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Sequence Number: 10-20-12  
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 File Date: 10/22/12

# Notice of Rulemaking Hearing

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

<b>Agency/Board/Commission:</b>	TN State Board of Education
<b>Division:</b>	
<b>Contact Person:</b>	Dannelle F. Walker
<b>Address:</b>	9 <sup>th</sup> Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243
<b>Phone:</b>	615-253-5707
<b>Email:</b>	Dannelle.Walker@tn.gov

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

<b>ADA Contact:</b>	Dannelle F. Walker
<b>Address:</b>	9 <sup>th</sup> Floor, Andrew Johnson Tower 710 James Robertson Parkway Nashville, TN 37243
<b>Phone:</b>	615-253-5707
<b>Email:</b>	Dannelle.Walker@tn.gov

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

Address 1:	1 Floor Conference Room, Andrew Johnson Tower		
Address 2:	710 James Robertson Parkway		
City:	Nashville		
Zip:	37243		
Hearing Date :	12/11/12		
Hearing Time:	10am-12pm	<input checked="" type="checkbox"/> 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)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only ONE Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0520-01-09	Special Education Programs and Services

<b>Rule Number</b>	<b>Rule Title</b>
0520-01-09-.10	Initial Evaluations

<b>Chapter Number</b>	<b>Chapter Title</b>
<b>Rule Number</b>	<b>Rule Title</b>

Rule 0520-01-09-.10 Special Education Programs and Services is amended by deleting the regulation in its entirety.

Authority: T.C.A. §§ 49-10-101 and 49-10-701.

#### The Background:

The 2004 reauthorization of IDEA provided that initial evaluations for determination of eligibility for special education “must be conducted within 60 (calendar) days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe” 20 U.S.C. §1414(a)(1)(C) and 34 C.F.R. §300.301(c). When the State Board of Education revised Tennessee Rules and Regulations Chapter 0520-01-09, Special Education Programs and Services, effective February 2008, it adopted by reference the Compilation of Federal Regulations at 34 C.F.R. Parts 300 and 301 in their entirety, unless otherwise provided, as the policies and procedures for administration of special education programs and services in the state. Because Tennessee had an evaluation timeframe in place, an exception to the adoption by reference was Chapter 0520-01-9-.10, originally adopted in 2001, which provides that “initial evaluation for determination of eligibility for special education must be conducted and an initial educational placement must be made within forty (40) school days of the local education agency’s receipt of informed parental consent for an initial evaluation. “ Therefore, Tennessee has followed a timeframe of forty (40) “school days” instead of sixty (60) “calendar days”.

On April 11, 2012, the United States Department of Education’s Office of Special Education Programs, in *Letter to Reyes*, indicated there is no exception in 34 CFR § 300.301(d) regarding initial evaluations that would permit the applicable initial evaluation timeline to be suspended because of a school break.

OSEP further indicated that IDEA contemplates that the initial evaluation of a child suspected of having a disability not be unreasonably delayed so that eligible children with disabilities are not denied a free appropriate public education. This guidance was provided to North Carolina, which, like Tennessee, had an established state timeframe that allowed suspension of the timeline during school breaks.

34 C.F.R. §300.301(c) provides that an initial evaluation for determination of eligibility for special education must be conducted within sixty (60) “calendar days” of the local education agency’s receipt of informed parental consent and 34 C.F.R. §300.323(c) provides that an initial meeting to develop an IEP must be conducted within thirty (30) “calendar days” of the determination of eligibility.

Deletion of Rule 0520-01-09-.10 will result in adoption by reference of 34 C.F.R. §300.301(c) and 34 C.F.R. §300.323(c) regarding initial evaluations and development of IEPs. This will remove the complications and confusion caused by the dependence on “school days”, the timing of which is based on various local education agency calendars. Students, parents, and local education agency personnel will benefit from this change because it will alleviate the complication caused by school closures for holidays, fall and spring breaks, summer breaks, inclement weather and illness outbreaks which must be considered when “school days” are involved in time calculation. Aligning the state regulation with the federal regulation will make Tennessee’s state data comparable with data collected by the U. S. Department of Education, Office of Special Education Programs for all other states implementing the

standard federal initial evaluation timeline requirement. Tennessee's regulations for reevaluation are already fully aligned with federal IDEA regulation.

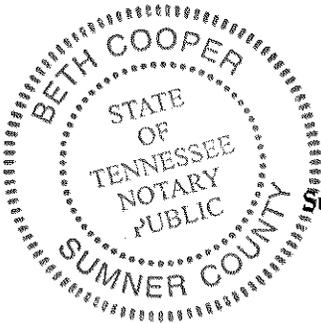
I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: October 15, 2012

Signature: Gary Nixon

Name of Officer: Gary Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: October 15, 2012

Notary Public Signature: Beth Cooper

My commission expires on: January 26, 2016

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Filed with the Department of State on: 10/22/12

Tre Hargett by Mrs. Hargett

Tre Hargett  
Secretary of State

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