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Notice of Rulemaking Hearing

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

Agency/Board/Commission:	State Board of Education
Division:	
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Angela C. Sanders
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Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Legislative Plaza, Room 12		
Address 2:	301 6 th Avenue North		
City:	Nashville		
Zip:	37243		
Hearing Date :	11/12/15		
Hearing Time:	1:00 pm	<input checked="" type="checkbox"/> X CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0520-01-11	Individualized Education Accounts
Rule Number	Rule Title
0520-01-11-.01	Purpose
0520-01-11-.02	Definitions
0520-01-11-.03	Application
0520-01-11-.04	Term of the IEA
0520-01-11-.05	Agreement and Funds Transfer
0520-01-11-.06	Use of Funds
0520-01-11-.07	Monitoring and Compliance
0520-01-11-.08	Participating Schools and Providers
0520-01-11-.09	Return to Local Education Agency
0520-01-11-.10	Appeal Procedures
0520-01-11-.11	Conflict of Interest
0520-01-11-.12 through 0520-01-11-.20	Reserved

Substance of Proposed Rule

**CHAPTER 0520-01-11
INDIVIDUALIZED EDUCATION ACCOUNTS**

New

A new Chapter 0520-01-11 Individualized Education Accounts is created and the following language is inserted, so that the new rule shall read:

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0520-01-11-.01 PURPOSE.

The purpose of these rules is to effectuate the Individualized Education Act as required by Public Chapter 431 (2015).

0520-01-11-.02 DEFINITIONS.

- (1) "Act" means the Individualized Education Act.
- (2) "Application" means a document whereby parents and participating eligible students may seek to establish an Individualized Education Account (IEA).
- (3) "Agreement" means a document signed by a parent of a participating student or a participating student who has attained the age of majority and the department.
- (4) "Computer hardware" means computer hardware or other technological devices approved by the department or a physician that is used for the student's educational needs. Computer hardware must meet one of the following criteria:
 - (a) Is a required device for communication or physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA, or
 - (b) Allows a student to access instruction or instructional content.
- (5) "Criminal background check" at a minimum shall include, but not be limited to, a check of the following: Tennessee's Sex Offender Registry and the Abuse Registry of the Tennessee Department of Health. All service providers and employers of service providers must maintain documentation that any person providing services to participating students has undergone a fingerprint based criminal history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act. All participating schools must maintain documentation that all persons working on school grounds when students are present and/or providing services to students have undergone a fingerprint based criminal

history records check conducted by the Tennessee Bureau of Investigation (TBI) and forwarded by the TBI to the Federal Bureau of Investigation for processing pursuant to the National Child Protection Act.

- (6) "Department" means the Tennessee Department of Education.
- (7) "Educational purposes" means the curriculum of a participating school and educational therapies.
- (8) "Educational therapies" means an individualized intervention and treatment plan designed to remediate learning problems through a combination of educational and therapeutic approaches.
- (9) "Eligible postsecondary institution" means a community college, college of applied technology, or university of the University of Tennessee system or the board of regents system or a private postsecondary institution.
- (10) "Eligible student" means:
 - (a) A resident of this state with any of the following disabilities as documented in their individualized education program (IEP) at the time of their application and defined in the rules of the State Board of Education 0520-01-09-.02:
 - 1. Autism;
 - 2. Deaf-blindness;
 - 3. Hearing impairments;
 - 4. Intellectual disability;
 - 5. Orthopedic impairments;
 - 6. Traumatic brain injury; or
 - 7. Visual impairments.
 - (b) Has an IEP in effect at the time the department receives the request for participation in the program; and
 - (c) Meets at least one (1) of the following requirements:
 - 1. Was previously enrolled in a Tennessee public school during the two (2) semesters immediately preceding the semester in which the student receives an IEA; For the purposes of these rules, prior two (2) full semesters in enrollment means that the student was counted in the enrollment figures for the local education agency (LEA) in months two (2), three (3), six (6) and seven (7) for purposes of calculating the basic education program (BEP) funding.
 - 2. Has not previously attended a public K-12 school, but is currently eligible to enroll in a kindergarten program in a public school in this state;
 - 3. Has not previously attended a school in Tennessee during the two semesters immediately preceding the semester in which the student receives an IEA, and is eligible to enroll in a public school in this state. When a student has an active IEP in another state and moves to Tennessee, the student shall register with the LEA in which he/she resides in order to be eligible to participate in the IEA program. The LEA shall then request a copy of the student's IEP from the student's previous out-of-state school; or
 - 4. Received an IEA in the previous school year.
 - 5. If a student has an IEP prior to enrolling in kindergarten, the student will be eligible to receive an IEA without having to attend a Tennessee public school; however, the student would have to register with the LEA in which they reside for purposes of calculating the amount of IEA funding the student would be eligible to receive.
- (11) "Fee for service transportation provider" means a commercial transportation provider including a taxi or bus service. It does not include private transportation by a parent or participating student in accordance with the conflict of interest provision in these rules.
- (12) "Financial institution" or "private financial management firm" means an institution selected by the department to administer the individualized education accounts.

- (13) "IEA" means a Tennessee individualized education account.
- (14) "IEP" means an individualized education program developed by a public school pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1400, et seq.
- (15) "Local education agency (LEA)," "school system," "public school system," "local school system," "school district," or "local school district" means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.
- (16) "Nonpublic online learning program or course" means online courses designated and approved by the department.
- (17) "Parent" means the biological parent, legal guardian, person who has custody of the child pursuant to an order of a court of competent jurisdiction, or person with caregiving authority pursuant to a power of attorney for care of a minor child pursuant to T.C.A. § Title 34, Chapter 6, Part 3.
- (18) "Participating provider" means an individual or business that meets the requirements for accreditation or licensure established by the Tennessee Department of Health pursuant to T.C.A. Title § 63, or T.C.A. § Title 68 or Tennessee Department of Education and pursuant to the application and approval process created by the departments of education and health for participating providers.
- (19) "Participating school" means a nonpublic school that meets the requirements established in the Act, and meets related rules, regulations, policies and procedures of the state board of education and the department. Participating schools must be a Category I, II, or III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02.
- (20) "Participating student" means an eligible student whose parent is participating in the IEA program.
- (21) "Physician" means a person licensed under T.C.A. § Title 63, Chapter 6 or T.C.A. § Title 63, Chapter 9.
- (22) "Program" means the individualized education account (IEA) program.
- (23) "Technological device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability in the curriculum of a participating school or the program of a participating provider.
- (24) "Tutoring services" means services provided by a tutor accredited by a state, regional, or national accrediting organization.

0520-01-11-.03 APPLICATION.

- (1) To receive an IEA the parent of an eligible student, or a student who has attained the age of majority, must first request an IEA by filing a notice of intent with the department and fully completing an application available through the department's website by the deadline set by the department.
 - (a) A school district, a nonpublic school, or the department may assist a parent in filing the application.
 - (b) An application must include all information requested by the department and must be approved by the department.
- (2) The department shall make a determination of eligibility and notify the parent or student who has reached the age of majority.

0520-01-11-.04 TERM OF THE IEA

- (1) For purposes of continuity of educational attainment, a student who enrolls in the program shall remain eligible until the participating student meets one of the following, whichever occurs first:
 - (a) Enrolls full-time in a public school in the LEA in which the parent or student who has attained the age of majority resides;

- (b) Graduates from high school. The student may continue in the program until such time as he or she and receives a high school diploma, or received a passing score on all subtests of the GED or HiSET. Certificates of attendance do not constitute graduation from high school for the purposes of this program.
 - (c) Reaches twenty-two (22) years of age. The student may complete the school year in which he or she reaches the age of twenty-two (22), provided a student shall not be enrolled in the program past August 15 of the next school year after they have reached twenty-two (22) years of age.
- (2) The student's parent may remove the student from the nonpublic school and place the student in a public school. The parent shall notify the department of the student's withdrawal from the IEA program and return to the LEA by the date set by the department.
 - (3) Upon reasonable notice to the department, the student's parent (or a student who has attained the age of majority) may move the student from one participating nonpublic school to another participating nonpublic school.
 - (4) In order for students to continue in the program, the parent or participating student who has attained the age of majority shall annually renew the IEA by following the procedures posted on the department's website.
 - (5) After graduating from high school or reaching twenty-two (22) years of age, unused funds in an IEA account from prior years can be used in subsequent years, up to four (4) years after a student has aged out of the program. Account holders are not required to spend the entire sum each quarter; however, a portion of the funds must be used each quarter for the benefit of the IEA student and overall spending must equal ninety (90) percent of the annual award at the close of each contract year.
 - a. If overall spending does not equal 90 percent at the close of the contract year and if the IEA is renewed for the following year, the department will subtract the difference from the quarterly payments in the next contract year. If a student withdraws from the IEA program or if the IEA is not renewed, the IEA account shall be closed and any remaining funds shall be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

0520-01-11-.05 CONTRACT AND FUNDS TRANSFER.

- (1) Upon notification by the department that an IEA may be established, a parent or eligible student shall sign an agreement to:
 - (a) Provide an education for the participating student in at least the subjects of reading, grammar, mathematics, social studies, and science;
 - (b) Not to enroll the participating student in a public school; and
 - (c) Release the local education agency in which the student resides and the school which the student is zoned to attend from all obligations to educate the student.
- (2) The agreement shall be available on the department's website. Parents or eligible students shall complete the agreement and submit it along with all information requested by the department by the date set by the department before the first quarterly IEA payment is disbursed.
- (3) Participation in the program shall have the same effect as a parental refusal to consent to the receipt of specially designed instruction and related services pursuant to the Individuals with Disabilities Education Act at 20 U.S.C. §1414.
- (4) The agreement shall be signed by the parent of an eligible student or an eligible student who has attained the age of majority and a designee of the department. The agreement shall specify the anticipated participating school or participating provider(s), acceptable uses of IEA funds, the responsibilities of parents and eligible students, the duties of the department, and shall specify the financial institution to which the IEA funds shall be electronically transferred on a quarterly basis.

- (5) Upon receipt of the signed agreement, the department shall remit the first quarterly payment to the IEA via electronic funds transfer. IEA funds shall be remitted to the IEA on a quarterly basis thereafter until termination of the agreement.
- (6) The department shall establish procedures to effectuate the funds transfer process and dates on which each IEA payment shall be disbursed.
- (7) After the initial quarterly payment to the IEA, parents or an eligible student who has attained the age of majority shall submit receipts for all IEA funds expended for each quarter by the date set by the department before the next IEA quarterly payment is disbursed.
- (8) In accordance with the procedures of the department, the department may remove any parent or qualified student from eligibility for an IEA if the parent or qualified student fails to comply with the terms of the IEA agreement or applicable laws, rules or procedures, or misuses monies or fails to comply with the terms of the IEA agreement. A parent, or student who has reached the age of majority, may appeal the department's decision pursuant to the appeals procedures in the rules of the State Board of Education.
- (9) If the department determines that IEA funds have been misspent, the department shall notify the parent, or student who has reached the age of majority, and the parent, or student who has reached the age of majority, shall repay the misspent amount in the manner and within the timeframe set by the department. The department is authorized to freeze and/or withdraw funding directly from the student's IEA account for reasons including, but not limited to, fraud, misuse of funds, parent or student failure to comply with the terms of the state laws, rules, procedures or IEA agreement, if the student returns to the LEA, or if funds were deposited into the account in error. A parent, or student who has reached the age of majority, may appeal the department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

0520-01-11-.06 USE OF FUNDS.

- (1) Parents and eligible students who have attained the age of majority shall agree to use the funds deposited in the IEA for any, or any combination of, the following expenses:
 - (a) Tuition or fees at a participating school;
 - (b) Textbooks required by a participating school;
 - (c) Tutoring services provided by an individual tutor that meets the requirements set by the department or a tutoring organization accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE);
 - (d) Payment for purchase of curriculum, defined as a complete course of study for a particular content-area or grade level, including any supplemental materials required by the curriculum;
 - (e) Fees for transportation paid to a fee-for-service transportation provider. Transportation fees can only be used for transportation to participating schools and providers (including approved tutors and therapists);
 - (f) Tuition or fees for a nonpublic online learning program or course provided by a Category III nonpublic school pursuant to the rules of the State Board of Education Chapter 0520-07-02;
 - (g) Fees for nationally standardized norm-referenced achievement tests, Advanced Placement examinations, or any examinations related to college or university admission;
 - (h) Contributions to a Coverdell education savings account established under 26 U.S.C. § 530 for the benefit of the participating student;

- (i) Educational therapies or services for participating students from a licensed or accredited practitioner or provider;
 - (j) Services provided under a contract with a public school, including individual classes and extracurricular programs;
 - (k) Tuition or fees at an eligible postsecondary institution. Eligible postsecondary institutions include community colleges, colleges of applied technology, or universities of the University of Tennessee system or the board of regents system, or a private postsecondary institution accredited by one (1) of the following: any accreditation division of AdvancED (the North Central Association Commission on Accreditation and School Improvement (NCA CASI), the Northwest Accreditation Commission (NWAC), and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement (SACS CASI)), the Middle States Association of Colleges and Schools (MSA), the New England Association of Schools and Colleges (NEASC), the Western Association of Schools and Colleges (WASC), or the Council on Occupational Education (COE).
 - (l) Textbooks required for courses at an eligible postsecondary institution;
 - (m) Fees for the management of the IEA by private financial management firms;
 - (n) Computer hardware or other technological devices approved by the department or a physician, if the computer hardware or other technological device is used for the student's educational needs and is a required device for communication or physical access to instruction due to the adverse impact of the disability for which the student qualifies to receive an IEA or allows a student to access instruction or instructional content. Parents must receive prior approval from the department or a licensed physician before purchasing computer hardware using IEA funds.
- (2) If requested by the department, a parent or participating provider shall provide justification for how a particular educational therapy serves an educational purpose. If the department determines that a particular therapy does not serve an educational purpose for the student, the expense will be deemed an unapproved expenditure.

0520-01-11-.07 MONITORING AND COMPLIANCE.

- (1) The department shall conduct fiscal and program compliance reviews of all IEAs on a quarterly basis pursuant to procedures developed by the department for this purpose. The department shall conduct random reviews as determined appropriate pursuant to procedures established by the department for this purpose.
- (2) The department shall conduct an annual review of all IEAs.
- (3) The department shall establish or contract for the establishment of an online anonymous fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the department of any violation by a parent, nonpublic school, school district, participating school(s), or participating provider(s) of state laws relating to program participation. The department shall conduct an inquiry of any written report of fraud, or make a referral to the appropriate agency for an investigation.
- (4) The department may terminate a participating school/ participating provider or participating student/ parent from participation in the program upon finding that a participating school/ provider or student/ parent has failed to comply with the provisions of the Act, rules, or procedures. A participating school/ participating provider or participating student/ parent may appeal the department's decision pursuant to the appeals procedures in the rules of the State Board of Education.

0520-01-11-.08 PARTICIPATING SCHOOLS AND PROVIDERS.

- (1) For the purposes of the IEA program, a participating nonpublic school is considered to have an inclusive educational setting if the following two criteria are met:
 - (a) Students with disabilities are educated with non-disabled children.
 - (b) No more than 50 percent of the students in an individual classroom or setting are students with disabilities.
- (2) Nonpublic schools interested in enrolling IEA students shall submit an application to the department by the deadline set by the department.
 - (a) The department shall determine the application process for nonpublic schools to participate in the program. The department shall create a standard application which shall include, at a minimum, the eligibility requirements set forth in the Act and these rules, and may also include additional eligibility requirements set by the department.
 - (b) The department shall review the application and notify the school as to whether the school meets the requirements to enroll IEA students.
 - (c) If the department determines that a school is eligible to enroll IEA students, the department shall list the school on the department's website.
- (3) Participating schools shall include in their initial application to participate in the IEA program and in their annual renewal application the maximum number of IEA students the school has the capacity to enroll.
 - (a) Participating schools must demonstrate financial viability to repay any funds that may be owed to the state by filing with the department, prior to the start of each school year, financial information verifying the school has the ability to pay an aggregate amount equal to the amount of the scholarships expected to be paid during the school year. The school may comply with this requirement by filing a surety bond payable to the state from a surety, and in an amount determined by the department.
 - (b) Participating schools shall provide to the department all documentation required for a student's participation, including the nonpublic school's and student's fee schedules.
- (4) Participating schools and participating providers shall:
 - (a) Be academically accountable to the parent for meeting the educational needs of the student by:
 1. At a minimum, annually providing to the parent a written explanation of the student's progress.
 2. Cooperating with the IEA student whose parent chooses to participate in the statewide assessments.
 - (b) Comply with all health and safety laws or codes that apply to nonpublic schools and the profession of the participating provider;
 - (c) Certify that they shall not discriminate against students or applicants on the basis of race, color, or national origin;
 - (d) Conduct criminal background checks on employees;
 - (e) Exclude from employment any person not permitted by state law to work in a nonpublic school or as a participating provider; and
 - (f) Exclude from employment any person who might reasonably pose a threat to the safety of students.
- (5) The funds in an IEA may be used only for educational purposes. Participating schools, postsecondary institutions, and education providers that enroll participating students shall provide parents with a receipt for all qualifying expenses.
- (6) Participating schools shall verify each student's continued enrollment and attendance by following the procedures posted on the department's website. The department may suspend or remove a school from participating in the IEA program if the school fails to verify a student's continued enrollment and

- attendance. A participating school/ participating provider may appeal the department's decision pursuant to the appeals procedures in the rules of the State Board of Education.
- (7) Annually, participating schools shall submit a notice to the department if they intend to continue participating in the program by following the procedures developed by the department.
 - (8) The department may require participating schools to submit to the department a financial audit of the school conducted by a certified public accountant. Such audit shall include a statement that the report is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the department to be expended in a manner inconsistent with this part shall be returned to the state.
 - (9) The department may suspend or terminate a participating school or participating provider from participating in the program if the department determines the school or provider has failed to comply with the requirements of the Act, these rules, and/or the procedures set by the department.
 - a. If the department suspends or terminates a school's or provider's participation, the department shall notify affected participating students and their parents of the decision. If a participating school or provider is suspended or if a participating school or provider withdraws from the program, affected participating students remain eligible to participate in the program.
 - b. A participating school/ participating provider may appeal the department's decision pursuant to the appeals procedures in the Rules of the State Board of Education.
 - (10) If a student withdraws from a participating school and transfers to another participating school or returns to the LEA, the participating school shall refund the tuition and fees on a prorated basis based on the number of days the student was enrolled in the school. If the student transfers to another participating school, the funds shall be returned to the student's IEA account. If the student returns to the LEA, the funds from the IEA account shall be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.
 - (11) Third parties are prohibited from sending parent-held IEA accounts to collections in order to settle unpaid debts. All contracts entered into are the responsibility of the private parties involved.

0520-01-11-.09 RETURN TO LOCAL EDUCATION AGENCY.

- (1) A participating student may return to the local education agency (LEA) in which the student resides and the school which the student is zoned to attend upon termination of the student's participation in the program.
- (2) If the student transfers from a nonpublic school and enrolls in the LEA for which the student is zoned to attend, the parent or student shall notify the department by following the procedures and timeline set by the department.
- (3) Upon a student's return to the LEA, the department shall close the participating student's IEA. Upon a student's withdrawal from the school, participating schools and providers shall send all educational records of the participating student to the LEA or other school identified by the parent.
- (4) The LEA shall enroll the student and provide instruction in the general education curriculum.
- (5) If the parent or student requests, in writing, an evaluation for eligibility pursuant to the Individuals with Disabilities Education Act, the LEA shall treat the request as a request for an initial evaluation under 34 C.F.R. § 300.301.

0520-01-11-.10 APPEAL PROCEDURES.

- (1) Participating schools and providers may appeal the denial, suspension, or termination of the entity's participation in the IEA program, and a parent may appeal a denial of determination of eligibility,

preauthorization request, a denial of an expense paid for using IEA funds, or removal of the student from the IEA program pursuant to the following two (2) step appeal process:

- (a) Step one (1): The appeal should be on the form provided by the department and should be submitted to the commissioner of education within ten (10) business days of the denial, suspension, termination, and/or removal. The appeal shall be reviewed by the commissioner of education, or the commissioner's designee, within thirty (30) calendar days. The commissioner's decision shall be rendered within ten (10) business days of the date of the review.
- (b) Step two (2): An appeal of the commissioner's decision in step one (1) shall be filed with the commissioner within thirty (30) days and shall conform to the Uniform Administrative Procedures Act (T.C.A. Title 4, Chapter 5).

0520-01-11-11 CONFLICT OF INTEREST.

- (1) Use of IEA funds must be for the sole benefit of the participating student for which the IEA account is established. Any services, resources, and/or equipment purchased using IEA funds shall only be used by the participating student whose IEA paid for said services, resources, and/or equipment.
 - (a) It is a conflict of interest and is considered a misuse of IEA funds against IEA program rules and procedures for a family member of a participating student, including step parent, or member of an eligible student's household to derive any financial benefit from the IEA program.
 - (b) It is also a conflict of interest and against IEA program rules and procedures for a family member of a participating student, including step parent, or a member of a participating student's household to provide a professional recommendation or approval for a service or the use of computer hardware or other technological device for the participating student.
 - (c) For purposes of this section regarding conflict of interest, the definition of participating student is limited to students who are currently participating in the IEA program and does not include a student who has reached the age of majority and holds the IEA in his/her own name.

0520-01-11-12 through 0520-01-11-20

Reserved.

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

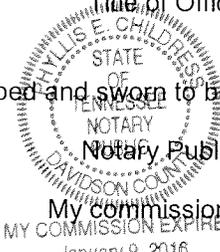
Date: 9/16/15

Signature: [Handwritten Signature]

Name of Officer: Dr. Sara Heburn

Title of Officer: Executive Director

Subscribed and sworn to before me on: 9/17/15



Notary Public Signature: [Handwritten Signature]

My commission expires on: _____

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Filed with the Department of State on: 09/18/15

[Handwritten Signature]
Tre Hargett
Secretary of State

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