

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: sos.information@state.tn.us

For Department of State Use Only

Sequence Number: 04-16-09
Rule ID(s): 4185
File Date: 04/30/2009
Effective Date: 08/28/2009

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-205 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

Agency/Board/Commission: State Board of Education

Division:

Contact Person: Rich Haglund

Address: 9th Floor, 710 James Robertson Pkwy, Nashville, TN

Zip: 37243

Phone: 615-253-5707

Email: Rich.haglund@state.tn.us

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0520-01-09	Special Education Programs and Services
Rule Number	Rule Title
0520-01-09-.02	Definitions

Chapter 0520-01-09
Special Education Programs and Services

Amendments

Rule 0520-01-09-.02 Definitions Paragraph (11) is amended by deleting the present language in its entirety and replacing it with the following:

- (11) "Intellectually Gifted" means a child whose intellectual abilities and potential for achievement are so outstanding that the child's educational performance is adversely affected. "Adverse affect" means the general curriculum alone is inadequate to appropriately meet the student's educational needs. Children identified as intellectually gifted are exempted from the discipline procedures at 34 C.F.R. §300.530-537. Children with a dual diagnosis that includes intellectually gifted must be considered as children with a disability and may not be exempted from the discipline procedures at 34 C.F.R. §300.530-537.

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

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Jim Ayers	X				
Flavius Barker	X				
Vernita Justice	X				
Carolyn Pearre	X				
Richard Ray	X				
Jean Anne Rogers	X				
Fielding Rolston	X				
Theresa Sloyan	X				
Melvin Wright	X				
Brittini England	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 08/22/2008, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Date: 3-2-09

Signature: Gary Nixon

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 3-2-09

Notary Public Signature: Allison Williams

My commission expires on: November 7, 2012

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter

4-25-09
 Date

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Filed with the Department of State on: April 30, 2009

Effective on: August 28, 2009



Tre Hargett
Secretary of State

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The Individuals with Disabilities Education Act (IDEA) is a law ensuring services to children with disabilities throughout the nation. Children and youth (ages 3-21) receive special education and related services under the IDEA Part B. In 2004 the IDEA was reauthorized. Final federal implementing regulations became effective October 13, 2006.

To comply with the IDEA regulations, April 20, 2007, the Department of Education provided the Board with proposed revisions to the Special Education Programs and Services Rule 0520-1-9. The Board approved the rule on first reading and directed the staff to hold a public rulemaking hearing. June 26, 2007, a public hearing provided an opportunity for public response to the proposed rule changes. The proposed rules presented for final reading reflected responsiveness to constituent concerns and new state legislation.

T.C.A. § 49-10-102 specifies a child who meets the eligibility criteria for intellectually gifted is a child with a disability. This is state specific eligibility category. While preparing the rule for final reading a portion of the gifted definition was accidentally omitted. The entire definition was crafted by the Intellectually Gifted Task Force. There were no constituency objections or recommended to change the definition as presented on first reading.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Individuals with Disabilities Education Act (IDEA) and §§49-10-101 and 49-10-701.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Local education agencies, teachers, parents and students.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

Minimal.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Bill Wilson
State Department of Education

Rich Haglund
State Board of Education

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

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State Department of Education

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State Board of Education

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Bill Wilson
State Department of Education
7th Floor, 710 James Robertson Pkwy
Nashville TN 37243
(615) 741-5988

Rich Haglund
State Board of Education
9th Floor, 710 James Robertson Pkwy
Nashville TN 37243
(615) 253-5707

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.