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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.

<b>Agency/Board/Commission:</b>	Department of Intellectual and Developmental Disabilities
<b>Division:</b>	
<b>Contact Person:</b>	Richard R. Prybilla
<b>Address:</b>	315 Deaderick Street, UBS Tower, 8 <sup>th</sup> Floor, Nashville, TN
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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:

<b>ADA Contact:</b>	Tonya LaDeau
<b>Address:</b>	315 Deaderick Street, UBS Tower, 8 <sup>th</sup> Floor, Nashville, TN
<b>Phone:</b>	615-253-2386
<b>Email:</b>	<a href="mailto:Tonya.LaDeau@tn.gov">Tonya.LaDeau@tn.gov</a>

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

Address 1:	DIDD Middle Tennessee Regional Office, One Cannon Way Bldg., Basement		
Address 2:	275 Stewarts Ferry Pike, Payne Conference Room		
City:	Nashville		
Zip:	37214		
Hearing Date:	09/28/2020		
Hearing Time:	1:00 p.m. to 3:30 p.m.	X	CST/CDT ___ EST/EDT

## Additional Hearing Information:

**Alternate Hearing Option (Only If the In-Person Hearing is Prohibited by Executive Order)**  
 If physical congregating in groups of 10 or more persons is prohibited by Executive Order or social distancing phase-in guidance issued by Governor Lee, then the hearing will not be held at the location above but will, instead, be held electronically by WebEx at the same date and time provided above. In that event, you may join by going to this link:  
<https://tngov.webex.com/webappng/sites/tngov/meeting/download/8147598f652a456cbdfbaf12c013e458?siteurl=tngov&MTID=md2164832833b88f73e956abbea30880c>

Meeting number (access code): 161 923 5061  
 Meeting password: fRZNR3WpQ73

**Tap to join from a mobile device (attendees only)**  
[+1-415-655-0003](tel:+14156550003), [1619235061##](tel:+1619235061) US TOLL

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**Join from a video system or application**

Dial [1619235061@tngov.webex.com](mailto:1619235061@tngov.webex.com)

You can also dial 173.243.2.68 and enter your meeting number

**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.)

<b>Chapter Number</b>	<b>Chapter Title</b>
0465-04-01	Tennessee's Early Intervention System
<b>Rule Number</b>	<b>Rule Title</b>
0465-04-01-.01	General Regulations. Adoption By Reference
0465-04-01-.02	Definitions
0465-04-01-.03	Lead Agency
0465-04-01-.04	Data Collection and Records
0465-04-01-.05	Individualized Family Service Plan (IFSP)
0465-04-01-.06	Procedural Safeguards

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 0465-04-01  
Tennessee's Early Intervention System

Chapter 0520-01-10 is being transferred to new Chapter 0465-04-01 and amended to read as follows

0465-04-01-.01 GENERAL REGULATIONS. ADOPTION BY REFERENCE.

The State Department of Intellectual and Developmental Disabilities adopts by reference the Compilation of Federal Regulations at 34 C.F.R. Part 303 in their entirety unless otherwise provided herein as the policies and procedures for administration of special education early intervention programs and services in the state. The regulations are available from Tennessee's Early Intervention Systems (TEIS), Tennessee Department of Intellectual and Developmental Disabilities, UBS Tower, 8<sup>th</sup> Floor, 315 Deaderick Street, Nashville, Tennessee 37243, or on the internet by accessing the Department of Intellectual and Developmental Disabilities' website at <http://tn.gov/DIDD/teis>.

**Authority:** T.C.A. §§ 49-10-702, 33-1-303, 4-3-2708; 20 U.S.C. § 1431, *et seq.*; Exec. Order No. 10 (Dec. 2, 2019).

0465-04-01-.02 DEFINITIONS.

(1) Developmental Delay for Infants and Toddlers.

(a) General.

Infants and toddlers with disabilities eligible for TEIS services shall be those children from birth to age three, inclusive, who:

1. Have been evaluated in accordance with appropriate procedures for early intervention services; and
2. As a result of the evaluation, a multidisciplinary team has determined that the child meets the criteria for Tennessee's definition of Developmental Delay.

(b) Developmental Delay Criteria. The infant or toddler must meet one of the following:

1. The child is experiencing developmental delays, as measured by appropriate diagnostic instruments, administered by qualified professionals, indicating that the child is:
  - (i) Functioning at least twenty-five percent (25%) below his/her chronological age in two or more of the following developmental areas:
    - (I) Cognitive development;
    - (II) Physical development, including vision and hearing;
    - (III) Communication development;
    - (IV) Social/emotional development; and/or
    - (V) Adaptive development; or
  - (ii) Functioning at least forty percent (40%) below his/her chronological age in one of the developmental areas listed in subparagraph 1(i)(I-V) above; or

- (iii) The child has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay, i.e., known, obvious, or diagnosable condition such as sensory losses and severe physical impairments. Examples include, but are not limited to:
  - (I) Hearing loss that can be verified or estimated to be significant as indicated through an audiological evaluation;
  - (II) Visual loss, which can be verified or estimated to be significant; for example, cataracts, retinopathy of prematurity, or dysfunction of the visual cortex;
  - (III) Neurological, muscular, or orthopedic impairment which prevents the development of other skills; for example, spina bifida, cerebral palsy, autism, epilepsy;
  - (IV) Organic conditions or syndromes which have known significant consequences; for example, tuberous sclerosis, hydrocephalus, muscular dystrophy, fetal alcohol syndrome;
  - (V) Chromosomal, metabolic, or endocrine abnormalities; for example, Down Syndrome; Klinefelter Syndrome, Turner Syndrome, hypothyroidism; or
  - (VI) Prematurity, as defined by Tennessee's eligibility criteria for premature infants; or
- (iv) The child has been determined eligible based on informed clinical opinion because the use of standardized instruments does not accurately reflect the child's developmental status and the child does not have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(2) Developmental Therapy.

Developmental therapy for infants and toddlers with disabilities eligible for TEIS services includes:

- (a) Family training, counseling, and home visits, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in understanding the special needs of the child and enhancing the child's development; and
- (b) Special instruction including:
  - (i) The design of learning environments and activities that promote the infant's or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;
  - (ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the Individualized Family Service Plan (IFSP) for the infant or toddler with a disability;
  - (iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and
  - (iv) Working with the infant or toddler with a disability to enhance the child's development.

**Authority:** T.C.A. §§ 49-10-702, 33-1-303, 4-3-2708, 68-5-905; 20 U.S.C. 1431, et seq.; Exec. Order No. 10 (Dec. 2, 2019).

- (1) The Tennessee Department of Intellectual and Developmental Disabilities is designated by the Governor as lead agency for TEIS and is responsible for the administration of the State's early intervention system.
- (2) The Tennessee Department of Intellectual and Developmental Disabilities, in accordance with Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1431 (Part C), *et. seq.* and state interagency agreements, shall be responsible for:
  - (a) The general administration and supervision of programs that receive funding under IDEA Part C to provide services to eligible infants and toddlers and their families; and
  - (b) Assigning financial responsibility among appropriate agencies for early intervention services.
- (3) The Tennessee Department of Intellectual and Developmental Disabilities shall be responsible for the supervision and monitoring of programs including:
  - (a) Supervising and monitoring programs and activities that comprise the early intervention system, including agencies, institutions, and organizations which provide early intervention services to children eligible under Part C and their families, for compliance with IDEA Part C and the provisions of federal and state regulations, policies and procedures, whether or not the programs or activities receive financial assistance under Part C of IDEA;
  - (b) Providing, or facilitating the provision of, technical assistance to those agencies, institutions, and organizations including self-evaluation, program planning and implementation;
  - (c) Enforcing obligations imposed on those agencies, institutions and organizations as required under these regulations; and
  - (d) Directing that deficiencies identified through monitoring be corrected.
- (4) Each agency receiving assistance under IDEA Part C shall:
  - (a) Submit financial and other written reports at the time and manner specified by TEIS; and
  - (b) Participate in periodic on-site monitoring visits conducted by TEIS.
- (5) The Tennessee Department of Intellectual and Developmental Disabilities shall utilize funds provided under IDEA Part C that are reasonable and necessary for administering the state early intervention system.
- (6) TEIS shall ensure that traditionally underserved groups, including minority, low-income, and rural families, are meaningfully involved in the planning and implementation of all components of the early intervention system and that these families have access to culturally competent services within their local geographical areas.
- (7) The lead agency shall utilize contractual arrangements as a method of securing required early intervention services for children and families. Each contractor will be required by the terms of its contract to adhere to all applicable state and federal requirements for the provision of services to Part C eligible children and their families.
  - (a) All early intervention services provided for eligible children and their families shall meet the definition of early intervention services and shall be provided in a manner that is consistent with state and federal standards for services under IDEA Part C.
  - (b) Procurement of early intervention services by service providers shall conform to the applicable agency procurement policies.

- (c) Individuals or organizations seeking to provide early interventions services shall meet the requirements and standards established by the lead agency.

**Authority:** T.C.A. §§ 49-10-702, 33-1-303, 4-3-2708; 20 U.S.C. § 1431, et seq.; Exec. Order No. 10 (Dec. 2, 2019).

0465-04-01-.04 DATA COLLECTION AND RECORDS.

- (1) The Tennessee Department of Intellectual and Developmental Disabilities shall maintain a data system that contains the early intervention records of infants and toddlers served by TEIS. The department shall maintain a process for collecting, managing, analyzing, and reporting statewide data regarding the operational status of TEIS.

**Authority:** T.C.A. §§ 49-10-702, 33-1-303, 4-3-2708; 20 U.S.C. § 1431, et seq.; Exec. Order No. 10 (Dec. 2, 2019).

0465-04-01-.05 INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP).

- (1) IFSP Meetings.
  - (a) The service coordinator shall communicate with the family and other IFSP team members in scheduling the IFSP meeting. Once scheduled, written notice of the meeting shall be provided to the family and other participants, no later than then (10) days prior to the scheduled meeting date to ensure that they will be able to participate.
  - (b) Participants' involvement in the IFSP meeting shall be reflected on the IFSP document by personal signature or by noting the method of participation.

**Authority:** T.C.A. §§ 49-10-702, 33-1-303, 4-3-2708; 20 U.S.C. § 1431, et seq.; Exec. Order No. 10 (Dec. 2, 2019).


0465-04-01-.06 PROCEDURAL SAFEGUARDS.

- (1) Mediation.
  - (a) Mediations shall be conducted by mediators employed by the secretary of state and in accordance with Tennessee Department of Intellectual and Developmental Disabilities policy.
  - (b) TEIS shall provide an appropriate location for the mediation and shall be responsible for the administrative costs of the mediation.
- (2) Due Process.
  - (a) Due process cases shall be heard by administrative law judges employed by the secretary of state and in accordance with Tennessee Department of Intellectual and Developmental Disabilities policy.
  - (b) Due process cases shall be conducted pursuant to 34 C.F.R. §§ 303.440 – 449.
  - (c) TEIS shall provide an appropriate location for the hearing, a court reporter, an original copy of the transcript for the administrative law judge, a copy of the transcript for the parents, and shall be responsible for the administrative costs of the hearing.
  - (d) Any party aggrieved by the findings and decision of a due process hearing has the right to bring a civil action with respect to the complaint presented. The action may be brought in any state court of competent jurisdiction in accordance with Tenn. Code Ann. § 4-5-322 or in a district court of the United States without regard to the amount in controversy.

**Authority:** T.C.A. §§ 49-10-702, 33-1-303, 4-3-2708; 20 U.S.C. § 1431, et seq.; Exec. Order No. 10 (Dec. 2, 2019).

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: July 29, 2020

Signature: 

Name of Officer: Richard R. Prybilla

Title of Officer: Deputy General Counsel

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Tre Hargett  
Secretary of State

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