent required by state or federal law, for confirming that the facility meets the requirements set forth in *Rules, Regulations, and Minimum Standards for the Governance of Tennessee Public Schools*. DOE shall monitor these facilities for compliance with IDEA and other state and federal regulations. *See Article Four Section A-DOE*. An IEP Team meeting must be convened for IDEA eligible children who are educated in a Residential Facility. DOE, as lead agency, will be responsible for the Residential Facilities agreeing to provide the services listed in a child's IEP that would be provided by the LEA in a public school. The LEA is responsible for the educational costs related to the provision of Special Education and related services for the child attending school in the Residential Facility if the LEA placed the child in the facility. If a Parent enrolls an IDEA eligible child in a Residential Facility without such placement being a provision of the IEP, the facility is considered a private school, and the Special Education and Related Services costs are the parent's responsibility. The financial responsibility of other Participating Agencies providing services in the child's IEP shall not be altered because the IDEA eligible child is being educated at a Residential Facility when placed there by the IEP Team.
7. When an IDEA eligible child reaches the age of fourteen (14), the IEP Team shall formulate an ITP that will include the Transition Service needs of the child. *See TN Rules & Regs. Chap. 0520-01-09-.12(4)*. The LEA shall provide functional and vocational Assessments as needed that will assist the IEP Team in formulating an appropriate ITP. The ITP will focus on the child's course of study while in school.

8. The Special Education teacher or person responsible for facilitating the IEP Team meeting will send a copy of the invitation to the Parents and child or personally call and/or emailed them the invitation, as well sending the invitation to the IEP Team meeting to the representative from DIDD, DHS/DRS, DCS, and other agencies DOE, as lead agency, will be responsible for the ITP being updated annually. *See 34 C.F.R. §300.323.* The child must be invited to the meeting. If the student is not in attendance, documentation must be presented and considered concerning his preferences and interests.
9. When an IDEA eligible child reaches the age of sixteen (16), or younger if determined appropriate by the IEP Team, the ITP will include a statement of needed Transition Services as well as the agency responsible for providing and paying for the services. *See 34 C.F.R. §300.320(b) and 300.324(c).* If the IEP Team determines that the student should be referred to DHS/DRS for Vocational Rehabilitation Services, the student must be present at the IEP Team meeting when the referral is made.
10. As part of the IEP Team process, the LEA shall facilitate the transition from special education and related services to Vocational Rehabilitation Services. Therefore, the LEA will provide DHS/DRS with the child's last psychological report and information about the student's ability to obtain and maintain employment, functional inventories and performance reports on community/work-based learning experiences. All of the information and data supplied by the IEP Team which documents successful community job training experiences will supplement any evaluations DHS/DRS might choose to perform. All evaluations provided by the LEA to DHS/DRS for Vocational Rehabilitation Services eligibility determinations shall be considered confidential Education Records consistent with IDEA, FERPA, HIPAA and all applicable federal and state laws. *See Article Seven - Records.*
11. If state or federal law requires that another public agency is responsible for services that are part of Special Education or Related Services in a child's IEP, the LEA will notify the other public agency by letter, personal phone call and/or email message of its financial responsibility for covering that service pursuant to applicable state and federal law or regulations and this Agreement. The LEA shall also send the public agency a copy of the IEP that pertains to the services in question. The LEA shall notify all public agencies that may have financial responsibility for Special Education and Related Services of the child's IEP Team meeting by sending a copy of the invitation sent to the parents or personal phone call and/or email message. *See 34 C.F.R. §300.321(b).* The public agency that has financial responsibility for providing an IDEA eligible child with services shall not be relieved of that responsibility simply because an agency representative does not attend an IEP Team meeting. Additionally, the failure of that public agency to pay for that service shall not relieve the LEA of its obligation to provide that service to the child with a disability in a timely manner. *See 34 C.F.R. §300.154(b)(2).*
12. The LEA may seek reimbursement for provided services for which the child is eligible from the public agency that was obligated under state and federal law to provide or pay for these services. In order for a LEA or a health care provider working in the school (e.g. physical therapist, speech therapist) to seek reimbursement from a TennCare or a MCC the LEA or health care Provider must

be a TennCare provider enrolled with the child's MCO; verify that the provider selected is a TennCare network provider, and the necessary prior approvals must have been obtained from the MCC. If there is a dispute regarding reimbursement, the dispute shall be resolved in accordance with the procedures outlined in *Article Six* of this Agreement.

13. The LEA shall provide information to the Parent of an IDEA eligible child about accessing services from other public agencies that may assist the Parent in meeting the child's needs but which are not services under IDEA. If the school determines that not all areas of the child's suspected disability have been addressed, it is the school's responsibility to address all the areas and contact other Participating Agencies, as necessary, unless the IEP states otherwise. The referral by the LEA representative on the IEP Team of a child to other public agencies shall not be considered a determination of eligibility or obligate the public agency to provide or pay for any service not in the child's IEP. The Parent shall be responsible for meeting all eligibility requirements of other public agencies.
14. Beginning one (1) year before a student reaches the age of majority [eighteen (18) in Tennessee], the student's IEP must include a statement that the student has been informed of his/her rights under IDEA that will transfer to the student upon reaching the age of majority. All rights will be transferred from the Parent to the student upon reaching the age of majority unless the student has been declared incompetent under Tennessee law. *See 34 C.F.R. §300.520 and TN Rules & Regs. Chap. 0520-01-09-.21.* However, nothing in this section prohibits the LEA from inviting a child's Parent to an IEP Team meeting if the Parent has special knowledge related to the student which may be helpful in determining appropriate Special Education and Related Services for the student who has reached the age of majority. *See 34 C.F.R. §300.321(a)(6).*

**C. Department of Finance and Administration,
Division of Health Care Finance and Administration,
Bureau of TennCare**

1. TennCare contracts with MCCs to provide medical and behavioral care through networks of health care providers. TennCare monitors MCC compliance with TennCare Rules and policies and that the MCCs are providing accessible, appropriate in-network providers to TennCare Enrollees. Although neither the MCCs nor the MCOs are parties to this Agreement, TennCare is the Participating Agency with oversight of the MCCs and MCOs through its contracts with the MCCs. Therefore, whenever a MCC or MCO is designated herein to carry out a specific function or tasked with a specific obligation, it is understood by the parties hereto that TennCare shall be responsible for such function or obligation to be performed by the MCC or MCO.
2. TennCare will only pay for covered Medically Necessary services in accordance with TennCare Rules and policies for children who are TennCare Enrollees. Medical Services for children who are not TennCare Enrollees will not be paid by TennCare. Services supplied to children who are TennCare Enrollees, but which are not Medically Necessary services, or not covered by the TennCare program,

will not be paid by TennCare. These will be paid for by other appropriate agencies as set forth herein.

3. DHS shall perform TennCare eligibility determinations for children who apply for TennCare (other than those who apply for Supplemental Security Income through the Social Security Administration) and conduct EPSDT outreach to help TennCare Enrollees receive Medically Necessary care consistent with *John B. Consent Decree, paragraph 39(p)*.
4. Through its MCCs, TennCare is responsible for providing EPSDT services for all children who are TennCare Enrollees under the age of twenty-one (21). EPSDT services include:
 - (a). Periodic well-child screenings in accordance with the recommendations of the American Academy of Pediatrics;
 - (b). Medically Necessary health and behavioral health diagnostic services that are covered by Medicaid under *Section 1905(a) of the Social Security Act (42 U.S.C.A § 1396d)*; and;
 - (c). Medically Necessary health and behavioral health treatment services include “such other necessary health care, diagnostic services, treatment and other measures [described in *42 U.S.C.A § 1396d(a)*] ... to correct or to ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State Plan.” *See 42 U.S.C. § 1396d(r)(5)*; and *John B. Consent Decree, paragraph 9*. EPSDT services are based on the individual child’s medical, developmental, and behavioral health needs. No prior authorization by the MCC is needed for a screening conducted by a PCP, and the MCC will provide all Medically Necessary covered services regardless of whether or not the need for such services was identified by a provider who received prior authorization or by an in-network provider. *See John B. Consent Decree, paragraph 41(m)*. TennCare (including its contractors, the MCCs) cannot impose limitations on covered EPSDT services other than the EPSDT services are required to be Medical Necessity. This means that the State cannot set arbitrary limits of duration, scope, or cost of services under EPSDT. *John B. Consent Decree, paragraph 57*. Under their contracts with TennCare, the MCCs have the discretion to require that TennCare covered services be delivered by the MCC network providers, as long as the networks are sufficient in size and scope to meet the access standards of the MCC contract with the state.
5. For children who are TennCare Enrollees in DCS custody, DCS is responsible for providing Medically Necessary Residential Treatment services. TennCare, through its MCCs, provides these services for non-custodial children.
6. Any encounter with a health professional practicing within the scope of his/her practice is an inter-periodic screening. Any person such as an educator, Parent, or health professional who suspects a health problem may refer a child for an inter-periodic screen. An inter-periodic screening does not have to include any screening elements required for a periodic screening. No prior authorization by the MCC is needed for a screening conducted by a PCP, and the MCC will provide all Medically Necessary covered services regardless of whether or not the need for

such services was identified by a provider who received prior authorization or by an in-network provider. *See John B. Consent Decree, paragraph 42(a).*

7. LEAs should (with parental consent) refer TennCare enrolled children for EPSDT screenings when the child is not up-to-date on his/her immunizations. TennCare is not permitted or required to inform the LEA that the child is a TennCare Enrollee but the Parent can notify the LEA that the child is a TennCare Enrollee. The child's MCC will be responsible for identifying whether or not the child's screenings are up-to-date and shall be responsible for providing screenings as needed. The MCC may share this information with the LEA only with parental consent. These screenings shall be provided by the child's PCP under contract with the MCC. When a LEA suspects that a TennCare enrolled child may have a particular medical or behavioral health problem and the child is up-to-date on his EPSDT screenings, the LEA should refer the child to the child's PCP for an EPSDT inter-periodic screening. The PCP will make arrangements for care and/or make recommendations to the MCC if he/she believes there is a need for additional diagnosis and/or treatment that is Medically Necessary.
8. TennCare shall provide transportation to and from appointments for services covered by TennCare when the enrollee does not have access to transportation services. *See John B. Consent Decree, paragraph 76.* DCS is responsible for routine transportation for children in DCS legal custody.
9. TennCare may not disqualify an eligible service for TennCare reimbursement solely because that service is provided in accordance with an IEP. *See 34 C.F.R. § 300.154(b)(1)(i).* Under their contracts with TennCare, the MCCs have the discretion to require that covered services be delivered by providers in the MCC networks, within the access standards required in their contracts with the state. There is no specific requirement that MCCs provide services in the schools if these services can be delivered by the MCCs' qualified-providers within the required access standards.
10. Children who are Inmates are not covered by TennCare. *See 42 C.F.R. § 435.1009* Children in a YDC may be covered under the provisions stated in *Grier Revised Consent Decree (Modified) C.15.f.*
11. TennCare, through its MCCs, is responsible for the management of medical/behavioral care and continuity of care for all its TennCare Enrollees including IDEA eligible children. Specific responsibilities include performance of reasonable health case management services, appropriate referral and scheduling assistance for enrollees needing specialty health care services, monitoring of enrollees with ongoing medical conditions, coordinated hospital and/or institutional discharge planning that includes post-discharge care as appropriate, maintenance of an internal tracking system which identifies the current preventive service screening status and pending due dates for each enrollee, and authorization of out-of-plan or out-of-state services which are Medically Necessary due to an emergency. *See Contractor's Risk Agreement between TennCare and MCC.* TennCare shall be responsible for each MCC coordinating EPSDT screenings and services, and shall provide case management services for children for whom case management is Medically Necessary. *John B. Consent Decree, paragraph 66(i).* The case management provided shall center on the process of collecting

information on the health needs of the child, making and following up on referrals as necessary, and activating the examination/diagnosis/treatment loop. *See John B. Consent Decree, paragraph 66(ii)*. The case management services must meet the needs of the child and cannot be used exclusively as a tool for prior authorization. *See John B. Consent Decree, paragraph 70*.

12. TennCare through its MCCs shall coordinate the delivery of covered MCC services with services offered by other state health agencies and shall attempt to make use of other public health, behavioral health, and educational programs and related programs such as Head Start to provide an effective child health program. TennCare will be responsible for the MCCs requesting the IEPs of enrollees who they know are IDEA eligible children and enrolled in each MCC. TennCare has developed the TennCare IEP Release Form to provide to LEAs that a Parent may use to consent to the release of Education Records consistent with HIPAA, HITECH, IDEA, FERPA and all applicable state and federal regulations. The LEA is responsible for sharing the IEP with the PCP after obtaining appropriate parental consent. *See Attachment Two - TennCare IEP Release Form*. TennCare will be responsible for its MCCs accepting the IEP indication of a medical problem or having the child tested further. Coordination by the MCC and LEA should be calculated to reduce gaps and overlaps in services. *See John B. Consent Decree, paragraph 81*.
13. The Member Services Division of TennCare will review all TennCare appeals by TennCare Enrollees regarding adverse actions, such as the denial, delay, termination, suspension, or reduction of Medical Assistance by the MCC. Appeals will be handled in accordance with procedures outlined in applicable state rules and as required by the *Grier Revised Consent Decree (Modified)*. *See TN Rules & Regs. Chap. 1200-13-13-.11 and 1200-13-14-11*.
14. TennCare, through its MCCs, will train TennCare Providers concerning EPSDT requirements. TennCare will be responsible for its MCCs providing appropriate technical assistance to TennCare Providers in the coordination of services for children who are IDEA eligible.
15. TennCare pays residential costs for Medicaid-eligible children residing in Developmental Centers through the ICF/MR program.

D. Department of Children's Services

1. No Child with a Disability shall be denied Special Education and Related Services in the Least Restrictive Environment because of his/her status as a child in state Custody. For the purposes of the Department of Children's Services (hereinafter "DCS") and this section of the Agreement, Least Restrictive Environment means the placement that is no more restrictive than is necessary to meet the treatment and security needs of the student.
2. Placement in DCS Custody is court ordered due to dependency and neglect, unruliness or delinquency, and is not an educational placement. DCS develops a permanency plan for each child that includes education, behavior, personality, family and testing results. If the child is IDEA eligible or needs to be referred for testing, this will be indicated on the permanency plan. DCS will determine once

treatment and clinical placement is made whether it is appropriate for the child to attend a public school or otherwise. *See Brian A. vs. Sundquist.*

3. The provision and cost of Special Education and Related Services for a Child with a Disability in DCS Custody and living in a Foster Home shall be provided for in the following manner:
 - (a). The LEA where the child is residing shall be the LEA for a child living in a Foster Home. The LEA shall have primary responsibility for fulfilling the requirements of IDEA. *See Article Four, Section B. - LEA. Also see T.C.A. §37-1-130.*
 - (b). DCS shall refer the child to the LEA where the child is residing to evaluate the child for, or confirm current, eligibility for IDEA *T.C.A. §37-1-130(a)(2)(B)*. The LEA shall convene an IEP Team meeting to determine IDEA eligibility and develop and implement an IEP if appropriate. *See Article Four, Section B. - LEA.*
 - (c). A DCS representative shall be present at the IEP Team meeting of an IDEA eligible child in DCS Custody. However, the DCS employee or a DCS provider employee may not sign the IEP as a Consenting Parent. If a Parent cannot be located, or parental rights have been terminated, the LEA will appoint a Surrogate Parent. The Surrogate Parent, when representing the child's educational interests, shall have the same rights as Parents of children who are IDEA eligible.
 - (d). DCS shall be financially responsible for the room and board of children in Foster Homes.
 - (e). DCS is not responsible for cost of residential placement recommended by any non-DCS LEA/IEP Team.

4. The provision and cost of Special Education and Related Services for a Child with a Disability in DCS Custody, living in a Residential Facility that does not maintain an on-site school, or there has been a Child and Family Team (CFT) decision pursuant to *DCS Policy 21.20* to place a child into a public school. Rather than an In-House School pursuant to *DCS Policy 21.20*, shall be provided for in the following manner: *See T.C.A. §37-1-130-(a)(2)(B). See also (Brian A. vs. Sundquist).*
 - (a). The LEA where the child is residing shall have primary responsibility for fulfilling the requirements of IDEA. *See Article Four, Section B - LEA.*
 - (b). DCS shall refer the child to the LEA to evaluate the child, or confirm current IDEA eligibility. The LEA shall convene an IEP Team meeting to determine eligibility and develop and implement an IEP, if appropriate.
 - (c). A DCS representative shall be present at the IEP Team meeting of a IDEA eligible child in DCS Custody. However, the DCS employee or a DCS provider employee may not sign the IEP as a consenting Parent. If a Parent cannot be located, or if parental rights have been terminated, the LEA will appoint a Surrogate Parent. The Surrogate Parent, when representing the child's educational interests, shall have the same rights as Parents of children who are IDEA eligible.
 - (d). DCS is not responsible for cost of residential placement recommended by any non-DCS LEA/IEP Team.
 - (e). Any decision by DCS to place a child into a Residential Facility is a treatment or clinical placement and is not an educational placement pursuant to the IDEA.

- (f). DCS shall pay the residential costs for children in DCS Custody who are placed by DCS into such Residential Facilities.
5. The provision and cost of Special Education and Related Services for a Child with a Disability in DCS Custody, living in a Residential Facility and attending an In-House School pursuant to *DCS Policy 21.20* shall be provided for in the following manner:
- (a). DCS may at the election of the DCS Commissioner serve as the LEA for children who are in the Custody of DCS and who reside in such Residential Facilities and attend an In-House School. *See T.C.A. §37-5-119.*
 - (b). DCS shall provide for the costs of Special Education and Related Services for such an IDEA eligible child in DCS Custody who resides in such a Residential Facility and attends an In-House School after a *DCS Policy 21.20* analysis is applied. *See T.C.A. §37-5-119.*
 - (c). In accordance with IDEA, DCS, as the LEA, shall ensure that an IEP Team meeting is convened to determine eligibility and develop and implement an IEP commensurate with the child's Permanency Plan, if appropriate.
 - (d). DCS will pay for an evaluation to determine if a child in its Custody and living in a Residential Facility may be IDEA eligible.
 - (e). The financial responsibility of other Participating Agencies to provide services in the child's IEP will not be altered because the IDEA eligible child is being educated in a Residential Facility.
 - (f). DCS shall pay the residential costs for children in DCS Custody who are placed by DCS into such Residential Facilities except to the extent otherwise addressed in this Agreement.
 - (g). DCS is not responsible for costs of any residential placement recommended by any non-DCS LEA/ IEP Team.
 - (h). Any decision by DCS to place a child into a Residential Facility is a treatment or clinical placement and is not an educational placement pursuant to the IDEA.
6. The provision and cost of Special Education and Related Services for an IDEA eligible child in DCS Custody and placed by DCS, in a Youth Development Center (YDC) shall be paid or in the following manner:
- (a). DCS shall serve as the LEA for children who are in the Custody of DCS and reside in YDC. *See T.C.A. §37-5-119.* DCS shall assume the cost of Special Education and Related Services for a child who is IDEA eligible who resides in a YDC.
 - (b). In accordance with IDEA, or after confirmation of prior eligibility, DCS, shall convene an IEP Team meeting to determine eligibility and develop and implement an IEP commensurate with the child's Permanency Plan, if appropriate.
 - (c). DCS will provide an evaluation to determine if a child in its Custody and living in a YDC is IDEA eligible.
 - (d). The financial responsibility of other Participating Agencies to provide services in the child's IEP will not be altered because the IDEA eligible child is being educated in a YDC except that the child may not be eligible for TennCare unless there is in-patient hospitalization. *See Grier Revised Consent Decree, (Modified) C.15.f.(i), and (iii) and Article Four Section D13.*

7. In order to expedite the provision of Special Education and Related Services to any IDEA eligible child who is in DCS Custody, a school formerly serving the child shall provide DCS and the receiving school with the child's Education Records within fourteen (14) calendar days of receipt of the request unless there is a critical need to expedite forwarding of the records. Such records shall at a minimum include the child's IEP and all evaluations which were used to assess the child's IDEA eligibility. However, failure to receive Education Records does not suspend the responsibility of DCS to provide a Child with a Disability FAPE in the Least Restrictive Environment. Nothing in this provision is meant to supersede the requirements of FERPA, state and federal law and the regulations promulgated therein. When an IDEA eligible child in DCS Custody transitions into a non-DCS LEA, DCS will provide the LEA with the Education Records of the child consistent with IDEA and FERPA within fourteen (14) calendar days of receipt of the request unless there is a critical need to expedite forwarding of the records. *See also DCS Policy 21.19.* However, failure to receive Education Records does not suspend the responsibility of any school to provide a Child with a Disability FAPE in the Least Restrictive Environment.
8. When it appears that an IDEA eligible child who is in DCS Custody can be returned to the community, pursuant to *T.C.A. §37-1-130* DCS whenever possible shall facilitate the child's transition to the LEA in the following manner:
 - (a). DCS shall notify the LEA that it intends to enroll the child in the LEA. DCS and the LEA will work together to determine an appropriate placement. A DCS employee shall attend an IEP Team meeting to assist the LEA in determining the most appropriate educational placement. However, a DCS employee or DCS provider employee shall not sign the IEP as Parent.
 - (b). The LEA shall be responsible for providing and paying for Special Education and Related Services for the IDEA eligible child. The absence of a DCS employee at the IEP Team meeting does not relieve that agency from any responsibilities imposed by this section.
 - (c). DCS is not responsible for cost of any residential placement recommended by any non-DCS LEA/IEP Team.
9. Medical services for children in DCS custody shall be paid for as follows:

TennCare is responsible for the payment of all covered Medically Necessary services to children in DCS Custody who are TennCare Enrollees, except children who are Inmates as defined herein *TN Rules & Regs. Chap. 1200-13-13-.01 and 1200-13-14-.01* and as clarified in *Grier Revised Consent Decree (Modified) C.15.f.(i), (ii), and (iii)*. A Child placed in a YDC who is admitted to inpatient hospitalization may access TennCare benefits for the inpatient hospitalization. Medical Services are provided by the assigned MCC. DCS provides residential treatment services to children in DCS Custody as determined by the Family and Child Team (CFT) and such are not educational placements.
10. As mandated by IDEA, federal and state law and regulations, DOE will monitor all Special Education programs, services in all DCS facilities, Youth Developmental Centers, and Residential Facilities using appropriate monitoring procedures. DOE will assist DCS in providing technical assistance and in-service training to DCS staff, family service workers, and Residential Facility school administration and teachers in identified areas of need relating to Children with Disabilities. DCS shall

work with Residential Facility school staff and faculty in identifying training needs. DOE, through its monitoring efforts, shall also assess areas needing improvement and coordinate technical assistance through DCS. DOE will request a corrective action plan (CAP) from any school for which it has identified deficiencies through its monitoring and/or compliance efforts. *See Article Four Section A-DOE.*

11. The Member Services Division of TennCare will review all TennCare appeals by TennCare Enrollees regarding adverse actions, such as the denial, termination, delay, suspension, or reduction of TennCare services for a child in DCS Custody. *See TN Rules & Regs. Chap. 1200-13-13-.11 and 1200-13-14-.11, and See Grier Revised Consent Decree (Modified).* Children in DCS Custody not in consensus with the determination of the Child and Family Team (CFT) regarding residential treatment services to be provided by DCS may appeal to Member Services. Notice of this right is provided at the Child and Family Team Meeting (CFTM) where the determination regarding the provision of residential behavioral health services is made.
12. For children who are TennCare Enrollees in DCS Custody, DCS is responsible for providing Medically Necessary Residential Treatment services. TennCare, through its MCCs, provides these services for non-custodial children. DCS is responsible for routine transportation for children in DCS Custody.

E. Department of Mental Health and Substance Abuse Services

1. No eligible child shall be denied Special Education and Related Services in the Least Restrictive Environment due to his/her status as a child hospitalized in a Regional Mental Health Institute (RMHI). Hospitalization in a RMHI must meet the requirements of one of the applicable state statutes governing psychiatric hospitalization and is not an educational placement. The RMHIs only serve individuals age eighteen (18) and older. A child must be admitted by a physician pursuant to state statutes (*See T.C.A. Title 33, Chapter 6, Parts 2, 4, 5 and 6; T.C.A. §33-3-401, §33-3-412, §33-3-607, §33-7-301, §33-7-303, §33-9-101, et seq., and §37-1-128*). TDMHSAS will provide psychiatric care for all children hospitalized in a RMHI, as provided in state and federal law. RMHI are not LEAs. All educational placements must remain with the child's IEP Team.
2. If an IDEA eligible child is hospitalized in one of the RMHIs the LEA will ensure that the child receives FAPE in the least restrictive environment. The local LEA will convene an IEP Team meeting to determine eligibility, and develop and implement an appropriate IEP in accordance with IDEA and all applicable state and federal regulations. The LEA is responsible for the cost and provision of special education and related services. The RMHI shall provide the LEA with suitable space in which to provide these services, if needed. All other costs associated with the child's hospitalization in the RMHI shall be paid in accordance with *T.C.A. Title 33, Chapter 2, Part 11 (Costs in State Facilities)*.
3. If it appears that a child who is IDEA eligible who is hospitalized in a RMHI can be provided an appropriate educational program in a less restrictive environment, a representative from the LEA serving the geographical area where the RMHI is

located shall convene an IEP Team meeting to determine the most appropriate educational placement. If the IEP Team determines that the child can be provided FAPE in a less restrictive environment, the child will be enrolled in the LEA where the RMHI is located. The LEA serving the geographic area where the RMHI is located shall be responsible for providing special education and related services under IDEA. The financial responsibility for the child's IDEA services shall be with the LEA where the child attends school. All other costs associated with the child's hospitalization shall be paid in accordance with *T.C.A. Title 33, Chapter 2, Part 11 (Costs in State Facilities)*.

4. TDMHSAS shall have no responsibility for the costs of Special Education and Related Services under IDEA for a child in an RMHI, or when an IDEA eligible child has been discharged from a RMHI.
5. Nothing in this Agreement is meant to alter or abrogate any contractual agreement between TDMHSAS and other parties or agencies regarding the provision of inpatient hospitalization.
6. The Member Services Division of TennCare will review all TennCare appeals by TennCare Enrollees regarding adverse actions, such as the denial, delay, termination, suspension or reduction of mental health services for a child who is receiving mental health services in a RMHI. *See TN Rules & Regs. Chap. 1200-13-12-.11 and 1200-13-14-.11 See Grier Revised Consent Decree (Modified)*.

F. Department of Health

1. Department of Health (TDH) programs that may serve Part B IDEA eligible children in need of medically necessary services include the Maternal and Child Health (MCH) Title V programs of Children's Special Services (CSS), and child health EPSDT services. These programs support children in an educational setting and may need to be included in the IEP. Other TDH programs that may provide services to Part B IDEA eligible children include Traumatic Brain Injury, Hemophilia, Ryan White, and Renal. TDH services are not an entitlement program.
2. TDH ensures that department personnel in child health programs shall be trained to make appropriate referrals for Part B IDEA eligible children in need of medically necessary and related services. TDH shall also provide families and staff with information regarding Child Find, services for children with disabilities, and information about the types of services that may support a student in an educational setting.
3. TDH programs that provide services to include Part B IDEA eligible children identified eligible for CSS will appropriately document the type and amount of service and/or reimbursement provided for the IDEA eligible child as determined by the IEP. When notified of an IEP meeting by the LEA, the TDH program representative or authorized representative shall participate on the IEP team meeting to assist in the process and advise with respect to the amount and type of services to be provided or reimbursed by the TDH program. All services provided or reimbursed must meet the CSS program rules and regulations, scope of service and policy.

4. To the extent that funding is available, and to the extent that all other funding sources have been exhausted, payment for Part B IDEA services which are determined necessary by the IEP Team that are appropriately documented on the IEP for which a child is eligible under MCH or TDH programs will be the financial responsibility of TDH. In the event no third party payors are available, reimbursement for covered services shall be in accordance with the controlling statute and rules of the applicable TDH program. *TN Rules & Regs. Chap. 1200-11-01, 1200-11-3-.05 and 1200-14-02.*
5. CSS provides reimbursement for medical necessary services for Part B IDEA eligible children who meet financial and diagnostic eligibility guidelines in accordance with the CSS programmatic rules and regulations. CSS may provide services that have been denied by, or not covered by, other third party payors, but that are considered to be “medically necessary” by the CSS program and the child’s provider, and supersedes other department rules and regulations in accordance with the current CSS rules and regulations. Care Coordination services are provided to children who meet the diagnostic and financial eligibility guidelines and may be limited by CSS funding. The CSS program does not provide Part B IDEA services other than those related to medical treatment, audiological assessment, physical therapy, occupational therapy, speech-language therapy, limited DME, and limited medications. These services are provided to the extent that funding is available. CSS is not an entitlement program.

G. Department of Intellectual and Developmental Disabilities

1. DIDD provides services for children with Intellectual Disabilities through the Home and Community Based Services (HCBS) Waiver, for children having been diagnosed with Intellectual Disabilities, the DIDD Self Determination Waiver and limited state funded services (which are only provided based upon current resources and subject to the sole discretion of DIDD.) For purposes of this Agreement, these waivers and state funded services shall be collectively referred to as the “DIDD Waiver”, and where the acronym “DMRS” or “DIDD” appears in the documentation of such waivers and services, it is understood that “DIDD” will be substituted in its place. Access into the DIDD Waiver is not guaranteed and is subject to and limited to available funds and resources through state and federal appropriations. **DIDD programs and services are not an entitlement.**
2. If an IDEA eligible child is residing in an ICF/ID (Intermediate Care Facility for the Intellectually Disabled), the LEA will ensure that the child receives FAPE in the least restrictive environment. The LEA will convene an IEP Team meeting to determine eligibility, and develop and implement an appropriate IEP in accordance with IDEA and all applicable state and federal regulations. The LEA is responsible for the cost and provision of special education and related services. Medicaid pays the residential costs for Medicaid-eligible children. TennCare pays residential costs for Medicaid-eligible children residing in an ICFID (Intermediate Care Facility for the Intellectually Disabled).
3. For children served in the DIDD waiver, the LEA where the child is residing will provide Special Education and Related Services if the child is IDEA eligible.

While there are no age requirements associated with the DIDD Waiver, a person who is twenty-two (22) years of age or has a high school diploma and who is no longer eligible to receive services under IDEA shall be eligible to qualify for day habilitation or supported employment services.

4. Everyone in the DIDD Waiver may have an Independent Support Coordinator (ISC) administered by DIDD. The ISC or case manager shall attend the IEP Team meeting of an IDEA eligible child. At the IEP Team meeting, the ISC will work with the other team members to assure that the Individual Support Plan (ISP) and the IEP complement each other so that the child is provided with a comprehensive and effective set of services and supports. DIDD, in collaboration with DOE, will provide technical assistance to Parents, case managers, and ISCs regarding the IEP development process.
5. As part of the IEP Team process, the LEA should notify DIDD when it believes a child is eligible and may benefit from DIDD services and supports. Consistent with IDEA, the LEA shall be responsible for inviting a DIDD representative to a child's IEP Team meeting when the child reaches age fourteen (14), to facilitate planning for the child's transition from school services to adult services. The DIDD Waiver funded services for which an IDEA eligible child qualifies should be stated in the child's ITP at age sixteen (16). The IEP/ITP will be updated annually. See *Article Four Section B. - LEA*.
6. The Member Services Division of TennCare will review as appropriate TennCare appeals by TennCare Enrollees regarding adverse action, such as the denial, delay, termination, suspension or reduction of DIDD waiver services. *TN Rules & Regs. Chap. 1200-13-13-.11 and 1200-13-14-.11 See Grier Revised Consent Decree (Modified)*.

H. Department of Human Services, Division of Rehabilitation Services

1. The Department of Human Services, Division of Rehabilitation Services (DHS/DRS) shall provide vocational rehabilitation employment services for individuals with disabilities who meet the DHS/DRS eligibility criteria and have a desire to become employed. DHS/DRS is not an entitlement program. Services funded by state appropriations, matched with federal funds are provided to those who are eligible in proportion to the availability of funds. If a public entity other than DHS/DRS is required under federal or state law, state policy, or interagency agreement to provide or pay for any vocational rehabilitation employment services, that public entity must provide or pay for those services or make arrangements for them to be paid before DHS/DRS is obligated to do so.
2. For the purpose of providing outreach for students with disabilities, Vocational Rehabilitation staff shall maintain a working relationship with special education supervisors, vocational education supervisors, directors, and secondary school guidance counselors and provides technical assistance to school personnel to assist the LEAs to prepare students with disabilities for career opportunities. Also, for the purpose of providing information regarding vocational rehabilitation employment services, Vocational rehabilitation staff shall participate in in-service training programs of the Local Education Agencies (LEAs) and in statewide special

education conferences. Vocational rehabilitation staff shall participate in local community job fairs, job clubs, and attends civic club/ organization meetings to inform students and parents of the purpose of the vocational rehabilitation employment program, the application procedures, the eligibility requirements, and the potential scope of services that may be available. An individual with a disability may be self-referred to DHS/DRS or may be referred by another individual or agency. Referrals may be made by contacting a rehabilitation services office in person, by mail, e-mail or by telephone.

3. An individual is eligible for assistance if he or she is an individual with a disability and requires vocational rehabilitation employment services to prepare for, secure, retain, or regain employment. *See 34 C.F.R. §361.42(a)*. For DHS/DRS purposes, an individual with a disability means any individual who: 1) has a physical or mental impairment that constitutes or results in a substantial impediment to employment for that individual; and 2) can benefit in terms of an employment outcome from vocational rehabilitation employment services. *See 34 C.F.R. §361.42(a)*. The determination of eligibility for vocational rehabilitation employment services shall be based on existing and current information from other programs and providers, the individual and his family. To the extent that such data is unavailable or insufficient for determining eligibility, DHS/DRS may secure the necessary evaluations to make a determination.
4. Eligibility determinations will be made by DHS/DRS counselors.
5. To the extent possible, DHS/DRS personnel shall conduct transition planning with the educational agency for DRS eligible students with disabilities that facilitates the development and completion of their individualized education programs (IEP) under *Section 614(d)* of the Individuals with Disabilities Education Act. DHS/DRS shall provide consultation and technical assistance to assist educational agencies in planning for the transition of DRS eligible students with disabilities from school to post-school activities leading to employment. A vocational rehabilitation services counselor may participate in the IEP meeting to the extent possible when requested by the LEA. The counselor will assist in the formulation of an IEP/ITP and secure a copy of the IEP/ITP for the student's DHS/DRS case record.
6. If at any time a student is determined to be at risk of dropping out of school, or at least twelve (12) to eighteen (18) months prior to the projected date of graduation, the LEA shall provide to DHS/DRS the most current copies of medical, psychological, vocational, and social evaluations/records and all other available information needed for establishing eligibility and identifying the vocational rehabilitation employment needs of each student referred for services. If the information is not appropriate, DHS/DRS may secure other medical or psychological information to be used in making an eligibility/ineligibility determination.
7. When DHS/DRS determines that a student with a disability is eligible for Vocational Rehabilitation Employment Services, the student, and the student's Parent/guardian if appropriate, shall develop an Individualized Plan for Employment (IPE), with the assistance of a vocational rehabilitation services counselor or other technical assistance as required. The IPE shall include the specific employment outcome chosen by the student, consistent with the student's

unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, in an integrated setting to the maximum extent appropriate. It shall include a description of vocational rehabilitation employment services to be provided by DHS/DRS, and timelines for initiation of services and achievement of the employment outcome. Also included are the vendors and method of procuring services, criteria to evaluate progress, and the terms and conditions of the IPE. If applicable, information about any projected need for rehabilitation technology, personal care assistance, supported employment, or post-employment services shall be included.

8. DHS/DRS shall coordinate Transition Services to high school students with disabilities, who meet DHS/DRS eligibility criteria, and who desire to become employed after leaving high school, as early as possible but no later than, twelve (12) to eighteen (18) months prior to their exit from school to assist them in gaining employment. Transition services are provided by the Vocational Rehabilitation program led by Vocational Rehabilitation Counselors. A vocational rehabilitation counselor shall assist in coordinating services including vocational evaluation, training, job placement, and other services either directly, or through referral to appropriate agencies. The types of services provided are based on the needs of the individual. DHS/DRS shall coordinate and/or provide vocational rehabilitation employment services, which may consist of training and job placement, and participate in public and professional awareness activities regarding availability of services.
9. DHS/DRS shall provide vocational rehabilitation employment services to eligible individuals, provided funding is available. These services include any services listed in an IPE necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. DHS/DRS shall provide Assessment activities and coordinate program planning. Any services provided by DHS/DRS are available only to the extent that they relate to an employment outcome.
10. DHS/DRS is not an entitlement program and provides services to eligible individuals who want to go to work. Some services are based on an economic needs test that takes into account the number of family members living in the home and available family financial resources. Services which may be provided regardless of financial need include: diagnostic exams, counseling and guidance, maintenance and/or transportation necessary to determine eligibility, job placement, personal/work adjustment, supported employment, orientation and mobility training services, reader, interpreter, translator, attendant or job coaching services, and services provided by the Tennessee Rehabilitation Center. However, some services currently provided without cost, may be subject to modified regulations of the Division of Rehabilitation Services in the future so that economic need may be considered in providing such services. Other services available are provided in proportion to the financial resources of the student/family.
11. DHS/DRS is required by state laws and regulations *T.C.A. § 71-1-105; T.C.A. § 49-11-601* and by federal law and regulations (*29 U.S.C. 721(a)(5)(A)*) as amended, and *34 C.F.R. §361.36* to maintain an order of selection when providing employment services to persons meeting the basic guidelines for eligibility. The

vocational rehabilitation services order of selection is designed to ensure that persons with the most significant disabilities receive a higher priority for services. With limited funds and resources, DHS/DRS may not be able to provide employment services to all eligible individuals who apply for services. In keeping with the *Rehabilitation Act of 1973* as amended, DHS/DRS developed an order of selection. It outlines which eligible individuals can be served when limited funds will not allow all eligible individuals to be served. Services and expenditures will be closely monitored on a continuous basis to enable DHS/DRS to close or open priority categories as deemed appropriate. This will allow DHS/DRS to manage available funds to assure services are continued for eligible cases receiving employment services under an Individualized Plan for Employment. Additionally, adequate funds shall be conserved to provide assessment services for all expected applicants throughout the year to determine eligibility and to provide services for those eligible individuals placed in an open priority category in the order of selection. The DHS/DHR order of selection is developed in accordance with *34 C.F.R. 361.36*.

12. When an applicant for vocational rehabilitation employment services or an individual receiving vocational rehabilitation employment services is dissatisfied with any action concerning the furnishing or denial of these services, the individual or his representative may file a request for an informal administrative review, mediation, or fair hearing at the nearest vocational rehabilitation office within thirty (30) working days of their disagreement or unfavorable treatment by DHS/DRS. *See T.C.A. §49-11-612 and TN Rules & Regs. Chap. 1240-5-1-.05(7)*. A Client Assistance Program is available to provide assistance in informing and advising all applicants for services of available benefits under the Rehabilitation Act of 1973 as amended. Upon request the Client Assistance Program may assist each individual in his/her pursuit of services provided under the Rehabilitation Act of 1973 as amended, including assistance in pursuing legal, administrative, or other appropriate remedies to ensure the protection of rights under the Rehabilitation Act of 1973 as amended.

I. Department of Correction

1. A child's commitment to TDOC Custody is made pursuant to order of the Criminal Court, upon conviction as an adult for a felony offense, or for safekeeping pending disposition of charges, pursuant to *T.C.A. §41-4-121*. Commitment to TDOC custody is not an educational placement.
2. TDOC inmates are assessed for classification upon intake and periodically thereafter, as needed, but no less than annually. Inmate classification determines an inmate's program and placement needs with respect to security, healthcare needs, work, training, educational, or social service needs. In accordance with *TDOC Policy #117.07* the Tennessee Department of Correction (TDOC) shall provide for additional assessments for inmates under the age of twenty-two (22) who have not completed high school or obtained a GED. Special Education services shall be made available to eligible inmates in accordance with the Tennessee Department of Education Special Education Procedural Manual.
3. For the purpose of this Agreement TDOC Custody does not include:

- (a). Offenders who reside in the community, under supervision by the Board of Probation and Parole (BOPP). Special Education services for felony offenders under BOPP supervision shall therefore be the responsibility of the respective LEA or.
 - (b). Offenders who are housed in county detention facilities. Pursuant to *T.C.A. §41-4-101 et seq.*, such local detention facilities are responsible for the ordinary incidents of care and custody of inmates housed therein, including support and healthcare, subject to reimbursement for costs from the state's general appropriations, as provided by *T.C.A. §41-8-106*. Special Education services for felony offenders housed in county detention facilities shall therefore be the responsibility of the respective LEA.
- 4. No Child with a Disability in TDOC Custody shall be denied Special Education and Related Services in the Least Restrictive Environment solely because of his/her status as an inmate in Tennessee Department of Correction (TDOC) Custody. Particular limitations on FAPE or related activities may apply, however, as provided by law.
 - (a). The obligation to make FAPE available to all Children with Disabilities does not apply to students ages eighteen (18) to twenty-one (21) if, prior to incarceration in an adult correctional facility, the students were not actually identified as being IDEA eligible and did not have an IEP, as provided in *34 C.F.R. 300.102*.
 - (b). For the purposes of TDOC and this section of the Agreement, Least Restrictive Environment means the placement that is no more restrictive than is necessary to meet the treatment and security needs of the student. As governed by IDEA, all educational placements, and Special Education, and Related Services decisions remain with the child's IEP Team when the child is placed in state Custody. In accordance with *34 C.F.R. 300.324*, however, a student's IEP or placement may be modified when TDOC has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
- 5. The following requirements of IDEA do not apply to children in TDOC Custody, as per *34 C.F.R. 300.324(d)*:
 - (a). Requirements relating to participation of Children with Disabilities in general Assessments, and
 - (b). Requirements relating to 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.
- 6. The provision of Special Education and Related Services for an IDEA eligible child incarcerated in an adult TDOC institution, including contract prison facilities authorized pursuant to *T.C.A. §41-24-101 et seq.*, shall be performed in the following manner:
 - (a). TDOC shall serve as the LEA for children in the Custody of TDOC and who are incarcerated in an adult institution as described above. TDOC or its facility contractor under TDOC's oversight shall assume the cost of Special Education and Related Services for an IDEA eligible child incarcerated in an adult institution.

- (b). TDOC shall provide for Assessments for inmates under the age of twenty-two (22) who have not completed high school or obtained a GED. Special Education services shall be made available to eligible inmates in accordance with the Tennessee Department of Education Special Education Procedural Manual.
 - (c). The determination of eligibility for Special Education services shall be made by appropriate persons as outlined in the TDOC Special Education Procedural Manual and the Tennessee Department of Education Rules and Regulations. In accordance with IDEA, TDOC, as the LEA, shall convene an IEP Team meeting to determine eligibility and develop and implement an IEP.
- 7. In order to expedite the provision of Special Education and Related Services to any IDEA eligible child in TDOC Custody, the LEA formerly serving the child shall provide TDOC with the child's Education Records within fourteen (14) calendar days of receipt of the request unless there is a critical need to expedite forwarding of the records. The former LEA providing the child's Special Education and Related Services should forward to TDOC the child's IEP and all evaluations which were used to assess the child's IDEA eligibility. However, failure to receive Education Records does not suspend the responsibility of TDOC to provide a Child with a Disability FAPE as required by law. Nothing in this provision is meant to supersede the requirements of FERPA, state and federal law and the regulations promulgated therein.
- 8. In applicable circumstances, when an IDEA eligible child is discharged from TDOC Custody, TDOC will notify (DOE) Division of Special Education of the child's pending discharge and identify the LEA where the student will be attending school. When a child in TDOC Custody transitions into the LEA, TDOC will provide the LEA with the Education Records of the child consistent with IDEA and FERPA. TDOC shall provide the LEA with the Education Records of IDEA eligible children transitioning to the LEA within fourteen (14) calendar days of receipt of the request from the LEA unless there is a critical need to expedite forwarding of the records. However, failure to receive Education Records does not suspend the responsibility of the LEA to provide FAPE. Nothing in this provision is meant to supersede the requirements of the FERPA, state and federal law and the regulations promulgated therein.
- 9. As mandated by IDEA, federal and state law and regulations, DOE will monitor all Special Education programs and services in all TDOC facilities and contract prison facilities using appropriate monitoring procedures. DOE will assist TDOC in providing technical assistance and in-service training to TDOC staff, caseworkers, and contract facility administration and teachers in identified areas of need relating to Children with Disabilities. TDOC shall work with contract facility staff and faculty in identifying training needs. DOE, through its monitoring efforts, shall also assess areas needing improvement and coordinate technical assistance through TDOC. As the LEA, TDOC shall be responsible for submitting a corrective action plan (CAP) to respond to any areas of deficiencies identified by DOE through its monitoring and/or compliance efforts.

Article Five IDEA Part C Services

Early Intervention System

The mandate of IDEA Part C is to develop a comprehensive, interagency, multidisciplinary, family centered and community based services system that is accessible to all infants and toddlers birth to age three (3) with disabilities and their families. In Tennessee, this system is named the Tennessee's Early Intervention System (TEIS). The purpose of this Agreement is to specify the financial responsibility of each Participating Agency and establish procedures for achieving timely resolution of both Intra-agency Disputes and Interagency Disputes. *See 34 C.F.R. §303.511.*

A. Collaboration

1. Each Participating Agency, to the extent required by state or federal law, shall assist in the ongoing development and implementation to benefit all IDEA eligible Infants or Toddlers with Disabilities and their families. Each Participating Agency, to the extent required by state or federal law, shall facilitate and assist the coordination of payments for Early intervention Services from all public and private sources to enhance the state's capacity to provide quality Early Intervention Services and to expand and improve existing services. *See 34 C.F.R. §303.1.*
2. Each Participating Agency, to the extent required by state or federal law, agrees to support the ongoing development of policies and procedures which will provide all Infants or Toddlers with Disabilities and their family's timely and efficient access to appropriate service coordination, evaluations, referrals, services, transition planning, and implementation. Each Participating Agency, to the extent required by state or federal law, shall promote and support the implementation of such policies and procedures within their agency and contract providers to further assure compliance with federal statutes and regulations regarding Infants or Toddlers with Disabilities.
3. Each Participating Agency, to the extent required by state or federal law, shall conduct individual or coordinated efforts to provide information to the public regarding TEIS to include information on accessing the service system. Each Participating Agency, to the extent required by state or federal law, (on the state and local level), may provide information to be included in Tennessee's Central Directory of Services, The Disability Pathfinder, located at <http://kc.vanderbilt.edu/tnpathfinder/> and will, to the extent required by state or federal law, assist in the distribution of this Directory. *See 34 C.F.R. §§303.300-303.*
4. Each Participating Agency, to the extent by state or federal law, shall provide training and technical assistance to its service providers and, to the greatest degree appropriate, the staff of other Participating Agencies, regarding their roles and responsibilities in the provision of Early Intervention Services in accordance with IDEA Part C.

5. Each Participating Agency will be responsible for its Service Coordinators, as appropriate on the local level providing information regarding parental rights and procedural safeguards under IDEA to families of infants and toddlers who are IDEA Part C eligible and being served by their agency. Since the Service Coordinators are not parties to this Agreement, when a Participating Agency appoints a Service Coordinator to carry out the functions and obligations set forth herein, that Participating Agency is deemed to have oversight of its Service Coordinator and shall be responsible for the performance of such functions or obligations by its Service Coordinator as required herein.
6. Each Participating Agency, to the extent required by state or federal law, will be responsible for its services providers, as appropriate, submitting data to the lead agency (DOE) on an annual basis to fulfill the requirements of IDEA and its accompanying Federal Regulations for submission of the December 1 Child Count to the U.S. Department of Education/Office of Special Education Programs.
7. Each Participating Agency, to the extent required by state or federal law, shall assist the lead agency (DOE) in facilitating the monitoring of Early Intervention Services and programs to ensure quality and promote compliance with IDEA and federal and state regulations for services provided to infants, toddlers, and families that are Part C eligible. Each Participating Agency, to the extent required by state or federal law, shall incorporate IDEA Part C standards into their monitoring process so their programs, providers, and contract agencies will be in compliance with IDEA. DOE, as lead agency, shall receive, to the extent required by state or federal law, a copy of each Participating Agency's monitoring instrument and monitor its format to verify compliance with IDEA. DOE shall maintain the option to go on-site with each Participating Agency's monitoring team or to review the Participating Agency's monitoring report to fulfill DOE's Early Intervention System monitoring obligations under IDEA Part C. DOE also has the discretion to follow up with the programs, providers, and contract agencies to ensure the correction of any deficiencies and enforce the requirements of IDEA. *See 34 C.F.R. §303.700.*

B. Referral and Intake

1. Each Participating Agency, to the extent required by state or federal law, shall contribute to the development and implementation of a unified system of developmental screening and referral for infants and toddlers birth to three (3) years old. In order to facilitate referrals and developmental screenings, each Participating Agency, to the extent required by state or federal law, shall provide training and technical assistance to Primary Referral Sources who are required to refer any infant or toddler they suspect is experiencing Developmental Delay(s) to their local TEIS Point of Entry within seven (7) days after examining or observing the infant or toddler. *See 34 C.F.R. §303.303.*
2. DOE, in conjunction with TEIS, shall develop and disseminate Part C evaluation procedures and requirements to the Participating Agencies and potential providers and evaluators. DOE through TEIS will train or provide training to evaluators and providers to use the state's eligibility criteria, as outlined in the State's Early Intervention Plan. DOE through TEIS shall also implement uniform procedures for documenting results of the evaluations and assessments for the Individual Family

Service Plan (IFSP) Team. Supervision and monitoring activities conducted by DOE through TEIS will ensure timely evaluations and assessments of potentially eligible infants and toddlers.

3. When a Participating Agency finds, suspects, or receives a referral from a Primary Referral Source, the Participating Agency or its agent shall forward that referral immediately to the local TEIS Point of Entry to begin a multidisciplinary evaluation process to determine the infant or toddler's Part C eligibility. The multidisciplinary evaluation must include a minimum of two (2) disciplines. In every instance, the receiving agency will notify the TEIS district office of all infants and toddlers who are or potentially are Part C eligible. *See 34 C.F.R. §303.24.*
4. The TEIS Eligibility Coordinator will assign a developmental specialist to complete the eligibility evaluation for TEIS eligibility. The developmental specialist will evaluate the infant or toddler in the following five (5) developmental areas: adaptive skills, physical (including vision and hearing) development, communication skills, social/emotional development, and cognition. The multidisciplinary evaluation process must be completed and an IFSP meeting must be held within forty-five (45) calendar days from the date of receipt of the referral by the Primary Referral Source if the infant or toddler is found to be IDEA eligible. *See 34 C.F.R. §303.310(a).* Early Intervention Services and evaluations must be provided within a reasonable time period. Therefore, in order to provide evaluations and Early Intervention Services in a timely and efficient manner, DOE through TEIS may contract with appropriate providers or provide the needed evaluations and/or services in accordance with the Payor of Last Resort requirements. *See 34 C.F.R. §§303.510-521.* In order to receive reimbursement from TennCare, the service provider must be a TennCare provider for the MCC in which the child is enrolled. In addition; the necessary prior approvals must have been obtained from the TennCare MCC.

C. Provision of Services

1. Early Intervention Services must be provided in collaboration with Parents to meet the developmental needs of the infant or toddler. Qualified personnel shall provide these services in accordance with a current IFSP. Early Intervention Services shall be provided at no cost to Parents unless a system of sliding fees has been implemented by the Participating Agency or the lead agency (DOE). *See 34 C.F.R. §303.521.* The use of private insurance must be voluntary and must have consent in writing by the Parents. This written consent shall be obtained by a representative of the local TEIS Point of Entry. If the Parent consents to access private insurance for Early Intervention Services, Part C funds may be used to pay the family's copayment assessed by the insurance company. Each Participating Agency, to the extent required by state or federal law, shall promote the provision of Early Intervention Services to infants and toddlers to the greatest extent appropriate, in Natural Environments, including the home and community settings in which infants and toddlers without disabilities participate. *See 34 C.F.R. §303.126.*
2. Once an infant or toddler has been determined to be eligible for Early Intervention Services, the IFSP team will meet to develop a comprehensive plan of Early Intervention Services. The IFSP team will include the Service Coordinator, the

infant or toddler's Parents and other family members, as requested by the Parent, an advocate or person outside the family, if the Parent requests his/her participation, person(s) directly involved in conducting the evaluations and Assessments, and persons from the Participating Agencies who will be providing services to the infant, toddler or family, as appropriate. *See 34 C.F.R. §303.343.* The Service Coordinator may be the same Service Coordinator who was initially assigned to the infant or toddler during the evaluation process or may be someone different. The Service Coordinator shall be responsible for coordinating any additional evaluations and assessments, as necessary; facilitating the IFSP meeting and development of the IFSP; coordinating with medical and health providers; and coordinating and monitoring the delivery of the services indicated in the IFSP.

3. DOE, with the assistance of the other Participating Agencies, to the extent required by state or federal law, shall provide training and technical assistance to Service Coordinators to assist them in performing the requirements of service coordination particularly facilitating the interaction between families and service providers. DOE will establish a technical assistance system to support Service Coordinators and service providers. DOE is also responsible for monitoring service coordination.
4. The IFSP will include the payment arrangements, if any, and the location of the Early Intervention Services as well as the frequency, intensity, and method of delivering each service. *See 34 C.F.R. §303.344.* Services will be delivered in a family-centered manner. This includes allowing and encouraging full participation of the family in the planning and implementation of Early Intervention Services and to the greatest extent appropriate, providing services in Natural Environments and in a manner that incorporates those services into the family's normal lifestyle and routines.
5. Early Intervention Services, as defined in IDEA Part C and this Agreement, shall be available to IDEA eligible infants and toddlers as determined appropriate by the IFSP team. In addition to meeting the eligibility requirements of IDEA, an infant or toddler must also meet the eligibility requirements of the individual Participating Agencies to receive services from that agency.
6. The TEIS Service Coordinator shall ensure that transition planning begins no later than the date of the development of the infant or toddler's initial IFSP. Transition steps include the transmission of Child Find information about the child to the Local Education Agency (LEA) or other relevant agency. With parental consent, the Service Coordinator shall arrange for a transition planning conference no later than ninety (90) days prior to the toddler's third (3rd) birthday. *34 C.F.R. §303.344(h)* Families will be included in all aspects of transition planning. If a toddler is determined eligible for Part B/LEA services an IEP must be developed by the toddler's third (3rd) birthday. In lieu of an IEP, an IFSP, developed in accordance with Part C with appropriate modifications to meet Part B requirements, may be used with the concurrence of the Parent. In either case, the IEP or IFSP must be developed by the toddler's third (3rd) birthday.
7. Each Participating Agency, to the extent required by state or federal law, shall support the interdepartmental exchange of information as appropriate and in accordance with IDEA, and all other federal and state laws and regulations regarding confidentiality. DOE developed an authorization form for the

procurement and/or release of an infant or toddler's confidential records to assist in the effective provision of Early Intervention Services. The designated Service Coordinator will ensure that informed consent is obtained from the family before any information is shared. The family may revoke the consent at any time. All information will be released to the family's designated Service Coordinator who shall compile and maintain a complete service file for the child and family. *See Attachment Three - TEIS Release Form.*

D. Department of Education

1. DOE has been designated by the Governor as lead agency for the State's Early Intervention System mandated by IDEA. *See 34 C.F.R. §303.22.* Therefore, DOE shall pursue collaborative strategies with all other Participating Agencies that are part of the Early Intervention System. DOE, as lead agency, shall:
 - (a). Promulgate standards for Early Intervention Service provision;
 - (b). Ensure that IDEA Part C funds are used in accordance with the IDEA and are not used to replace or supplant any activities required under any other state and federal program. *See 34 C.F.R. §§303.225(a) and 501;*
 - (c). Provide technical assistance to Participating Agencies, service providers, and contract agencies that provide Early Intervention Services to ensure compliance with the provisions of IDEA Part C. *See 34 C.F.R. §303.120(a);*
 - (d). Monitor all Early Intervention Services and programs provided to infants and toddlers and their families that are Part C eligible whether or not they are supported by IDEA Part C funds. *See 34 C.F.R. §303.120(a); and*
 - (e). Ensure that disputes regarding payment or provision of services are resolved in a timely manner.

2. In addition to its responsibilities as lead agency, DOE shall provide and pay for Early Intervention Services documented on the family's IFSP for which there is no other responsible payor. *See 34 C.F.R. §303.510.* DOE's responsibility will be limited to the services specified under IDEA. Part C funds will not be utilized for payment for any service which is considered experimental in nature.

3. When a family consents to accessing its private insurance for Early Intervention Services, DOE will utilize Part C funds to cover deductibles and copayments to ensure that the services are provided at no cost to the family unless DOE establishes a system of sliding fees. If a TennCare enrollee is assessed a copayment, the LEA may pay that copayment. DOE funds cannot be used to supplement payment for services covered by any other program supported by federal, state, or local funds. *See 34 C.F.R. §303.521.*

4. When a family declines the use of private insurance for Early Intervention Services indicated on the IFSP for which there is no other responsible payor, DOE will secure the service(s), via the local TEIS office, from a provider who has agreed to provide the service in a manner and cost rate established by DOE. DOE shall assume the costs of these services only if it is in accordance with the Payor of Last Resort provisions of IDEA Part C and appropriately documented in a current IFSP. *See 34 C.F.R. §303.521.*

E. Department of Health

1. Although CSS is not a party to this Agreement, TDH is the Participating Agency with oversight of CSS. Therefore, whenever CSS is designated herein to carry out a specific function or is tasked with a specific obligation, it is understood by the parties hereto that TDH shall be responsible for such function or responsibility being performed by CSS.
2. Department of Health (TDH) programs that may have infants or toddlers in need of Early Intervention Services include the following Family Health and Wellness programs of Children's Special Services (CSS): Healthy Start; HUGS; WIC; and child health EPSDT services. Other TDH programs include Traumatic Brain Injury, Hemophilia, Ryan White, and Renal. TDH services are not an entitlement program.
3. TDH ensures that department personnel in child health programs shall be trained to make appropriate referrals for infants and toddlers potentially in need of Early Intervention Services and Related Services. TDH shall also provide enrolled families and staff with information regarding, Early Intervention Services.
4. TDH programs that provide services to infants and toddlers birth to three (3) years of age identified with a Developmental Delays and IDEA Part C eligible, will appropriately document the type and amount of service and/or reimbursement provided for the infant, toddler or family as determined by the IFSP. The TDH program representative or authorized representative shall participate on the IFSP team to assist in the process to determine the amount and type of service to be provided or reimbursed by the TDH program and to assist in the process to determine the Service Coordinator. All services provided or reimbursed must meet the CSS program rules and regulations, scope of service and policy.
5. To the extent that funding is available TDH will be financially responsible for payment of any Early Intervention Service which is determined necessary by the IFSP team, appropriately documented on the family's IFSP, and is a service for which the child and family are eligible under MCH or any other TDH programs.
6. CSS provides reimbursement for Medical Services for infants or toddlers who meet financial and diagnostic eligibility guidelines. CSS may provide services that have been denied by, or are not covered by, other third party payors but that are considered to be "Medically Necessary" by the CSS program and the child's provider. Care Coordination services are provided to children who meet the diagnostic and financial eligibility guidelines and may be limited by CSS funding. The CSS program does not provide Early Intervention Services other than those related to medical treatment, audiological assessment, physical therapy, occupational therapy, speech-language therapy, limited DME, and limited medications. These services are provided to the extent that funding is available. CSS is not an entitlement program.

**F. Department of Finance and Administration,
Division of Health Care and Finance Administration,
Bureau of TennCare**

1. TennCare contracts with MCCs to provide medical and behavioral care through networks of health care providers. TennCare monitors MCC compliance with TennCare Rules and that the MCCs are providing accessible, appropriate in-network providers to TennCare Enrollees. Although the PCPs are not parties to this Agreement, TennCare is the Participating Agency with oversight of PCPs through its contracts with the MCCs. Therefore, whenever a PCP is designated herein to carry out a specific function or is tasked with a specific obligation, it is understood by the parties hereto that TennCare through its MCCs shall be responsible for such function or responsibility being performed by the PCP.
2. Department of Human Services (DHS) shall perform TennCare eligibility determinations for children who apply for TennCare (other than those who apply for Supplemental Security Income through the Social Security Administration) and conduct EPSDT outreach to help TennCare Enrollees receive Medically Necessary care consistent with *John B. Consent Decree, paragraph 39(p)*.
3. Through its MCCs TennCare is responsible for providing EPSDT services for all children who are Medicaid eligible TennCare Enrollees under age of twenty-one (21). EPSDT services include:
 - (a). Periodic well-child screenings in accordance with the recommendations of the American Academy of Pediatrics;
 - (b). Medically Necessary health and behavioral health diagnostic services listed in *Section 1905(a) of the Social Security Act*; and
 - (c). Medically Necessary health and behavioral health treatment services, including “such other necessary health care, diagnostic services, treatment and other measures [described in *42 U.S.C. §1396d(a)*] ... to correct or to ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State Plan.” See *42 U.S.C. §1396d(r)(5)*; and *John B. Consent Decree, paragraph 9*. EPSDT services are based on the individual child’s medical, developmental, and behavioral health needs. No prior authorization by the MCC shall be required for a screening conducted by the child’s PCP, and the MCC shall provide all Medically Necessary covered services listed in *42 U.S.C. §1396d(a)* regardless of whether or not the need for such services was identified by a provider who received prior authorization or by an in-network provider. See *John B. Consent Decree, paragraph 41(m)*. TennCare (including its contractors, the MCCs) cannot impose limitations on covered EPSDT services other than Medical Necessity. This means that the state cannot set arbitrary limits of duration, scope, or cost of services under EPSDT. See *John B. Consent Decree, paragraph 57*. Under their contracts with TennCare, the MCCs have the discretion to require that TennCare covered services be delivered by the MCC network providers, as long as the networks are sufficient in size and scope to meet the access standards of the MCC contract with the state.
 - (d). For children in DCS custody, DCS is responsible for providing medically necessary residential treatment services. The MCC provide these services

for non-custodial children. DCS is responsible for transportation for children in DCS custody.

4. Any encounter with a health professional practicing within the scope of his/her practice is an inter-periodic screening. Any person such as an educator, Parent, or health professional who suspects a health problem may refer a child for an inter-periodic screening. An inter-periodic screening does not have to include any screening elements required for a periodic screening. No prior authorization by the MCC is needed for an inter-periodic screening conducted by a PCP, and the MCC will provide all Medically Necessary covered services listed in *42 U.S.C. §1396d(a)* regardless of whether or not the need for such services was identified by a provider who received prior authorization or by an in-network provider. *See John B. Consent Decree, paragraph 42.*
5. The child's MCC will be responsible for identifying whether or not the child's EPSDT screenings are up-to-date and shall be responsible for providing screenings as needed. These screens shall be provided by the child's PCP under contract with the MCC. When it is determined that a TennCare enrolled child may have a particular medical or behavioral health problem and the child is up-to-date on his EPSDT screenings, the child should be referred to the child's PCP for an EPSDT inter-periodic screen. The PCP will make arrangements for care and/or make recommendations to the MCC if he/she believes there is a need for additional diagnosis and/or treatment that is Medically Necessary.
6. Through its MCCs, TennCare will provide all covered Medically Necessary services listed in *42 U.S.C. §1396d(a)* including durable medical equipment (DME), for all children who are TennCare Enrollees, regardless of whether or not these children are IDEA eligible. TennCare shall provide transportation to and from appointments for services covered by TennCare when the enrollee does not have access to transportation services. *John B. Consent Decree, paragraph 76.* TennCare may not disqualify an eligible service for TennCare reimbursement solely because that service is provided in accord with an IFSP. *See 34 C.F.R. §303.520(a).* Under their contracts with TennCare, the MCCs have the discretion to require that covered services be delivered by providers in their networks, within the access standards required in their contracts with the state.
7. TennCare, through its MCCs is responsible for the managing of medical/behavioral care and continuity of care for all its TennCare Enrollees including IDEA eligible children. Specific responsibilities include performing reasonable preventive health case management services, appropriate referral and scheduling assistance for enrollees needing specialty health care services, monitoring of enrollees with ongoing medical conditions, coordinated hospital and/or institutional discharge planning that includes post-discharge care as appropriate, maintaining an internal tracking system which identifies the current preventive service screening status and pending due dates for each enrollee, and authorization of Medically Necessary out-of-plan or out-of-state Emergency Medical Services or Conditions. *See Contractor's Risk Agreement between TennCare and MCC.* TennCare will be responsible for each MCC coordinating EPSDT screenings and providing case management services to children for whom case management is Medically Necessary. *See John B. Consent Decree, paragraph 66(i).* The case management provided shall center on the process of collecting information on the health needs

of the child, making and following up on referrals as necessary, and activating the examination/diagnosis/treatment loop. *See John B. Consent Decree, paragraph 66(ii)*. The case management services must meet the needs of the child and cannot be used exclusively as a tool for prior authorization. *See John B. Consent Decree, paragraph 70*.

8. TennCare through its MCCs will attempt to coordinate the delivery of covered health and behavioral health services with services offered by other state health agencies and will attempt to make use of other public health, behavioral health, and educational programs and related programs such as Head Start. The MCCs are responsible for requesting the IFSPs of enrollees from the other programs if the MCC becomes aware that they are IDEA eligible children and are enrolled in that MCC. TEIS or the designated Service Coordinator is responsible for sharing the IFSP with the PCP after obtaining appropriate parental consent. *See Attachment Three – TEIS Release Form*. TennCare will be responsible for the MCCs accepting the IFSP indication of a medical problem or having the child appropriately tested. The MCC and Service Coordinator shall collaborate to reduce gaps and overlaps in services. *See John B. Consent Decree, paragraph 81*.
9. Consistent with the policies and procedures adopted by TennCare, DOE, and this Agreement, TEIS may seek reimbursement for covered Early Interventions Services provided to TennCare Enrollees if TEIS or its providers have a provider contract with the TennCare MCC.
10. The Member Services Division of TennCare will review all TennCare appeals by TennCare Enrollees regarding adverse action, such as the denial, delay, termination, suspension, or reduction of Medical Assistance by the MCC. Appeals will be handled in accordance with procedures outlined in applicable State rules and as required by the *Grier Revised Consent Decree (Modified)*. *See TN Rules & Regs. Chap. 1200-13-13-.11 and 1200-13-14-.11*.
11. TennCare, through its MCCs, will provide training to the TennCare Providers concerning EPSDT requirements. TennCare will be responsible for its MCCs providing appropriate technical assistance to TennCare Providers in the coordination of services for children who are IDEA eligible.
12. TennCare pays residential costs for Medicaid-eligible children residing in Developmental Centers through the ICF/MR program.
13. For children who are TennCare Enrollees in DCS Custody, DCS is responsible for providing Medically Necessary Residential Treatment services. TennCare, through its MCCs, provides these services for non-custodial children. DCS is responsible for routine transportation for children in DCS Custody.

G. Department of Children's Services

1. No infant or toddler shall be denied Early Intervention Services because of his/her status as a child in DCS Custody. A family service worker shall be present at the IFSP Team meeting for all IDEA eligible children in state Custody. The involved family service worker shall be notified by correspondence, by telephone call and/or email message of any upcoming IFSP meetings.

2. DCS ensures that department personnel (e.g. family service workers) have an opportunity to be trained to make appropriate referrals for infants or toddlers potentially in need of Early Intervention Services. DCS shall also provide Foster Parents and family service workers with information regarding Child Find, Early Intervention Services, and the IFSP process. DCS does not provide any Early Intervention Services. However, family service workers shall be present at an IFSP Team meeting and facilitate the coordination of services in the IFSP and provide intake information in the DCS packets for the infant or toddler's DCS Permanency Plan.
3. DCS will refer children under the age of three (3) who are involved in substantiated cases of child abuse or neglect to Early Intervention Services funded under Part C of the IDEA.

H. Department of Mental Health and Substance Abuse Services

1. TDMHSAS contracts with outpatient agencies to provide Regional Intervention Program (RIP) services and directly operates its own RIP in Davidson County. These RIP sites provide services for preschoolers and their families that meet the RIP eligibility requirements. Participation in RIP is not an entitlement and is subject to RIP eligibility requirements not IDEA Part C requirements.
2. RIP provides intensive Parent training for families with preschool age children where there is a concern about their behavior.
3. TDMHSAS shall ensure that personnel at the RIP sites have an opportunity to be trained to make appropriate referrals for infants and toddlers potentially in need of Early Intervention Services. TDMHSAS shall also provide RIP staff with information regarding Child Find, Early Intervention Services, and the IFSP process. TDMHSAS encourages personnel at the RIP sites to attend the IFSP meeting of an infant or toddler who is or may be eligible to receive RIP services and help facilitate the coordination of services.

I. Resolution Mechanism

1. Any individual or organization may file a written complaint with DOE to resolve any systemic issues regarding the provision of Early Intervention Services and Special Education. *See 34 C.F.R. §303.434.* DOE will investigate all IDEA Part C administrative complaints. *See 34 C.F.R. §303.434.* The written complaint must be signed and include a statement that the Participating Agency or any funded recipient has violated a requirement of IDEA Part C and must provide facts to support the complaint. The alleged violation must have occurred not more than one (1) year before the date that the complaint is received by DOE. *See 34 C.F.R. §303.434(c).*
2. DOE, as lead agency, shall ensure that all due process hearings requested by Parents to resolve issues of IDEA eligibility, evaluation, placement, or the provision of appropriate Early Intervention Services will be conducted in

accordance with all applicable state and federal statutes and regulations. All due process hearings under IDEA shall be conducted consistently with state and federal law. *See 34 C.F.R. §§303.440-449.*

3. Upon request and with the consent of both the Parent and the agency providing the Early Intervention Service in dispute, DOE, as lead agency, will assign a mediator to resolve disputes arising under IDEA. Consent to mediation by the Parent of an IDEA Part C eligible infant or toddler is voluntary and will not delay or deny a Parent's right to a due process hearing nor shall it deny Parents any other rights afforded them under IDEA Part C. DOE shall bear the cost of the mediation process. Consistent with IDEA, all discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process are required to sign a confidentiality pledge prior to the commencement of the process. An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement. *See 34 C.F.R. §303.431.*
4. During the pendency of any proceeding involving a complaint under Part C, unless the public agency and the Parents otherwise agree, the infant or toddler must continue to receive the appropriate Early Intervention Services currently being provided. If the complaint involves an application for initial services, the infant or toddler must receive those services in the IFSP that are not in dispute. *See 34 C.F.R. §303.430(e).*
5. If a written complaint is received that is also the subject of a due process hearing, or if it contains multiple issues of which one or more are part of that hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within a sixty (60) calendar day timeline required for resolution of administrative complaints. *See 34 C.F.R. §303.433(c)(1).*
6. If an issue is raised in a complaint that has been decided previously in a due process hearing involving the same parties, the previous hearing decision is binding. A complaint alleging that a public agency or private service provider failed to implement a due process decision must be resolved by the lead agency. *See 34 C.F.R. §303.433(c)(2).*
7. Procedures for IDEA Part C dispute resolution permit the Participating Agencies to resolve Intra-agency Disputes using their own procedures so long as resolution is accomplished in a timely manner. DOE, as lead agency, is responsible for ensuring disputes are resolved in a timely manner. Therefore, when an agency is unable to resolve an Intra-agency Dispute in a timely manner, DOE, as lead agency, shall refer the issue to the DOE Resolution Committee which will resolve the issue in accordance with the procedures described in Article Six of this Agreement. DOE shall ensure services are provided in a timely manner pending the resolution of disputes among Participating Agencies or their service providers by seeing that existing services are not disrupted or if initial services are in dispute that all other services other than the disputed one(s) are delivered in a timely manner. *See 34 C.F.R. §303.511(c).*

8. If there is a conflict between or among Participating Agencies (e.g., an Interagency Dispute) regarding the provision of or the payment for Early Intervention Services, the procedure set forth in Article Six of this Agreement shall be followed. DOE shall ensure that services are not delayed or denied pending resolution of a dispute.

Article Six

Interagency Dispute Resolution Procedures

1. If any Participating Agency has any disagreement related to the payment for Special Education and Related Services, service responsibilities, or other matters related to this Agreement, the Participating Agencies agree to implement the following procedures. These procedures do not apply to individual administrative complaints initiated by a Parent. Individual administrative complaints are resolved in accordance with the procedures established by each Participating Agency as indicated in this Agreement. *See Articles Four and Five.*
2. The DOE Resolution Committee's purpose is to resolve disputes under this Agreement informally. This process can be initiated by any Participating Agency. If any entity other than the Participating Agencies has an issue with interagency implications, it may refer the issue by written notice to the Participating Agency with which it contracts or who provides oversight to its programs. The Participating Agency will evaluate the issue and refer the written notice to the Assistant Commissioner with authority over DOE's Office of Special Education for discussion by the DOE Resolution Committee as appropriate. Each Participating Agency, if required by state or federal law, shall designate a representative and an alternate to serve on the DOE Resolution Committee. The committee will only meet when a dispute arises. Each Participating Agency will require its representative or alternate to participate in the DOE Resolution Committee's deliberations even if the dispute at issue does not directly pertain to services provided by that Participating Agency. The committee shall meet as soon as practicable once the dispute arises and shall attempt to resolve the dispute in a timely manner. If a resolution is achieved, the committee shall write and distribute its findings of fact and conclusions. If the dispute cannot be resolved within fifteen (15) calendar days of the referral, the issue shall be forwarded to the Commissioners Task Force or designees.
3. If an Interagency Dispute cannot be resolved informally in a timely manner, the aggrieved Participating Agency shall submit a written complaint to the Assistant Commissioner with authority over DOE's Office of Special Education. The complaint must include: 1) the regulation, policy, or requirement involved in the dispute; 2) the specific issue(s) needing resolution; 3) the prior actions taken to resolve this issue including a copy of the written findings of fact and conclusions of the informal DOE Resolution Committee; and 4) any other information relevant to the complaint including but not limited to the child's IEP or IFSP, the relevant evaluations and Assessments of the child, and all other supporting documentation. The Assistant Commissioner with authority over DOE's Office of Special Education shall forward a copy of the complaint to the members of the Commissioners Task Force (whose members include the Commissioners of the Departments of Education, Finance and Administration, Correction, Intellectual and Developmental Disabilities Services, Health, Human Services, Children's

Services, and Mental Health and Substance Abuse Services, and the Director of TennCare or their designees) within ten (10) business days from receipt of the complaint. Representatives of the Participating Agencies who serve on the DOE Resolution Committee may not serve as the designee to the Task Force. The Task Force will meet within fifteen (15) business days from the receipt of the complaint from the DOE Resolution Committee. The Task Force will consider the written complaint including all documents submitted and oral arguments from the affected agencies. The Task Force shall render a written decision within ten (10) business days after the meeting and distribute it to each Participating Agency. The Participating Agencies shall be responsible for ensuring that the written findings and conclusions are distributed to all offices, divisions, bureaus, units, and programs that may be affected by the findings. The final determination of the Task Force shall be binding upon all the agencies. However, the decisions of the Task Force shall not be binding on future complaints but may be considered persuasive authority by the Task Force.

4. While the dispute is pending, the Commissioners Task Force may elect to assign financial responsibility to the Participating Agency currently providing the service at issue or if the service has not begun, the Task Force shall allocate resources from the Participating Agencies to provide the service as appropriate. Once the dispute has been resolved, if the Task Force determines that the assignment of financial responsibility was inappropriately made, it shall reassign the responsibility to the appropriate Participating Agency. The Participating Agency that was originally assigned financial responsibility may seek reimbursement for any expenditure incurred. Each Participating Agency shall establish such policies and procedures as are necessary to assure that any fiscal obligation assessed to it under this Agreement is timely paid or reimbursed.
5. A Participating Agency may refer a general policy question to the Commissioners Task Force for its review and recommendations. The Task Force shall make a policy determination in accordance with the applicable state and federal laws and issue written findings that will be distributed to each Participating Agency. The Participating Agencies shall be responsible for ensuring that the written findings are distributed to all offices, divisions, bureaus, units and programs that may be affected by the findings.

Article Seven Records

1. Pursuant to IDEA, FERPA, HIPAA and all applicable state and federal laws, the following provisions will apply to the confidentiality and disclosure of education and medical records of IDEA eligible children under this Agreement.
 - (a). Consistent with state statute, records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or the student's Parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution, to the public or to any Participating Agency, except those agencies authorized by the educational institution to conduct specific research, testing, evaluation, provide services or otherwise authorized by the governing board of the institution, LEA, or agency without the consent of the student

involved or the Parent or guardian of a minor student, except as otherwise provided by law or regulation and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, DOE, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and directory information such as information relating only to the individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed. However, if it is disclosed, the directory information may not be linked with other non-directory information such as IDEA eligibility. *T.C.A. §10-7-504 (a)(4)*.

- (b). Each Participating Agency or contractor which has access to the Education Records of a Child with Disabilities must protect personally identifiable information (PII) at the following stages: collection, storage, disclosure, and destruction. One official in each Participating Agency shall be assigned responsibility for ensuring the confidentiality of all PII. All Participating Agencies shall train or provide information to persons collecting or using PII on state law and procedures, IDEA, and FERPA requirements regarding the confidentiality of student Education Records. LEAs shall maintain, for public inspection, a current listing of all persons and their positions that have access to PII within the Participating Agency. *See 34 C.F.R. §300.623(d)*.
 - (c). Parents and legal guardians shall have complete access to their child's Education Records. Prior parental consent is required for disclosure of all PII in a student's Education Record unless: 1) the disclosure meets the requirements of one of the FERPA exceptions enumerated in *34 C.F.R. §99.31 (a)*; or 2) if the disclosure is to an outside third party performing professional, business, and Related Services as a part of the operations of the educational agency or institution and has a legitimate educational interest in the information.
 - (d). In order to have proper consent from a Parent for the release of Education Records, the consent document must include the Parent's: signature, date, listing of specific records to be disclosed, the purpose for the disclosure, and the parties or class of parties to which the disclosure will be made.
 - (e). For the purposes of granting consent to release Educational Records or PII, the rights of a Parent are transferred to the student when the student turns eighteen (18) years old unless the child has been declared judicially incompetent under applicable state law. *See 34 C.F.R. §300.520*.
2. Consistent with IDEA, FERPA, HIPAA and all applicable state and federal regulations, an educational agency or institution shall comply with the following procedures regarding the disclosure of Education Records:
- (a). An educational agency or institution may disclose PII from an Education Record of a student without parental consent if the disclosure meets one of the conditions set forth in *34 C.F.R. §99.31(a)* - FERPA Disclosure Exceptions. Although consent is not required for disclosure under one of the FERPA exceptions, FERPA generally does require the educational agency or institution to make a reasonable effort to notify the Parents of the child that the information will be disclosed (i.e. in response to a subpoena).

The Parents shall have an opportunity to pursue protective action if the Parent believes the disclosure is unwarranted. However, prior parental notification is not required prior to disclosure in response to a federal grand jury or law enforcement subpoena FERPA does not compel or forbid the disclosure of Education Records in *34 C.F.R. §99 .31 (a)*, but the child's right to privacy in the Education Records is a compelling state interest, and as such, the court places a high burden on the proponent of disclosure. A LEA may impose restrictions on the disclosure of Education Records to another LEA or Participating Agency.

- (b). An educational agency or institution may disclose PII to outside persons performing professional, business, and Related Services as part of the operations of the institutions if the educational agency or institution has determined that the person has a legitimate educational interest in the information. The privacy protections and confidentiality requirements imposed on the educational agency or institution extend to records and materials maintained by persons acting for the educational agency or institution such as an attorney, accountant or consultant. Improper disclosure by any individual receiving information under this provision will result in the denial of access to educational information by that individual for at least five (5) years. *See 20 U.S.C. § 1232g(b)(4)(B)*.
 - (c). The educational agency or institution may disclose Education Records to DCS without parental consent if the child has been placed in DCS custody and will be attending a school administered by or contracting with DCS. While in the possession of a law enforcement unit, Education Records do not lose their status as such.
 - (d). Pursuant to IDEA; an educational agency or institution, when reporting a crime committed by a Child with a Disability in school to the appropriate authorities, shall transmit copies of the child's Special Education and disciplinary records. However, the transmittal of records shall only be to the extent allowed under FERPA. Disciplinary records are Education Records for the purposes of FERPA. *See 34 C.F.R. §300.535(b)*.
 - (e). An educational agency or institution shall disclose Education Records to a due process hearing officer without parental consent if the disclosure is made in the course of the due process proceeding and not prior to it.
 - (f). Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system. *See 20 U.S.C.A. § 1232g (4)(A)*.
3. Consistent with IDEA, FERPA, HIPAA and all applicable state and federal regulations, student medical records shall be maintained in the following manner:
- (a). When maintained by an educational agency or institution for IDEA purposes, EPSDT records shall be considered Education Records. An

educational agency or institution shall not elect to categorize these records as anything else. If maintained by an educational agency or institution, school health and medical records shall be regarded as confidential Education Records. School health and medical records, as Education Records, include school performed screenings, exams, or assistance in the school health office; copies of medical or health related records submitted to schools when they are in the possession of the school; and receipt of services under IDEA.

- (b). The medical records of patients in state, county, and municipal hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, county, or municipality shall be treated as confidential and shall not be open for inspection by members of the public. *See T.C.A. §10-7-504.* The name, address, and other identifying information of a patient entering and receiving care at a licensed health or mental health care facility shall not be divulged unless the disclosure meets one of the enumerated exceptions in *T.C.A. §68-11-1503 (Medical Records - Confidentiality); or is otherwise in compliance with 42 C.F.R. 2 (Confidentiality of Alcohol and Drug Abuse Patient Records) and T.C.A. §§33-3-103 through 105 (Confidentiality of Mental Health Records).*
 - (c). An educational agency or institute may not disclose PII from a student's Education Record to TennCare without parental consent. Further, educational agencies or institutions may not provide TennCare with a list of all students who are receiving Special Education and related services to determine who is a TennCare Enrollee. *See 20 U.S.C. §1232g(b)(1).*
- 4. Confidential Education Records shall be destroyed consistent with IDEA, FERPA, HIPAA and all applicable state and federal laws.
 - 5. Nothing in this section shall be construed to supersede any provision of State law that prohibits an institution of higher education from making a disclosure.

Article Eight Amendments

This Agreement may be amended in writing upon mutual consent of all the Participating Agencies.

Article Nine Term of Agreement

This Agreement shall have an effective date as of July 1, 2012 upon execution by all Participating Agencies and shall remain in effect until it is terminated by any Participating Agency upon written thirty (30) day notice to the other Participating Agencies.

Article Ten Waiver

A failure by any Participating Agency to exercise its rights under this Agreement shall not preclude that agency from subsequent exercise of such rights and shall not constitute a waiver of

any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Participating Agency and attached to the original Agreement.

Article Eleven Severability

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirement of applicable law and the fundamental purpose of this Agreement, and to this end the provision of this Agreement are declared to be severable.

Article Twelve Integration

This Agreement contains all the terms and conditions agreed upon by the Participating Agencies. No other understandings oral or otherwise regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Participating Agencies.

Article Thirteen Assignment

Unless permitted herein, or permitted by state or federal law, the services to be provided under this Agreement and any claim arising hereunder shall not be assigned or delegated by any Participating Agency, in whole or in part, without the express prior written consent of the other Participating Agencies which consent shall not be unreasonably withheld.

The intent of the parties hereto is to coordinate and facilitate the provision of IDEA Services to IDEA-eligible children as specified under state or federal law. Except as expressly provided herein, none of the terms of this Agreement are intended to confer any benefits or impose any obligation on any third party, and the terms of this Agreement may only be enforced by the parties hereto.

Article Fourteen Construction


This Agreement is in no way to be construed as limiting or diminishing the responsibilities of the Participating Agencies under federal or state law. In all instances, this Agreement is to be construed to comply with the requirements of federal and state law. This Agreement shall not be construed to create rights in any third parties. Whenever used herein, as the context may require the use of the singular shall include the plural, and the use of any gender shall be applicable to all genders.

Approved by:



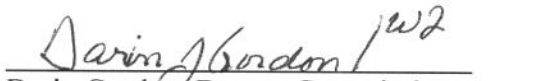
Kevin Huffman, Commissioner
Department of Education

6/19/12
Date



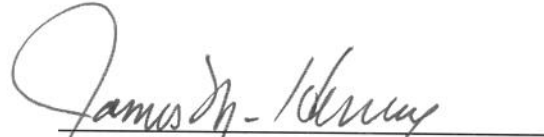
Mark A. Emkes, Commissioner
Department of Finance and Administration

6/27/2012
Date



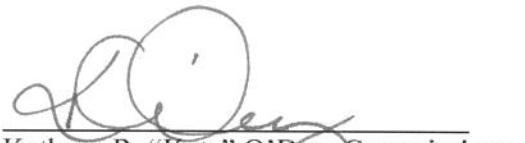
Darin Gordon, Deputy Commissioner
Department of Finance and Administration,
Division of Health Care Finance and
Administration, Bureau of TennCare

6/27/12
Date



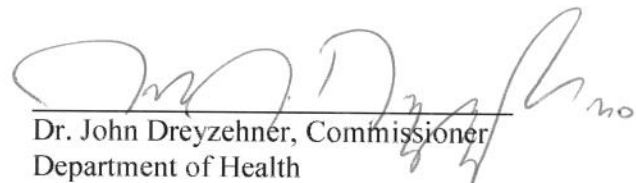
James M. Henry, Commissioner
Department of Intellectual and
Developmental Disabilities

6/27/12
Date




Kathryn R. "Kate" O'Day, Commissioner
Department of Children's Services

6-22-12
Date



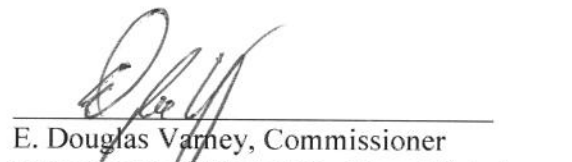
Dr. John Dreyzehner, Commissioner
Department of Health

21 June 2012
Date




Dr. Raquel Hatter, Commissioner
Department of Human Services

6-25-12
Date



E. Douglas Varney, Commissioner
Department of Mental Health and Substance
Abuse Services

6/24/12
Date



Derrick D. Schofield, Commissioner
Department of Correction

6-27-2012
Date

Effective Date: July 1, 2012

Attachment One - Acronyms

| | |
|---------|--|
| BOPP | Board of Probation and Parole |
| CAP | Corrective Action Plan |
| C.F.R. | Code of Federal Regulations |
| CFT | Child and Family Team |
| CFTM | Child and Family Team Meeting |
| CIT | Children's Information in Tennessee |
| CMHC | Community Mental Health Center |
| CSS | Children's Special Services |
| DCS | Tennessee Department of Children's Services |
| DHS/DRS | Tennessee Department of Human Services/Division of Rehabilitation Services |
| DIDD | Tennessee Department of Intellectual and Developmental Disabilities |
| DME | Durable Medical Equipment |
| DOE | Tennessee Department of Education |
| EPSDT | Early Periodic Screening, Diagnosis and Treatment |
| FAPE | Free Appropriate Public Education |
| FERPA | Family Educational Rights and Privacy Act |
| FSW | Family Service Worker |
| GED | General Educational Development Certificate |
| HIPAA | Health Insurance Portability and Accountability Act of 1996 |
| HUGS | Help Us Grow Successfully |
| ICC | Interagency Coordinating Council |
| ICF-MR | Intermediate Care Facility for the Intellectually Disabled |
| IDEA | Individuals with Disabilities Education Act |
| IEP | Individualized Education Program |
| IFSP | Individual Family Service Plan |
| IPE | Individual Plan for Employment |
| ISC | Independent Support Coordinator |
| ISP | Individual Support Plan |
| ITP | Individualized Transition Plan |
| LEA | Local Educational Agency |
| MCC | Managed Care Contractor |
| MCH | Maternal Child Health |
| MCO | Managed Care Organization |
| PCP | Primary Care Physician |
| PHI | Protected Health Information |
| PII | Personal Information or Personally Identifiable Information |
| RIP | Regional Intervention Program |
| RMHI | Regional Mental Health Institute |
| T.C.A. | Tennessee Code Annotated |
| TDH | Tennessee Department of Health |
| TDFA | Tennessee Department of Finance and Administration |
| TDMHSAS | Tennessee Department of Mental Health and Substance Abuse Services |
| TDOC | Tennessee Department of Correction |
| TEIS | Tennessee Early Intervention System |
| U.S.C. | United States Code |
| WIC | Women Infant and Children |
| YDC | Youth Development Center |

Attachment Two

TennCare IEP Release Form

TennCare

**RELEASE OF INFORMATION FOR
INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

Please be advised that permission is given for _____
Name of School

to release information concerning:

Full Name of Child

Social Security Number

I know that the information shared will be this child's IEP. The IEP will be shared with the child's TennCare plan and his/her doctor. I know that this form also lets the TennCare plan share information with the school. This information is private and will be given only to people who work with this child.

Parent / Guardian Signature

Date

Witness Signature

Date

Documents to be included in this release:

IEP _____

Medical _____

Psychological Records _____

Educational reports, records, or relevant test results _____

Supplies _____

Revised 04/11/12

TennCare

LANZAMIENTO DE LA INFORMACIÓN PARA PROGRAMA INDIVIDUALIZADO DE LA EDUCACIÓN (IEP)

Aconséjese por favor que el permiso está dado para _____

Nombre de la escuela

para lanzar la información respecto a:

Nombre completo del niño

Número de Seguridad Social

Sé que la información compartida será IEP de este niño. El IEP será compartido con el plan de TennCare del niño y su doctor. Sé que esta forma también deja la información de la parte del plan de TennCare con la escuela. Esta información es privada y será dada solamente a la gente que trabaja con este niño.

Firma del padre/del guarda

Fecha

Firma del testigo

Fecha

Documentos que se incluirán en este lanzamiento:

IEP _____

Medical _____

Records psicologico _____

Informes educativos, expedientes, o results relevante de la prueba _____

Supplies _____

Revised 04/11/12

Bureau of TennCare



Permission to Release
Protected Health Information (PHI)

After you fill out and sign this paper, send it to: TennCare Privacy Officer
 310 Great Circle Road
 Nashville, TN 37243
 Phone: 1-877-778-3698
 Fax: 615-532-7322

1. Who is the patient?

| | | | |
|-----------------|----------------------------|-------------------------------|----------|
| Last Name | First Name | Middle Initial | |
| ID Number (SSN) | Date of Birth (MM/DD/YYYY) | Phone Number (with area code) | |
| Address | City | State | Zip Code |

Check One:

- I am the patient OR
- I have the legal right to act for this person. (Check one below; if "other" fill in blank)
 I'm his or her: Parent OR Guardian OR Other _____

Only TennCare or your TennCare providers can **give out** your health facts.

2. Who can my health facts be given to?

| | |
|---|-----------------------------|
| Name (like family members who live with me, or a place of business) | Phone Number with area code |
| Address | City, State, and Zip Code |

3. What health facts can we share?

We'll **only** share the health facts you **OK**. Tell us the health facts from your records you say can be shared. Give the date or place if you can.

| Health Facts | Date I got the care | Name of the place I got care from |
|--------------|---------------------|-----------------------------------|
| | | |
| | | |
| | | |

If you give us your OK to share this kind of health information, tell us by checking the box.

- HIV/AIDS Alcohol/Substance Abuse Records Sexual/Physical/Mental Abuse
- Mental Health Records Other _____

This **OK** includes medicine you take now or have taken for the health facts you say we can share. **AND**, it includes facts in your record about your health and/or your alcohol and drug treatment. It doesn't include psycho-therapy notes that aren't in your medical records.

4. Why are you giving out this health information?

Is it to get health treatment, or for court or work? Or are you asking for these records to be sent directly to you just for you to use?

5. When does my OK end?

Your **OK** ends when you tell us it does. But, this **OK** can't be for more than 1 year. **Tell us when.**

- My **OK** ends on this date _____ **OR**
- My **OK** ends when this happens: _____

(It can be something like “you can share my medical records this one time.”)

What if you don't tell us when you want your **OK** to end? Then we'll end your **OK** in one year from when you sign. After one year, we will need a new **OK**.

6. Your Rights and Important Information

- Giving your **OK** is up to you. You don't have to share your health facts.
- You don't have to **OK** this paper. You will still get benefits and treatment.
- You can take back your **OK**. You must tell us in writing.

Mail it to TennCare Privacy Officer, 310 Great Circle Road, Nashville, TN 37243.

- What if you take back your **OK**? It won't take back the health facts we have already shared. But, we **won't** share any more of your health facts.
- If we share your health facts with the people or agencies you named, they may share it with others. Not everyone has to follow privacy rules.

You have a right to get a copy of this signed **OK**. If you need another copy, call the TennCare Privacy Office at **1-866-797-9469**. We can charge for copies of records as allowed by law.

Do you have questions or need help with this paper? Call the Family Assistance Service Center for free at **1-866-311-4287**. They can help you Monday – Friday 7am to 5:30pm.

7. Signature of Patient

I give my **OK** to share the information listed in this paper. This paper can be an original or a copy.

Sign Here:

Signature or Mark (“X”) of Patient

Date

()

If signed “X” please tell us the person’s name who helped you. Helper’s phone number

Helper’s Address, City, State, Zip Code

8. Signature of Authorized Representative (if you have one)

Authorized Representative means you have legal proof you can act for this person. A representative signs for a patient who may not legally sign on his or her own. If the patient is less than 18 years old, a parent or guardian should sign for the minor.

Signature of Person signing on behalf of patient

Date

()

Printed Name

Phone number

Address, City, State, Zip Code

“TC 08/25/06 Puede obtener estas hojas en español. Visite nuestro sitio web en www.tn.gov/tenncare. O bien, llame al Centro de Servicio para Asistencia Familiar al **1-866-311-4290**.”

NOTICE TO ANY RECIPIENT OTHER THAN THE PATIENT

This information has been disclosed to you from records the confidentiality of which may be protected by federal and/or state law. If the records are protected under the federal regulations on the confidentiality of alcohol and drug abuse patient records (42 C.F.R. Part 2), you are prohibited from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains, or as otherwise permitted by 42 C.F.R. Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

Attachment Three

TEIS Release Form



Tennessee Department of Education/Tennessee's Early Intervention System

AUTHORIZATION FOR RELEASE OR USE OF INFORMATION

I, _____ (Parent/Guardian of) _____ (Child's Name)
_____ (Child's DOB) _____ - _____ - _____ (Child's Social Security

Number), hereby authorize the use or disclosure of _____ 's health, mental health, including protected health information, and/or educational information as described in this authorization.

- (1) Specific person(s)/organization authorized to provide and/or receive the information (provide name and address of therapy agency, doctor, other service provider):
- (2) Specific person(s)/organization authorized to receive and/or provide and use the information (provide name and address):

(3) Specific and meaningful description of the information to be disclosed or used: The complete record, to include as appropriate: evaluations; assessments; program plans; therapy notes; medical records; and mental health records.

(4) The purpose of the request is for the provision of early intervention services.

(5) Right to revoke: I understand that I have the right to revoke this authorization at any time by notifying Tennessee's Early Intervention System in writing at

(list address where revocation must be delivered). I understand that the revocation is only effective after it is received in writing by the person who is in possession of _____'s records and that the person receiving this authorization may already have acted on it. I understand that any use or disclosure made prior to the revocation under this authorization will not be affected by a revocation.

- (6) I understand that after this information is disclosed, federal law might not protect it and the recipient might re-disclose it.*
- (7) I understand that my initial and continued receipt of services from Tennessee's Early Intervention System is not subject to my agreement to this authorization, or any additional authorization that Tennessee's Early Intervention System requests.
- (8) I understand that I am entitled to receive a copy of this authorization.
- (9) I understand that this authorization will expire: Upon 90 days after the child is no longer eligible for services from Tennessee's Early Intervention System.

Personal Representatives Section

If a Personal Representative executes this form, that Representative warrants that he or she has authority to sign this form on the basis of:

Client's, Parent's or Guardian's name (please print) Client's, Parent's or Guardian's Signature Date

Witness name (please print) Witness Signature Date

*Some disclosures may occur without prior authorization in circumstances specified by Federal, State and local laws and regulations, including the Community Regulations governing the rights of Program clients. The confidentiality of client-clinician relationship is subject to those laws and regulations.

This authorization complies with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 as per 45 C.F.R., Parts 160 and 164 and the requirements of the Family Educational Rights and Privacy Act (FERPA) at 20 U.S.C. 1232g, 34 C.F.R. Part 99.

ED-5417

RDA 2991

**Attachment Four
Interagency Agreement Department Contacts**

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|---|---------------------------------------|--|
| Bureau of TennCare | Terrence Leve | Terrence.Leve@tn.gov |
| Department of Children's Services | Marjorie Bristol Douglas E. Dimond | Marjorie.Bristol@tn.gov Douglas.E.Dimond@tn.gov |
| Department of Correction | Debbie Inglis | Debbie.Inglis@tn.gov |
| Department of Education | Bill Wilson | Bill.Wilson@tn.gov |
| Department of Health | Mary Kennedy | Mary.Kennedy@tn.gov |
| Department of Human Services | Bill Russell | Bill.Russell@tn.gov |
| Department of Mental Health and Substance Abuse Services | Ty Thornton | Ty.Thornton@tn.gov |
| Department of Intellectual and Developmental Disabilities | Theresa Sloan | Theresa.Sloan@tn.gov |