

**INTERAGENCY AGREEMENT**

**AMONG**

**TENNESSEE DEPARTMENT OF EDUCATION,**

**TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES,**

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION,**

**BUREAU OF TENNCARE, AND**

**DIVISION OF MENTAL RETARDATION SERVICES**

**TENNESSEE DEPARTMENT OF HEALTH,**

**TENNESSEE DEPARTMENT OF HUMAN SERVICES,**

**TENNESSEE DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL**

**DISABILITIES AND TENNESSEE DEPARTMENT OF CORRECTION**

**July 1, 2009**

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## Article One

### Parties to Agreement

This Interagency Agreement (Agreement) is entered into by the Tennessee Department of Education (DOE), the Tennessee Department of Children's Services (DCS), the Tennessee Department of Finance and Administration (TDFA)/Bureau of TennCare, Division of Mental Retardation Services (DMRS), the Tennessee Department of Health (DOH), the Tennessee Department of Human Services/Division of Rehabilitation Services (DHS/DRS), and the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD), and the Tennessee Department of Correction (TDOC). This includes all offices, divisions, bureaus, units and programs referred to in this Agreement for which each Department provides oversight.

## Article Two

### Purpose

This Interagency Agreement is intended to fulfill the requirements of Part B and Part C of the Individuals with Disabilities Education Act, *20 U.S.C. § 1400 et seq.* (IDEA). 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 adolescents who are IDEA eligible. This Agreement formalizes policies, procedures, and fiscal responsibilities of the Parties. For purposes of this Interagency Agreement, the term “child with a disability” shall always be defined according to *34 CFR §300.8(a)* unless otherwise specified.

## Article Three

### Definitions

For purposes of this Interagency Agreement,

1. **Assessment:** For Part B purposes, 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. *Special Education Dictionary*. For Part C purposes, it 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. *34 CFR §303.322(b)(2)*.
2. **Child Find:** 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. *34 CFR §300.111 and §303.321.*

3. **Child with a Disability:** For IDEA purposes, means a child evaluated as having mental retardation, 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. *34 CFR §300.8(a).*

4. **Children’s Cabinet:** A committee of child-serving state commissioner’s (Department of Education, Finance and Administration, Health, Human Services, Children’s Services, Mental Health and Developmental Disabilities, Mental Retardation, and TennCare), pediatricians, and stakeholders to resolve interagency dispute resolutions, issues, and priorities.

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

6. **Custody:** 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. *TCA §37-1-102(b)(8).*

7. **Department of Education (DOE) Resolution Committee:** A committee of Department of Education members to resolve IDEA Part C dispute resolutions, issues, and priorities. If a dispute can not be resolved by this committee with fifteen (15) calendar days of the referral, the issue shall be forwarded to the Children’s Cabinet.

8. **Detention Center:** 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 *TCA § 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. *TCA § 37-5-501(10).*

9. **Developmental Center:** A facility certified by the Department of Health as an Intermediate Care Facility/Mental Retardation (ICF/MR) facility and licensed by the Department of Mental Health and Developmental Disabilities as a Mental Retardation institutional habilitation facility.

10. **Developmental Delay:** Delays in one 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 birthday. *Tenn. Rule 0520-1-9-.02(7).*

11. **Durable Medical Equipment (DME):** 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. *Tenn. Rule 1200-13-13-.01* and *Tenn. Rule 1200-13-14-.01*.

12. **Early Intervention System:** The total effort in Tennessee that is directed at meeting the needs of children eligible under IDEA Part C and their families. *34 CFR §303.11*.

13. **Early Periodic Screening, Diagnosis and Treatment (EPSDT):** A covered benefit for TennCare Medicaid enrolled children only that includes (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 USC § 1396a(a)* to correct or ameliorate any defects and physical and mental illnesses and conditions discovered. *Tenn. Rule 1200-13-13-.01* and *Tenn. Rule 1200-13-14-.01*. Also known in Tennessee as "TENnderCare".

14. **Education Records:** 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 USC § 1232g(a)(4)(B)* (*FERPA-Exceptions*).

15. **Emergency Medical Condition:** For TennCare purposes, shall include emergency mental health and substance emergency treatment services and shall mean 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. *Tenn. Rule 1200-13-13-.01* and *Tenn. Rule 1200-13-14-.01*.

16. **Evaluation:** For the purposes of Part B, 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. *34 CFR §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 and 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. *34 CFR §303.322(b)(1)*.

17. **Family Educational Rights and Privacy Act (FERPA):** Federal legislation prohibiting educational agencies or institutions from releasing education records of students unless consistent with the terms of the Act. *20 USC §1232g*.

18. **Foster Care:** 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. *TCA §37-2-402(5)*.

19. **Foster Home:** 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 one time. This maximum includes birth, adopted or foster children.

20. **Foster Parent:** 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.  
*Tenn. Rule 0520-01.09-.04. and 34 CFR §300.30(a).*

21. **Free Appropriate Public Education (FAPE):** 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).  
*34 CFR §300.17.*

22. **Functional Delay:** 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:  
*Tenn. Rule 0520-1-9-.02(9)*.

(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 two 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 Mental Retardation eligibility standards.

23. **Grier Revised Consent Decree:** *Grier v. Wadley*, U.S. Dist. (M.D. Tenn.) Civil Action No. 79-3107 entered October 26, 1999 and all later revisions and modifications of such Revised Consent Decree entered by the Court.

24. **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. *DCS Glossary* page 24.

25. **Inmate:** For TennCare purposes, an inmate shall mean an individual confined in a local, state, or federal prison, jail, youth development center, or other penal or correctional facility, including a furlough from such facility. *Tenn. Rule 1200-13-13-.01* and *Tenn. Rule 1200-13-14-.01*.

26. **Individuals with Disabilities Education Act (IDEA):** Federal legislation codified at *20 USC § 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.

27. **Individualized Education Program (IEP):** A written statement that is developed, reviewed, and revised in a meeting of the IEP Team, in accordance with *34 CFR § 300.320-300.324* (IEP), for a child with a disability who qualifies for special education and related services under IDEA Part B.

28. **Individualized Education Program Team (IEP Team):** A statutorily defined group of individuals under *34 CFR § 300.321* (IEP Team), with the responsibility for determining eligibility and/or special education and related services under IDEA Part B.

29. **Individualized Family Service Plan (IFSP):** A 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) Is reviewed by interactive means acceptable to all parties, and at least on a six-month interval. *34 CFR §303.340(b)* and *§303.344*.

30. **Individual Support Plan (ISP):** A written document central for planning, providing and reviewing the supports and services to be provided by DMRS through its contract agencies for those in the Home and Community Based Services (HCBS) waiver. *DMRS Family Handbook* p. 51.

31. **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. *Tenn. Rule 0520-01-09.12(4)*.

32. **Infant or Toddler with a Disability:** 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; or

(c) Exhibits developmental delays for which there are no standardized measures or for which existing standardized procedures are not appropriate for the child's age or a given developmental area. *TCA 33-1-101 (7)*.

33. **In-House Schools:** 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. A self-contained educational program provided at a residential treatment facility.

**34. Intra-agency Dispute:** The inability of divisions, offices, bureaus, units or programs within a department or agency to agree as to which entity 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. *34 CFR 300.154(a)(3)*.

**35. Interagency Coordinating Council (ICC):** The IDEA Part C State Interagency Coordinating Council. *34 CFR §303.600*.

**36. Interagency Dispute:** Any disagreement between two 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.

**37. John B. Consent Decree:** *John B. v. Menke*, U.S. Dist. (M.D. Tenn.) Civil Action No. 0168, entered March 11, 1998.

**38. Least Restrictive Environment:** 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. *34 CFR §300.114(a)(2)*.

**39. Local Educational Agency (LEA):** 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. *34 CFR §300.28(a)*.

**40. Managed Care Contractor (MCC):** For TennCare purposes, a Managed Care Contractor shall mean:

(a) A managed care organization, 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 managed care organization to provide services; or

(c) A State government agency (i.e., Department of Children's Services and Division of Mental Retardation Services) that contracts with TennCare for the provision of services. *Tenn. Rule 1200-13-13-.01 and Tenn. Rule 1200-13-14-.01*.

41. **Managed Care Organization (MCO):** For TennCare purposes, Managed Care Organizations shall mean, an appropriately licensed Health Maintenance Organization (HMO) approved by the Bureau of TennCare as capable of providing medical services in the TennCare program. *Tenn. Rule 1200-13-13-.01* and *Tenn. Rule 1200-13-14-.01*.

42. **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 USC 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 (i.e, emergency 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). *Tenn. Rule 1200-13-13-.01* and *Tenn.Rule 1200-13-14-.01*. TennCare medical services for the purposes of this agreement include both medical and behavioral diagnoses and treatment.

43. **Medical Services:** Services provided by a licensed physician to fulfill the requirements of IDEA in order to determine a child's medically related disability that results in the child's need for special education and related services. *34 CFR §300.34(c)(5)*.

44. **Medically Necessary:** A description of a medical item or service that meets the criteria set forth in the *TCA§71-5-144*. For TennCare purposes, the term “medically necessary” is provided in the *Tenn. Rule 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 *Tenn. Rule 1200-13-16.01* *Tenn. Rule 1200-13-13-.01* and *Tenn. Rule 1200-13-14-.01*.

45. **Mental Retardation:** Substantial limitations in functioning:

- (a) As shown by significantly sub-average intellectual functioning, as shown by:
  - (i) an I.Q. of 70 or below on an individually-administered I.Q. test; or
  - (ii) such other, specific evidence as determined exclusively by the Division of Mental Retardation Services that establishes an I.Q. of 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.

46. **Natural Environments:** For IDEA Part C purposes, settings that are natural or normal for a child's age peers who have no disability. *34 CFR §303.12(b)*.

47. **Parent:** 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 CFR § 300.519* and *Tenn. Rule 0520-01-09-.20 (Surrogate Parents)*. *34 CFR §300.30(a)*; 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 *34 CFR § 300.30(b)(2)*.

48. **Participating Agencies:** Means the Tennessee Department of Children's Services, the Tennessee Department of Education, the Tennessee Department of Finance and Administration/Bureau of TennCare, and the Division of Mental Retardation Services, the Tennessee Department of Health (Part C only), the Tennessee Department of Human Services/Division of Rehabilitation Services (Part B only), and the Tennessee Department of Mental Health and Developmental Disabilities, and the Tennessee Department of Correction.

49. **Payor of Last Resort:** The agency that has ultimate responsibility for providing a service for a child with a disability or his family after all other potential resources have been exhausted.

50. **Permanency Planning:** 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, (i.e. return to parent, relative placement, adoption, in a timely manner).

51. **Personally Identifiable Information:** The information that relates to or concerns an individual student. It includes but is not limited to the student's name, the name of the student's parent(s) or other family member(s), the address of the student or student's family, a personal identifier such as the student's social security number or student number, and a list of personal characteristics that would make the student's identity easily traceable. *34 CFR §300.32*.

52. **Primary Care Physician (PCP):** 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. A primary care 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. *Tenn. Rule 1200-13-13-.01* and *Tenn. Rule 1200-13-14-.01*.

53. **Primary Referral Sources:** Hospitals (including prenatal and postnatal care hospitals), physicians, parents, day care programs, LEAs, public health facilities, other social services agencies, and other health care providers. *34 CFR §303.321 (d)(3)*.

54. **Regional Mental Health Institute (RMHI):** A mental health facility or institution of the State of Tennessee over which TDMHDD has exclusive jurisdiction and control. *TCA §4-3-1603(a)*.

55. **Related Services:** 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. *34 CFR §300.34(a)*. *Note: If a particular service is needed by a child but not needed to assist him in benefiting from special education, then it is not considered a “related service” for Medicaid purposes.*

56. **Residential Facility:** 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*.

57. **Residential Treatment:** 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*. Behavioral treatment services provided in a twenty (24) hour residential setting; an individual treatment plan to address mental health and behavioral needs is developed; treatment includes individual, group, and supportive therapies.

58. **Runaway House/Shelter:** 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. *TCA §37-2-502(3)*.

59. **School Health Services and School Nurse Services:** 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. *34 CFR §300.34(c)(13)*.

60. **Service Coordinator:** 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. *34 CFR §303.22*.

61. **Special Education:** 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. *34 CFR §300.39(a)(1)*.

62. **State Post-Secondary Transition Coordinating Council:** Each participating agency will provide an individual to participate in the State Post-secondary Transition Coordinating Council that will meet regularly and address statewide post-secondary transition issues to post secondary education, career development, or pre-employment.

63. **Surrogate Parent:** 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/early intervention services to the child. *34 CFR § 300.519*, and *Tenn. Rule 0520-01-09-.20*. Under current interpretation “ward of the state” is any child in legal custody of DCS whose parents have had their parental rights terminated by a court. (See AG op. 02-22).

64. **TennCare:** 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 Research and Demonstration waiver granted to the State of Tennessee. *Tenn. Rule 1200-13-13-.01* and *Tenn. Rule 1200-13-14-.01*.

65. **TennCare Enrollee:** 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 Sections 1115 or 1915 of the Social Security Act. As concerns MCO compliance with these rules the term only applies to those individuals for whom the MCO has received at least on day’s prior written or electronic notice from the TennCare Bureau of the individual’s assignment to the MCO. *Tenn. Rule 1200-13-13-.01* and *Tenn. Rule 1200-13-14-.01*.

66. **TennCare Medicaid:** The portion of the TennCare program that serves individuals who are eligible for Medicaid.

67. **TennCare Provider:** An institution, facility, agency, person, corporation, partnership, or association which accepts, as payment in full for providing benefits to a TennCare enrollee, the amounts paid pursuant to an approved agreement with a MCO. Such payment may include copayments from the enrollee or the enrollee’s responsible party. *Tenn. Rules 1200-13-13-.01* and *Tenn. Rule 1200-13-14-.01*.

68. **TennCare Standard:** The portion of the TennCare program that serves individuals who are not eligible for Medicaid but who have been determined eligible for TennCare as a member of a “demonstration” population.

69. **TENNderCare Connection:** A process that provides information with parental consent to MCOs when children are identified as needing to receive medically related services in an educational setting.

70. **Tennessee 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 serious medical conditions.

71. **Transition Services:** For IDEA Part B, is 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. *34 CFR §300.43 and Rehabilitation Act of 1973 as amended, §7(37).*

72. **Vocational Rehabilitation Services:** Any services described in an individualized plan for employment 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. *Rehabilitation Act of 1973 as amended, §103.*

73. **Youth Development Center (YDC):** A secure facility, operated by DCS, for those who have been adjudicated delinquent and meet the criteria established by DCS for placement at such facility. *TCA §37-5-103(16).*

## **Article Four**

### **IDEA PART B SERVICES**

#### **A. Tennessee Department of Education Division of Special Education**

1. DOE will coordinate the provision of services under this Agreement to ensure that children 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.
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. *34 CFR §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. *34 CFR §300.227(a)*.

4. Every state agency or private school shall comply with the Tennessee Department of Education'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 *TCA §49-10* (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 Determination Letter stating the agency "Meets Requirements", "Needs Assistance", "Needs Intervention", or "Needs Substantial Intervention". The 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 corrective action plan (CAP) to DOE within thirty (30) calendar day of the receipt of the letter. The corrective action plan shall outline steps and timelines for correcting the exceptions. DOE shall review the plan 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, known as a census, which is provided by the LEAs on children with disabilities. 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. *TCA §49-10-606, et seq.*
7. In accordance with IDEA, DOE will investigate all administrative complaints filed by parties to the agreement as it relates 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 extension to sixty (60) calendar days for the resolution of the complaint in order for the parties to submit additional information. *34 CFR §300.151-153, TCA §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 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. *34 CFR §300.506, TCA §49-10-605.*
9. DOE encourages LEAs to participate in the School to Work Case Manager's Grant Program administered by Department of Human Services/Division of Rehabilitation Services (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 4 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 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 as appropriate, 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 through the state's Regional Resource Centers to be supported by the Participating Agencies. These Regional Resource Centers will provide technical assistance 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/EPSTDT providers with criteria and training concerning IDEA requirements. TennCare will train TennCare/EPSTDT providers concerning EPSTDT requirements. TennCare will ensure that MCOs provide appropriate technical assistance to TennCare providers in billing and the coordination of services for children who are IDEA eligible. Information for providers regarding EPSTDT will be distributed at least annually.
13. Through state statute, Tennessee has extended eligibility for special education and related services to children identified as functionally delayed in accord 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. Tennessee Department of Education Local Educational Agency**

1. When the local educational agency (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, the LEA, with the permission of the child's parent or legal guardian, may refer the child for an EPSDT screening. *See Article 4 Section C - 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 EPSDT screenings, the LEA should refer the child to the child's PCP for an EPSDT interperiodic screen. 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 MCOs are bound.
  
2. Parents of IDEA eligible students and students referred for an IDEA eligibility evaluation will be asked to complete a voluntary TENNderCare Connection release form to indicate if the child is receiving services from any other Participating Agency or MCO. All information provided by the parents of an IDEA eligible child voluntary and will be used only to ensure compliance with 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. *34 CFR §300.154(b)(1)(i).* Individual TennCare information such as MCO, PCP, and related medical information shall be kept strictly confidential as required by FERPA, IDEA, 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, and all other applicable state and federal laws. *See Article 7 - 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 MCO 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 MCO. TennCare developed the TENNderCare Connection release form to help facilitate the disclosure of the IEP to the PCP so that they can help these children receive medically necessary TennCare services, if appropriate. *See Attachment Two-TennCare Release Form.*
  
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. *34 CFR §300.154(e).* The use of private insurance must be

voluntary and the parents must 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. *34 CFR §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. However, in order to avoid choosing an out of network provider and run the risk of not having such services paid for, the LEA must be a TennCare provider and verify that the provider selected is a TennCare network provider, and that the necessary prior approvals have been obtained from the MCO. If the child is a TennCare enrollee, the MCO shall accept the IEP indication of a medical problem or shall have the child appropriately tested. *John B. Consent Decree, paragraph 81*. TennCare will provide all periodic and interperiodic 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 a MCO in order to seek reimbursement for these services from TennCare MCOs 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. The MCO could determine that after a period of time the issue being addressed had been resolved and that speech therapy was no longer needed. In this case, the school system may have to assume responsibility for the service unless a new IEP is written.
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) 10 days before the meeting unless waived *TCA § 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 will 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. *34 CFR §300.14* and *34 CFR §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 must ensure 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 4 Section A-DOE*. An IEP Team meeting must be convened for IDEA eligible children who are educated in a residential facility. The residential facilities agree 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 this 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 (Individualized Transition Plan) that will include the transition service needs of the child. *Tenn. Rule 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 sent to the parents and child or personally call and/or emailed a message to the representative from DMRS, DHS/DRS, DCS, and other agencies, as appropriate, and invite them to the IEP Team meeting. The ITP will be updated annually. *34 CFR §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. *34 CFR §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 eligibility determinations shall be considered confidential education records consistent with IDEA, FERPA, and all applicable federal and state laws. See *Article 7 - Records*.

11. If another public agency is obligated under federal or state law or assigned responsibility under State policy to provide or pay for any services that are also considered special education or related services and are necessary for ensuring FAPE to children who are IDEA eligible, the public agency shall fulfill that obligation or responsibility, directly, through contract or by another arrangement. *34 CFR §300.154(b)*. If another public agency is responsible for services that are part of special education or related services listed in a child's IEP, the LEA will notify the other public agencies 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. *34 CFR §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. *34 CFR §300.154(b)(2)*.
12. The LEA may seek reimbursement for the services for which the child is eligible under each agencies programs from the public agency that failed 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 TennCare or a MCO. 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 have been obtained from the MCO. If there is a dispute regarding reimbursement, the dispute shall be resolved in accord with the procedures outlined in Article 6 of this Agreement.
13. The LEA shall provide information to the parent of an IDEA child eligible on 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 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. *34 CFR §300.520* and *Tenn. Rule 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. *34 CFR §300.321(a)(6)*.

### **C. Bureau of TennCare**

1. TennCare contracts with MCCs to provide medical and behavioral care through networks of health care providers. **TennCare monitors MCCs compliance with TennCare Rules and that the MCCs are providing accessible in-network providers to TennCare enrollees.**
2. Department of Human Services 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. TennCare is responsible for providing EPSDT services for all children who are TennCare enrollees under the age of twenty-one (21). 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; and
  - (c). Medically necessary health and behavioral health treatment services. EPSDT treatment services include “such other necessary health care, diagnostic services, treatment and other measures [described in § 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.” *42 USC§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 screen 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. *John B. Consent Decree*, paragraph 41(m). TennCare (including its contractors, the MCOs) 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. *John B. Consent Decree*, paragraph 57. The MCCs have the discretion to require that TennCare covered services be delivered by their network providers deliver TennCare covered services, 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 interperiodic screen. Any person such as an educator, parent, or health professional who suspects a health problem may refer a child for an interperiodic screen. An interperiodic screen does not have to include any screening elements required for a periodic screen. 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. *John B. Consent Decree*, paragraph 42(a).
5. LEAs should with parental consent, refer TennCare enrolled children for EPSDT screenings when the child is not up-to-date on his/her screenings. 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 interperiodic 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. TennCare will provide all covered medically necessary services, including durable medical equipment, 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 IEP. *34 CFR §300.154(b)(1)(i)*. 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. 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.
7. Children who are inmates are not covered by TennCare. *42 CFR §435.1009* Children in a Youth Detention Center may be covered under the provisions stated in *Grier Revised Consent Decree (Modified) C.15.f*.
8. Each TennCare MCC 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. *Contractor's Risk Agreement between TennCare and MCC*. In addition, to **coordinating** EPSDT screenings and services, each TennCare MCC shall provide case management services by assisting 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. *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. *John B. Consent Decree*, paragraph 70.

9. The TennCare 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 ensure an effective child health program. The MCCs are responsible for 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, 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*. MCCs shall accept the IEP indication of a medical problem or shall have the child tested further. Coordination by the MCC and LEA should be calculated to reduce gaps and overlaps in services. *John B. Consent Decree*, paragraph 81.
10. The TennCare Solutions Unit, as designated by 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)*. *Tenn. Rule 1200-13-13-11* and *Tenn. Rule 1200-13-14-11*.

## **D. Tennessee 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 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. *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 4, Section B. - LEA.*
  - (b). DCS shall refer the child to the LEA, where the child is residing, which will evaluate the child for, or confirm current IDEA eligibility *TCA§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 4, 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 decision pursuant to DCS Policy 21.20 to place a child into a public school. (*Brian A. vs. Sundquist*) even if there is an in-house school at the facility, shall be provided for in the following manner: *TCA§ 37-1-30-(a)(2)(B)*.
  - (a). The LEA where the child is residing shall have primary responsibility for fulfilling the requirements of IDEA. See *Article 4, Section B - LEA.*
  - (b). DCS shall refer the child to the LEA which will 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 DCS residential facility or a DCS provider residential facility and attending an in-house school 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.
  - (b). DCS, if it is the LEA, 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. *TCA§ 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, if it is the LEA, 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.
7. The provision and cost of special education and related services for an IDEA eligible child in DCS custody, residing 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. *TCA § 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, if the LEA, 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 pay 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 4 Section D14*.
  - (e). DCS is not responsible for the costs of any YDC placement recommended by any non-DCS LEA/IEP Team.
8. The provision and cost of special education and related services for a child with a disability in DCS custody and living in a detention center shall be provided for in the following manner:
- (a). The LEA where the detention center is located shall serve as the LEA for an IDEA eligible child who is living there.
  - (b). The LEA shall convene an IEP Team meeting to determine eligibility and develop an IEP for a child who is IDEA eligible, if appropriate. The LEA shall provide the detention center with teachers who shall provide the educational program to the child with a disability in the detention center in accordance with the child's IEP. The LEA shall assume the financial responsibility for the provision of special education and related services.
  - (c). The financial responsibility of other Participating Agencies to provide services in the child's IEP shall not be altered because the IDEA eligible child is being educated in a detention center.
  - (d). DCS is not responsible for cost of residential placement recommended by any non-DCS LEA/IEP Team.
9. The obligation to make FAPE available to all children with disabilities does not apply to students' age 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. If a child with a disability is convicted as an adult under state law and incarcerated in an adult prison, the following requirements of IDEA do not apply: 1) the requirements contained in *34 CFR §300.320(a)(5)(i)* (relating to participation of children with disabilities in general assessments; and 2) the requirements of *34 CFR §300.320(b)* (relating to transition

planning and transition services) with respect to students whose eligibility under Part B will end because of their age before they will be eligible to be released from prison considering their sentence and possibility for early release. The IEP Team of a student with a disability who is convicted as an adult and incarcerated in an adult prison may modify the student's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The IDEA requirements relating to the least restrictive environment do not apply to the modification of placement for penological reasons. *34 CFR §300.114.*

10. In order to expedite the provision of special education and related services to any IDEA eligible child who is in DCS custody, a LEA formerly serving the child shall provide DCS 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 DCS 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.
11. When it appears that an IDEA eligible child who is in DCS custody can be returned to the community, pursuant to *TCA Section 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.
12. 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.
13. The child's prior LEA will provide educational records to the new receiving LEA. 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.
14. Medical services for children in DCS custody shall be paid for as follows:

- (a). TennCare is responsible for the provision of all covered medically necessary services to children in DCS custody who are TennCare enrollees except children who are inmates as defined in *Tenn. Rule 1200-13-13-.01* and *Tenn. Rule 1200-13-14-.01* and as clarified in *Grier Revised Consent Decree (Modified) C.15.f.(i), (ii), and (iii)*. Medical and behavioral 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 and such are not educational placements.
15. 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 administration and teachers in identified areas of need relating to children with disabilities. DCS shall work with residential facility staff and faculty in identifying training needs. DOE, through its monitoring efforts, shall also assess areas needing improvement and coordinate technical assistance through DCS. As a LEA, DCS 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. *See Article 4 Section A.*
16. The TennCare Solutions Unit, as designated by 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. *Tenn. Rule 1200-13-13-.11* and *Tenn. Rule 1200-13-14-.11*, and *See Grier Revised Consent Decree*. Children in DCS custody not in consensus with the determination of the CFT (Child and Family Team) regarding residential behavioral health services to be provided by DCS may appeal to the TennCare Solutions Unit. Notice of this right is provided at the CFTM (Child and Family Team Meeting) where the determination regarding the provision of residential behavioral health services is made.

### **E. Tennessee Department of Mental Health and Developmental Disabilities**

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. A child must be admitted by a physician pursuant to state statutes (*Title 33, Chapter 6, Parts 2, 4, and 5; TCA §33-3-401, §33-3-412, and §37-1-128*). TDMHDD will provide psychiatric care for all children residing 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. Special education and related services for IDEA eligible children hospitalized in a RMHI shall be provided through arrangements with the LEA serving the

geographic area where the RMHI is located or through RMHI educational services. Only RMHIs with Children and Youth Programs provide educational services.

3. As mandated by federal and state law and regulation, DOE will monitor all IDEA programs and services provided by a RMHI using an appropriate monitoring instrument. See *Article 4 Section A*. DOE, in conjunction with TDMHDD, shall provide technical assistance regarding IDEA requirements and special education and related services to RMHI staff and teachers, as appropriate. DOE through its monitoring, in conjunction with TDMHDD and the RMHI staff, shall identify training and technical assistance needs at the RMHIs.
4. TDMHDD will assume the costs of special education and related services through state appropriations for all hospitalized IDEA eligible children. TDMHDD determines when the child is discharged from a RMHI that provides educational services.
5. When an IDEA eligible child is hospitalized in a RMHI that does not provide educational services, 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 *Title 33, Chapter 2, Part 11 (Costs in State Facilities)*.
6. When an IDEA eligible child is hospitalized in a RMHI that provides educational services, the RMHI will continue to follow the child's IEP, within the capabilities of the RMHI, from the previous educational placement until the child is discharged. However, the child's IEP shall be reviewed and modified as appropriate consistent with IDEA. If an IDEA eligible child is hospitalized in a RMHI that provides educational services and does not have an IEP, the RMHI shall convene an IEP Team meeting in order to determine IDEA eligibility and develop an IEP if appropriate and does not exceed the capabilities of the RMHI.
7. In order to expedite the provision of special education and related services to any IDEA eligible child hospitalized in a RMHI that provides educational services, the LEA formerly serving the child shall provide the RMHI that provides educational services 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 the records. The RMHI shall provide, within fourteen (14) calendar days of receipt of request, the educational records of children educated at the RMHI who return to the LEA, to a DCS residential facility school, where the child will be attending school unless there is a critical need to expedite the records. (The child's parent, legal guardian, or legal custodian must give consent for the RMHI providing educational services to notify the LEA that an IDEA eligible child is being discharge and will be returning to the LEA.) However, failure to receive such records does not suspend the responsibility of TDMHDD, DCS, or the LEA to provide or cause to be provided special education and related services to an IDEA child. The transfer

of records will be consistent with IDEA, FERPA, and all other applicable state and federal regulations.

8. When it appears that a child who is IDEA eligible who is hospitalized in a RMHI that provides educational services could 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 be invited by the RMHI to attend 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. Upon enrollment, the financial responsibility for the child's IDEA services shall transfer from TDMHDD to the LEA where the child attends school. All other costs associated with the child's hospitalization shall be paid in accordance with *Title 33, Chapter 2, Part 11 (Costs in State Facilities)*.
9. TDMHDD shall have no responsibility for the costs of special education and related services under IDEA for a child prior to admission to a RMHI, or when an IDEA eligible child has been discharged from a RMHI.
10. Nothing in this Agreement is meant to alter or abrogate any contractual agreement between TDMHDD and other parties or agencies regarding the provision of inpatient hospitalization.
11. The TennCare Solutions Unit, as designated by 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. *Tenn. Rule 1200-13-12-.11 and Tenn. Rule 1200-13-14-.11 See Grier Revised Consent Decree.*

## **F. Tennessee Division of Mental Retardation Services**

1. The Division of Mental Retardation Services (DMRS) provides services for children with mental retardation through the Home and Community Based Services (HCBS) waiver, the Division's Self Determination Waiver and limited state funded services (which are only provided based upon current resources and subject to the sole discretion of DMRS.) Access into the waiver(s) is not guaranteed and is subject to and limited by funding available through state and federal appropriations. **DMRS programs and services are not an entitlement.**
2. If an IDEA eligible child is residing in one of the DMRS Developmental Centers, 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 residential costs for Medicaid-eligible children residing in developmental centers through the ICF/MR (Intermediate Care Facility for the Mentally Retarded) program.

3. For children served in the HCBS 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 HCBS Waiver, a person shall be twenty-two (22) years of age or have a high school diploma and no longer eligible to receive services under IDEA to qualify for day habilitation or supported employment services.
4. Everyone in the HCBS Waiver may have an Independent Support Coordinator (ISC) administered by DMRS. 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. DMRS, 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 DMRS when it believes a child is eligible and may benefit from DMRS services and supports. Consistent with IDEA, the LEA shall be responsible for inviting a DMRS 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. These DMRS or HCBS Waiver funded services for which an IDEA eligible child qualifies should be stated in the child's ITP at age 16. The IEP/ITP will be updated annually. See *Article 4 Section B. - LEA*.
6. The TennCare Solutions Unit, as designated by TennCare, will review as appropriate TennCare appeals by TennCare enrollees regarding adverse action, such as the denial, delay, termination, suspension or reduction of waiver services. *Tenn. Rule 1200-13-13-.11 and Tenn. Rule 1200-13-14-.11 See Grier Revised Consent Decree.*

### **G. Tennessee Department of Human Services Division of Rehabilitation Services**

1. The Department of Human Services, Division of Rehabilitation Services (DHS/DRS) will provide vocational rehabilitation services for individuals with disabilities who meet DHS/DRS's eligibility criteria. 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.
2. For the purpose of providing outreach for students with disabilities, vocational Rehabilitation staff maintains a working relationship with special education supervisors, vocational education supervisors, directors, 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 services, Vocational Rehabilitation staff participates in in-service training programs of the LEAs and in statewide special education conferences. Vocational Rehabilitation staff participates in local community job fairs, job clubs, and attend civic club/organization meetings to inform students and parents of the purpose of the

vocational rehabilitation program, the application procedures, the eligibility requirements, and the potential scope of services that may be available. Other outreach activities include completion of “Student Survey” forms coordinated with special education teachers and school guidance counselors. An individual with a disability may be self referred to DHS/DRS or may be referred by another individual or another agency. Referrals may be made by contacting a rehabilitation services office in person, by mail or by telephone.

3. An individual is eligible for assistance if he is an individual with a disability and requires vocational rehabilitation services to prepare for, secure, retain, or regain employment. *34 CFR §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 services. *34 CFR§361.42(a)*. The determination of eligibility for vocational rehabilitation 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 shall secure the necessary evaluations to make a determination.
4. Eligibility determinations will be made by DHS/DRS counselor. Determinations made by officials of other agencies, particularly education officials, regarding whether an individual has a qualifying disability, shall be used, to the extent appropriate and consistent with the requirements of the Rehabilitation Act of 1973 as amended *29 USC §720 et seq.*, in assisting DHS/DRS in making such determinations. *34 CFR §361.42(d)(1) and (2)*.
5. To the extent possible, DHS/DRS personnel will conduct transition planning with the educational agency for students with disabilities that facilitates the development and completion of their individualized education programs under *Section 614(d)* of the Individuals with Disabilities Education Act. DHS/DRS will provide consultation and technical assistance to assist educational agencies in planning for the transition of students with disabilities from school to post school activities. A vocational rehabilitation counselor will participate in the IEP meeting when requested by the LEA. The rehabilitation 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. At any time a student is determined to be at risk of dropping out of school, or at least twelve to eighteen months prior to graduation the LEA will provide DHS/DRS the most current copies of medical, psychological, vocational, and social evaluations and all other available information needed for establishing eligibility and identifying vocational rehabilitation needs of each student referred for services. If the information is not appropriate, DHS/DRS will need to secure other medical or psychological information to be used in making an eligibility/ineligibility determination.
7. When DHS/DRS determines a student with a disability will be eligible for vocational rehabilitation services, the student, and the student’s parent/guardian if appropriate, will develop an Individualized Plan for Employment (IPE), with the assistance of a Vocational Rehabilitation Counselor or other technical assistance as

required. The IPE will 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 will include a description of vocational rehabilitation services to be provided by DHS/DRS, 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 will be included.

8. DHS/DRS begins to help coordinate transition services to high school students with disabilities, who meet DHS/DRS eligibility criteria as early as possible but no later than, 12-18 months prior to their exit from school to assist them in gaining employment. Transition services are provided jointly by DHS/DRS through Vocational Rehabilitation Counselors. A vocational Rehabilitation Counselor will assist in coordinating services including vocational evaluation, training, 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 will coordinate and/or provide vocational rehabilitation post-secondary training and job placement, and participate in public and professional awareness activities regarding availability of services.
9. DHS/DRS will provide vocational rehabilitation services to an eligible individual. 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 will 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 to the extent funding will allow. Some services are based on an economic need standard 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, including required union and organizational dues; tuition for post-secondary schools and training; personal/work adjustment; supported employment; tutorial training; orientation and mobility training services; reader, interpreter, translator, attendant or job coaching services; licenses or permits for an occupation or business; and services provided by the Tennessee Rehabilitation Center: provided, however, some services such as tuition for post-secondary schools and training, as well as other services currently provided without cost, may be subject in the future to modified regulations of the Division of Rehabilitation Services so that economic need is 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 *TCA § 71-1-105; TCA § 49-11-601* and by Federal law and regulations (*29 U.S.C. 721(a)(5)(A)*) as amended

and 34 CFR. §361.36 to maintain an order of selection when providing services to persons meeting the basic guidelines for eligibility. Vocational Rehabilitation's 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 services to all eligible individuals who apply for services. In keeping with the *Rehabilitation Act of 1973* as amended an Order of Selection has been developed. It outlines which eligible individuals can be served when limited funds will not allow all eligible individuals to be served. Four priority categories have been developed to assign individuals according to severity or significance of their disability. The four priority categories are: (1) Eligible individuals who have the most significant disabilities, (2) Eligible individuals who have significant disabilities, (3) Eligible individuals who do not have a significant disability whose vocational rehabilitation is expected to require multiple services and (4) Eligible individuals who do not have a significant disability and who cannot be classified into a higher priority category. Services and expenditures will be closely monitored on a continuous basis to enable the Division to close or open priority categories as deemed appropriate. This will allow the Division to manage available funds to assure services are continued for cases determined eligible and receiving services under an Individualized Plan for Employment. Additionally, adequate funds will be conserved to provide assessment services for all applicants expected to apply throughout the year to determine eligibility and to provide services for those eligible individuals placed in an open priority category within the Order of Selection. The Division's Order of Selection is developed in keeping with 34 CFR 361.36 of the final regulations.

12. When an applicant for vocational rehabilitation services or an individual being provided vocational rehabilitation 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. *TCA §49-11-612 and Tenn. Rule 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. Upon request the Client Assistance Program may assist each individual in his/her pursuit of services provided under the Rehabilitation Act, including assistance in pursuing legal, administrative, or other appropriate remedies to ensure the protection of rights under this Act.

## **H. Tennessee 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.
  - (b). Offenders who are housed in county detention facilities. Pursuant to *TCA 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 *TCA 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 age 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 *34 CFR 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 CFR 300.324*, however, a student's IEP or placement may be modified when the Department has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
5. The following requirements of IDEA do not apply, as per *34 CFR 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 *TCA 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 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, a 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 release information 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.

## **I. Collaboration**

1. Each participating agency will provide an individual to participate in the State Post-secondary Transition Coordinating Council that will meet regularly and address statewide post-secondary transition issues. The State Post-secondary Transition Coordinating Council will form a local transition team to develop a local agreement and process for facilitating post-secondary transition for all students.

## **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 that is named Tennessee's Early Intervention System (TEIS). The purpose of this Interagency Agreement is to specify the financial responsibility of each Participating Agency and establish procedures for achieving timely resolution of intra-agency and interagency disputes. *34 CFR §303.523.*

## **A. Collaboration**

1. Each Participating Agency shall support the ongoing development and implementation of Tennessee's statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for all infants and toddlers with disabilities and their families. Each Participating Agency shall support and assist the coordination of payments for these 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. *34 CFR §303.01.*
2. The Commissioner of each Participating Agency involved in the provision of or payment for early intervention services shall appoint a representative with sufficient authority to engage in policy planning and implementation on behalf of their Agency to serve on the Interagency Coordinating Council *34 CFR §303.600 et seq.*
3. Each Participating Agency agrees to support the ongoing development of policies and procedures which will ensure that all infants and toddlers with disabilities and their families have timely and efficient access to appropriate service coordination,

evaluations, referrals, services, transition planning, and implementation. Each Participating Agency shall promote and support the implementation of such policies and procedures within their agency and contract providers to ensure compliance with federal statutes and regulations regarding infants and toddlers with disabilities.

4. Each Participating Agency shall conduct individual or coordinated efforts to provide information to the public regarding Tennessee's system of early intervention services to include information on accessing the service system. *34 CFR §303.320*. Each agency, on the state and local level, shall submit and annually update information to be included in Tennessee's Central Directory of services, The Disability Pathfinder located at <http://kc.vanderbilt.edu/tnpathfinder/> and will, as appropriate, assist in the distribution of this Directory. *34 CFR §303.301*
5. Each Participating Agency 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.
6. Each Participating Agency shall appoint a representative, with the capacity to speak on behalf of the Participating Agency, to participate in Local Interagency Coordination Councils to facilitate collaboration in the planning, coordination, and provision of early intervention services at the local level. Each Participating Agency shall also encourage its local providers to participate in Local Interagency Coordination Councils.
7. Each Participating Agency shall ensure that its service coordinators, as appropriate, on the local level provide 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.
8. Each Participating Agency shall ensure that its services providers, as appropriate, submit 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.
9. Each Participating Agency, pursuant to individual agreements with the lead agency, shall assist the lead agency (DOE) in facilitating the monitoring of early intervention programs and services to ensure quality and compliance with IDEA and federal and state regulations for services provided to infants, toddlers, and families that are Part C eligible. *34 CFR §303.501(a)*. Each Participating Agency shall incorporate IDEA Part C standards into their monitoring process to ensure that their programs, providers, and contract agencies are in compliance with IDEA. DOE, as lead agency, shall receive a copy of each Participating Agencies monitoring instrument and monitor its format to ensure compliance. DOE shall maintain the option to go on-site with each Participating Agencies monitoring team or to review the agencies 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. *34 CFR §303.501(b)*.

## **B. Referral and Intake**

1. Each Participating Agency 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. In order to facilitate referrals and developmental screenings, each Participating Agency shall provide, as appropriate, training and technical assistance to primary referral sources (hospitals-including prenatal and post-natal care facilities, physicians, parents, child care programs, LEAs, public health facilities, and other health care and social service providers) who are required to refer any infant or toddler they suspect is experiencing developmental delay(s) to their local TEIS Point of Entry within two (2) business days after examining or observing the infant or toddler. *34 CFR §303.321*.
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/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/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/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 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.
4. The TEIS Eligibility Coordinator will assign a developmental specialist to complete the eligibility evaluation for TEIS eligibility. The development specialist will evaluate the infant or toddler in five 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 developed 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. *34 CFR §303.321(e)*. Early intervention services and evaluations must be provided within a reasonable time period. Therefore, in order to ensure that evaluations and early intervention services are provided in a timely and efficient manner, DOE/TEIS may contract with appropriate providers or provide the needed evaluations and/or services in accordance with the payor of last resort requirements. *34 CFR §303.527(b)*. In order to receive reimbursement from TennCare, the service provider must be a TennCare provider and verify that the provider selected to provide the needed evaluations and/or services is a TennCare network provider, and that the necessary prior approvals have been obtained from the 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). *34 CFR §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 a 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, as applicable, 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. *34 CFR §303.12 (a),(b)*.
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. *34 CFR §303.343*. The Service Coordinator may be the 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, as applicable, 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. In the IFSP, the payor and the provider of each service will be designated as well as the frequency, intensity, and method of delivering each service as allowed by TennCare rules, and state or federal law. *34 CFR §303.340*. 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 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 birthday. *34 CFR §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 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 birthday.
7. Each Participating Agency 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. Tennessee Department of Education**

1. DOE has been designated by the Governor as Lead Agency for the State's Early Intervention System mandated by IDEA. *34 CFR §303.500*. 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 not used to replace or supplant any activities required under any other State and Federal program. *34 CFR §303.527(a)*;
  - (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. *34 CFR §303.501 (b)(3)*;
  - (d). Monitor all early intervention programs and services provided to infants and toddlers and their families that are Part C eligible whether or not they are supported by IDEA Part C funds. *34 CFR §303.501 (b) (1)*; 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. 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. *34 CFR §303.527.*
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. *34 CFR §303.527(a).*
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. *34 CFR §303.527(a).*

### **E. Tennessee Department of Health**

1. Department of Health (DOH) programs that may have infants or toddlers in need of early intervention services include the Maternal and Child Health (MCH) Title V programs of Children's Special Services (CSS), Healthy Start, HUG, WIC, and child health EPSDT services. Other DOH programs include Traumatic Brain Injury, Hemophilia, Ryan White, and Renal. DOH services are not an entitlement program.
2. DOH 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 related services. DOH shall also provide enrolled families and staff with information regarding Child Find, early intervention services and the IFSP process.
3. DOH programs that provide services to infants and toddlers birth to 3 years of age identified with a developmental delay 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 DOH 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 DOH 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.
4. To the extent that funding is available payment for an early intervention service which is determined necessary by the IFSP team that is appropriately documented on the family's IFSP, and is a service for which a child and family are eligible

under MCH or any other DOH programs will be the financial responsibility of DOH.

5. 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 eligibility guidelines and may be limited by CSS funding or staff availability. 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, DME, and limited medications. These services are provided to the extent that funding is available. CSS is not an entitlement program.

## **F. Bureau of TennCare**

1. TennCare contracts with MCCs to provide medical and behavioral care through networks of health care providers. TennCare monitors MCCs compliance with TennCare Rules and that the MCCs are providing accessible in-network providers to TennCare enrollees.
2. Department of Human Services 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. TennCare is responsible for providing EPSDT services for all children who are 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 that are covered in Section 1905(a) of the Social Security Act; and
  - (c). Medically necessary health and behavioral health treatment services. EPSDT treatment services include “such other necessary health care, diagnostic services, treatment and other measures [described in §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.” *42 USC §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 MCO 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. *John B. Consent Decree*, paragraph 41(m). TennCare (including its contractors, the MCOs) 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. *John B. Consent Decree*, paragraph 57. The MCCs have the discretion to require that TennCare covered services, 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 interperiodic screening. Any person such as an educator, parent, or health professional who suspects a health problem may refer a child for an interperiodic screening. An interperiodic 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. *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 interperiodic 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. TennCare will provide all covered medically necessary services including durable medical equipment, 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. *34 CFR §303.527(c)*. 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. Each TennCare MCC 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 including 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 out-of-plan or out-of-state services which are medically necessary due to an emergency. *Contractor's Risk Agreement between TennCare and MCC*. In addition, to **coordinating** EPSDT screenings and services, each TennCare MCC shall provide case management services to 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. *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. *John B. Consent Decree*, paragraph 70.

8. In order to attempt to ensure an effective child health program. TennCare MCOs 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. The MCCs are responsible for requesting the IFSPs of enrollees from the other programs who they know are IDEA eligible children and are enrolled in a MCC. TennCare developed a TennCare IEP Release Form to provide to TEIS that a parent may use to consent to the release of education records consistent with HIPAA, IDEA, FERPA and all applicable state and federal regulations. TEIS or the designated service coordinator is responsible for sharing the IFSP with the PCP after obtaining appropriate parental consent. *See Attachment Two – TennCare IEP Release Form*. MCCs shall accept the IFSP indication of a medical problem or shall have the child appropriately tested. Coordination by the MCC and service coordinator shall collaborate to reduce gaps and overlaps in services. *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 early interventions services provided to TennCare enrollees if TEIS or its providers have a provider contract with the MCC.
10. The TennCare Solutions Unit, as designated by 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)*. *Tenn. Rule 1200-13-13-.11* and *Tenn. Rule 1200-13-14-.11*.

## **G. Tennessee 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 (i.e. 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 Individuals with Disabilities Education Act.

### **H. Tennessee Department of Mental Health and Developmental Disabilities**

1. TDMHDD contracts with outpatient agencies to provide Regional Intervention Program (RIP) services except at MTMHI who directly operates their own RIP Program. 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. TDMHDD shall ensure that personnel in the department, the Community Mental Health Centers (CMHC), and RIP sites have an opportunity to be trained to make appropriate referrals for infants and toddlers potentially in need of early intervention services. TDMHDD shall also provide staff with information regarding Child Find, early intervention services, and the IFSP process. TDMHDD encourages personnel at the CMHC and 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. Tennessee Division of Mental Retardation Services**

1. The Division of Mental Retardation (DMRS) provides services for infants and toddlers who are eligible through the Home and Community Based Services (HCBS) Waiver and state funded services available on the basis of state appropriations. Access into the waiver is not guaranteed and is subject to funds available through state appropriations. Services funded by state appropriations are provided to those who are eligible in proportion to the availability of funds. *See Article 4 Section F - DMRS.*
2. DMRS funds a variety of early intervention services for infants and toddlers and their families through local contract agencies. Community based early intervention services are funded through DMRS and provided pursuant to contracts between the community organization and the State of Tennessee. DMRS services are not an entitlement program; therefore, payment for services will be based on the scope of services funded through the local contractor and space availability. *See Article 4 Section F - DMRS.*

3. Payment for an early intervention service that can be provided by DMRS or one of its contract providers and is appropriately documented on the family's IFSP is made on the basis of availability of state appropriations.
4. Early intervention services shall be provided at no cost to parents unless a system of sliding fees has been implemented by the Lead Agency (DOE). *34 CFR §303.521.*
5. Appropriate staff from the contract agency providing early intervention services will assist in developing a comprehensive IFSP. Services assigned to the contract agency will be provided in a family-centered manner.
6. The contract agency will participate in the development of an appropriate transition plan when the child turns two (2) years of age. The agency in cooperation with the Service Coordinator will ensure that an IEP is developed by the child's third birthday.

## **J. 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. *34 CFR §303.510(a)(1)(i).* DOE will investigate all IDEA Part C administrative complaints in the same manner as it does for Part B administrative complaints. *See Article 4 Section A - DOE, 34 CFR §303.512(a) and (b).* 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. *34 CFR §303.511.* The alleged violation must have occurred not more than one (1) year before the date that the complaint is received by DOE unless (1) the violation continues for that infant or toddler or other infants or toddlers; or (2) the complainant is requesting reimbursement or corrective action for a violation that occurred not more than three (3) years prior to the date of receipt of the complaint by DOE. *34 CFR §303.511(b).*
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. *34 CFR §303.425.*
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 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. *34 CFR §303.419.*

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. *34 CFR §303.425.*
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. *34 CFR §303.512(c)(1).* See *Article 5 Section J.*
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. *34 CFR §303.512(c)(2).*
7. Procedures for IDEA Part C dispute resolution permit agencies to resolve intra-agency disputes using their own procedures so long as resolution is accomplished in a timely manner. *34 CFR §303.523(2)(i).* 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 accord with the procedures described in Article 6 of this Agreement. *34 CFR §303.523.* DOE shall implement procedures to ensure services are provided in a timely manner pending the resolution of disputes among Participating Agencies or 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 provided. *34 CFR §303.525.*
8. If there is a conflict between or among Participating Agencies (i.e. an interagency dispute) regarding the provision of or the payment for early intervention services, the procedure set forth in Article 6 of this Agreement shall be followed.

## **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 Interagency 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 accord with the procedures established by each agency as indicated in this Agreement. See *Articles 4 and 5*.

2. If an interagency dispute arises, the DOE Resolution Committee whose purpose is to resolve disputes under this Agreement informally. This process can be initiated by any Participating Agency. If any entity other than the agencies participating in this Agreement has an issue with interagency implications, it may refer the issue by written notice to the 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 of Special Education for discussion by the DOE Resolution Committee as appropriate. Each Participating Agency 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 shall ensure that its representative or alternate participates in the 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 Children's Cabinet or designees.
  
3. If an interagency dispute cannot be resolved informally in a timely manner, the aggrieved agency shall submit a written complaint to the Assistant Commissioner of the Division 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 of the Division of Special Education shall forward a copy of the complaint to the members of the Children's Cabinet (whose members include the Commissioners of the Departments of Education, Finance and Administration, Health, Human Services, Children's Services, and Mental Health and Developmental Disabilities, the Assistant Commissioner for Mental Retardation, 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 Children's Cabinet. The Children's Cabinet will meet within fifteen (15) business days from the receipt of the complaint from the DOE Resolution Committee. The Children's Cabinet will consider the written complaint including all documents submitted and oral arguments from the affected agencies. The Children's Cabinet 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 Children's Cabinet shall be binding upon all the agencies. However, the decisions of the Children's Cabinet shall not be binding on future complaints but may be considered persuasive authority by the Children's Cabinet.

4. While the dispute is pending, the Children's Cabinet may elect to assign financial responsibility to the agency currently providing the service at issue or if the service has not begun, the Children's Cabinet shall allocate resources from the Participating Agencies to provide the service as appropriate. Once the dispute has been resolved, if the Children's Cabinet determines that the assignment of financial responsibility was inappropriately made, it shall reassign the responsibility to the appropriate agency. The 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 Children's Cabinet for its review and recommendations. The Children's Cabinet shall make a policy determination in accord 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, 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. *TCA§10-7-504 (a)(4)*.

- (b). Each Participating Agency or contractor which has access to a child with a disabilities education records must protect personally identifiable information 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 personally identifiable information. All Participating Agencies shall train or provide information to persons collecting or using personally identifiable information 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 personally identifiable information within the Participating Agency. *34 CFR §300.623.*
  - (c). Parents and legal guardians shall have complete access to their child's education records. Prior parental consent is required for disclosure of all personally identifiable information in a student's education record unless: 1) the disclosure meets the requirements of one of the FERPA exceptions enumerated in *34 CFR §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 personally identifiable information, 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. *34 CFR §300.520.*
2. Consistent with IDEA, FERPA, 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 personally identifiable information from an education record of a student without parental consent if the disclosure meets one of the conditions set forth in *34 CFR §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 CFR §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 educational records to another LEA or Participating Agency.

- (b). An educational agency or institution may disclose personally identifiable information 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 years. *20 USC § 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, educational 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. *34 CFR §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). An educational agency or institution shall document and record to whom and for what purpose access to records was allowed. This record shall not include parents and authorized employees of the educational agency or institution. *34 CFR §300.614*.
3. Consistent with IDEA, FERPA, 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 educational 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. *TCA §10-7-504*. The name, address, and other identifying information of a patient entering and receiving care at a licensed health care facility shall not be divulged unless the disclosure meets one of the enumerated exceptions in *TCA §68-11-1503 (Medical Records - Confidentiality); Title 33-3-103; 33-3-104; and 33-3-105 (Confidentiality of Mental Health Records)*.
  - (c). An educational agency or institute may not disclose personally identifiable information 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. *20 USC §1232g(b)(1)*.
4. Confidential education records shall be destroyed consistent with IDEA, FERPA and all applicable state and federal laws.

## **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 is effective 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**

### **Quality Review**

Each Participating Agency shall designate liaisons who will meet annually to review the Agreement to ensure that the Agreement is meeting the needs of the Participating Agencies and recommend any changes or modifications which would benefit any of the Participating Agencies and or children with disabilities and their families. Personnel from the Participating Agencies will initiate a quality review of the services and conditions set forth in this Agreement. The Participating Agencies agree to review this Agreement one year from the date of its implementation and thereafter as needed to make such changes as they deem desirable.

## **Article Fourteen**

### **Assignment**

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.

## **Article Fifteen**

### **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.

APPROVED BY:

Timothy K. Webb  
Tim Webb, Commissioner  
Department of Education

7/1/09  
Date

M. D. Goetz, Jr.  
M. D. Goetz, Jr., Commissioner  
Department of Finance and Administration

6/29/09  
Date

D. Gordon  
Darin Gordon, Deputy Commissioner  
Department of Finance and Administration  
Bureau of TennCare

6/26/2009  
Date

Stephen H. Norris  
Stephen H. Norris, Deputy Commissioner  
Department of Finance and Administration  
Division of Mental Retardation Services

6/26/09  
Date

Viola Miller  
Viola Miller, Commissioner  
Department of Children's Services

6/29/2009  
Date

Susan R. Cooper  
Susan R. Cooper, Commissioner  
Department of Health

6/25/09  
Date

Virginia T. Lodge  
Virginia T. Lodge, Commissioner  
Department of Human Services

6-4-09  
Date

Virginia Trotter Betts  
Virginia Trotter Betts, Commissioner  
Department of Mental Health and  
Developmental Disabilities

6/29/09  
Date

George Little  
George Little, Commissioner  
Department of Correction 6-5-09

EFFECTIVE DATE: July 1, 2009

## Attachment One

### Acronyms

BHO	Behavioral Health Organization
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
DMRS	Tennessee Division of Mental Retardation
DOE	Tennessee Department of Education
DOH	Tennessee Department of Health
EPSDT	Early Periodic Screening, Diagnosis and Treatment
FAPE	Free Appropriate Public Education
FERPA	Family Educational Rights and Privacy Act
FSW	Family Service Worker
HCBS	Home and Community Based Waiver
ICC	Interagency Coordinating Council
ICF-MR	Intermediate Care Facility – Mental Retardation
IDEA	Individual's 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
MCO	Managed Care Organization
PCP	Primary Care Physician
RIP	Regional Intervention Program
RMHI	Regional Mental Health Institute
SEA	State Educational Agency
TCA	Tennessee Code Annotated
TDH	Tennessee Department of Health
TDFA	Tennessee Department of Finance and Administration
TDMHDD	Tennessee Department of Mental Health and Developmental Disabilities
TEIS	Tennessee Early Intervention System

**Attachment Two**

**TennCare IEP Release Form**

TennCare

RELEASE OF INFORMATION FOR  
INDIVIDUAL EDUCATION PLAN

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)

You must also complete the attached Permission to Release Protected Health Information Form for this release to be valid.

\_\_\_\_\_  
(Witness Signature)

\_\_\_\_\_  
(Date)

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

# Bureau of TennCare



Permission to Release  
**Protected Health Information (PHI)**

**After you fill out and sign this paper, send it to:** TennCare Privacy Officer  
 P.O. Box 20007  
 Nashville, TN 37202  
 Phone: 1-877-778-3698  
 Fax: 1-615-248-2928

**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, P.O. Box 20007, Nashville TN 37202.

- 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.tennessee.gov/tenncare](http://www.tennessee.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 CFR 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 CFR 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 CFR, 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

Bureau of TennCare	Terence Leve	<a href="mailto:Terence.Leve@tn.gov">Terence.Leve@tn.gov</a>
Department of Children's Services	Nancy Clark Stacy Miller	<a href="mailto:Nancy.V.Clark@tn.gov">Nancy.V.Clark@tn.gov</a> <a href="mailto:Stacy.Miller@tn.gov">Stacy.Miller@tn.gov</a>
Department of Correction	Debbie Inglis	<a href="mailto:Debbie.Inglis@tn.gov">Debbie.Inglis@tn.gov</a>
Department of Education	Bill Wilson	<a href="mailto:Bill.Wilson@tn.gov">Bill.Wilson@tn.gov</a>
Department of Health	Mary Kennedy	<a href="mailto:Mary.Kennedy@tn.gov">Mary.Kennedy@tn.gov</a>
Department of Human Services	Bill Russell	<a href="mailto:Bill.Russell@tn.gov">Bill.Russell@tn.gov</a>
Department of Mental Health and Developmental Disabilities	Theresa Sloan	<a href="mailto:Theresa.Sloan@tn.gov">Theresa.Sloan@tn.gov</a>
Division of Mental Retardation	Steve Tepley	<a href="mailto:Steve.Tepley@tn.gov">Steve.Tepley@tn.gov</a>