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**Special Education Programs and Services Initial Evaluations, Rule**

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**The Background:**

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

On April 11, 2012, the United States Department of Education’s Office of Special Education Programs (OSEP), in *Letter to Reyes*, indicated there is no exception in 34 CFR § 300.301(d) regarding initial evaluations that would permit the applicable initial evaluation timeline to be suspended because of a school break. OSEP further indicated that IDEA contemplates that the initial evaluation of a child suspected of having a disability not be unreasonably delayed so that eligible children with disabilities are not denied a free appropriate public education. This guidance was provided to North Carolina, which, like Tennessee, had an established state timeframe that allowed suspension of the timeline during school breaks.

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

Deletion of Rule 0520-01-09-.10 will result in adoption by reference of 34 C.F.R. §300.301(c) and 34 C.F.R. §300.323(c) regarding initial evaluations and development of IEPs. This rule change will remove the complications and confusion caused by the dependence on “school days”, the timing of which is based on various local education agency calendars. Students, parents, and local education agency personnel will benefit from this change because it will alleviate the complication caused by school

closures for holidays, fall and spring breaks, summer breaks, inclement weather and illness outbreaks which must be considered when “school days” are involved in time calculation. Aligning the state regulation with the federal regulation will make Tennessee’s state data comparable with data collected by the U. S. Department of Education, Office of Special Education Programs for all other states implementing the standard federal initial evaluation timeline requirement. Tennessee’s regulations for reevaluation are already fully aligned with federal IDEA regulation.

The sixty (60) calendar day evaluation timeframe does not apply in the following instances: the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or, the child enrolls in another local education agency after the timeframe has begun and a determination of eligibility was not completed by the local education agency that commenced the initial evaluation process, the succeeding local educational agency is making sufficient progress to ensure completion of the evaluation, and the parent and the succeeding local education agency agree on a specific timeframe within which the evaluation will be completed.

On December 11, 2012, State Board of Education staff held a rule making hearing for the purpose of receiving comments on the proposed rule change from interested parties and stakeholders.

**The Recommendation:**

The Department of Education recommends adoption of this item on final reading. The SBE staff concurs with this recommendation.

## **Proposed Rule Revision**

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