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Sequence Number: 08-13-10
 Rule ID(s): 4814
 File Date: 0/13/2010
 Effective Date: 01/29/2011

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. 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. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Rich Haglund
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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 to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0520-01-09	Special Education Programs and Services
Rule Number	Rule Title
0520-01-09-.02	Definitions
0520-01-09-.10	Initial Evaluations Withdrawn. See http://tn.gov/sos/pub/tar/announcements/10-10-10.pdf

Rule 0520-01-09-.02 Definitions is amended by deleting the words "mental retardation" wherever they appear and substituting instead the words "intellectual disability".

Authority: T.C.A. §§ 49-10-101, 49-10-102 and 49-10-701.

Rule 0520-01-09-.10 Initial Evaluations is amended by deleting the rule in its entirety.

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				
Katie McMillan	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 4/16/10, 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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 6-29-10

Signature: Gary L. Nixon

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 6/30/10

Notary Public Signature: Phyllis E. Childress

My commission expires on: _____

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.
 Attorney General and Reporter
8-4-10

Date

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Filed with the Department of State on: 8/13/10

Effective on: 1/29/11

Tre Hargett by Anne Pat. ADA
 Tre Hargett
 Secretary of State

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 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)

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Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule will not have a projected financial impact on local governments.

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;

2010 Public Chapter 734 directs the Tennessee Code Commission to change the term "mental retardation" to "intellectual disability" throughout Tennessee Code Annotated, including §49-10-102 where the term is defined for purposes of special education.

This change aligns with a nationwide movement to change the term "mental retardation" to "intellectual disability".

The Advisory Council for the Education of Students with Disabilities recommended changing the State Board Rules to in the same manner.

- (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;

T.C.A. §§ 49-10-101, 49-10-102 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;

Public schools, local education agencies.

- (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;

None.

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

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

Bill Wilson
Rich Haglund

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

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

(Rule 0520-01-09-.02, continued)

**RULES
OF
STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-09
SPECIAL EDUCATION PROGRAMS AND SERVICES**

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0520-01-09-.02 DEFINITIONS.

- (1) "Charter school" means a public charter school as defined at Tenn. Code Ann. § 49-13-104(6).
- (2) "Child with a disability" means, children with disabilities and youth between three (3) and twenty-one (21) years of age, inclusive who have been evaluated in accordance with §§300.304 through 300.311, TCA § 49-10-102 and regulations of the state board of education. Any child with a disability who attains twenty-two (22) years of age subsequent to the commencement of a school year continues to be a child with a disability for the remainder of that school year.
- (3) "Child with a disability" means a child with ~~mental-retardation~~ intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, multiple disabilities, deaf blindness, developmental delay, functional delay and intellectually gifted and who, by reason thereof, needs special education and related services.
- (4) "Autism" means a developmental disability, which significantly affects verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experience. The term does not apply if a child's educational performance is adversely affected primarily because the child has an Emotional Disturbance, as defined in this section.

(Rule 0520-01-09-.02, continued)

The term of Autism also includes students who have been diagnosed with an Autism Spectrum Disorder such as Autism, Pervasive Developmental Disorder—Not Otherwise Specified (PDD-NOS) or Asperger's Syndrome when the child's educational performance is adversely affected. Additionally, it may also include a diagnosis of a Pervasive Developmental Disorder such as Rett's or Childhood Disintegrative Disorder. Autism may exist concurrently with other areas of disability.

After age three (3), a child could be diagnosed as having Autism if the child manifests the above characteristics. Children with Autism demonstrate the following characteristics prior to age 3:

- (a) Difficulty relating to others or interacting in a socially appropriate manner;
 - (b) Absence, disorder, or delay in verbal and/or nonverbal communication; and
 - (c) One or more of the following:
 1. Insistence on sameness as evidenced by restricted play patterns, repetitive body movements, persistent or unusual preoccupations, and/or resistance to change;
 2. Unusual or inconsistent responses to sensory stimuli.
- (5) "Deaf-Blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs by addressing any one of the impairments. A child with deaf-blindness shall be:
- (a) A child who meets criteria for Deafness/Hearing Impairment and Visual Impairment;
 - (b) A child who is diagnosed with a degenerative condition or syndrome which will lead to Deaf-Blindness, and whose present level of functioning is adversely affected by both hearing and vision deficits; or
 - (c) A child with severe multiple disabilities due to generalized central nervous system dysfunction, and who exhibits auditory and visual impairments or deficits which are not perceptual in nature.
- (6) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance. The child has:
- (a) An inability to communicate effectively due to Deafness; and/or
 - (b) An inability to perform academically on a level commensurate with the expected level because of Deafness; and/or
 - (c) Delayed speech and/or language development due to Deafness.
- (7) "Developmental Delay" refers to children aged three (3) through nine (9) who are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, 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. 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.
- (8) "Emotional Disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree that adversely affects a child's educational performance over an extended period of time (during which time documentation of informal assessments and interventions are occurring):

(Rule 0520-01-09-.02, continued)

- (a) Inability to learn which cannot be explained by limited school experience, cultural differences, or intellectual, sensory, or health factors;
- (b) Inability to build or maintain satisfactory interpersonal relationships with peers and school personnel;
- (c) Inappropriate types of behavior or feelings when no major or unusual stressors are evident;
- (d) General pervasive mood of unhappiness or depression;
- (e) Tendency to develop physical symptoms or fears associated with personal or school problems.

The term may include other mental health diagnoses. The term does not apply to children who are socially maladjusted, unless it is determined that they have an Emotional Disturbance. Social maladjustment includes, but is not limited to, substance abuse related behaviors, gang-related behaviors, oppositional defiant behaviors, and/or conduct behavior problems.

- (9) "Functional Delay" means a 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 student's chronological age, including:
 - (a) Significantly impaired intellectual functioning which is two 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~~ Intellectual disability eligibility standards.
- (10) "Hearing Impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but does not include Deafness.

(Rule 0520-01-09-.02, continued)

A child shall have one or more of the following characteristics:

- (a) Inability to communicate effectively due to a Hearing Impairment;
 - (b) Inability to perform academically on a level commensurate with the expected level because of a Hearing Impairment;
 - (c) Delayed speech and/or language development due to a Hearing Impairment.
- (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.
- (12) "~~Mental Retardation~~Intellectual Disability" is characterized by significantly impaired intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.
- (13) "Multiple Disabilities" means concomitant impairments (such as ~~Mental Retardation~~Intellectual Disability-Deafness, ~~Mental Retardation~~Intellectual Disability-Orthopedic Impairment), the combination of which causes such severe educational needs that they cannot be accommodated by addressing only one of the impairments. The term does not include Deaf-Blindness.
- (14) "Orthopedic Impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g. club foot, absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g. cerebral palsy, amputations, and fractures or burns that cause contractures).
- (15) "Other Health Impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, Attention Deficit Hyperactivity Disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Syndrome that adversely affects a child's educational performance.

A child is "Other Health Impaired" who has chronic or acute health problems that require specially designed instruction due to:

- (a) Impaired organizational or work skills;
 - (b) Inability to manage or complete tasks;
 - (c) Excessive health related absenteeism; or
 - (d) Medications that affect cognitive functioning.
- (16) "Specific Learning Disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, and that adversely affect a child's educational performance. Such term includes conditions such as visual processing (perceptual) disabilities, brain injury that is not caused by an external physical force, dyslexia, and developmental aphasia. Specific Learning Disability does not include a learning problem that is primarily the result of Visual Impairment, Hearing Impairment, Orthopedic Impairment,

(Rule 0520-01-09-.02, continued)

~~Mental Retardation~~ Intellectual Disability, Emotional Disturbance, limited English proficiency, or environmental or cultural disadvantage.

- (17) "Speech or Language Impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or voice impairment that adversely affects a child's educational performance.

Speech or Language Impairment includes demonstration of impairments in the following areas of language, articulation, voice, or fluency.

- (a) Language Impairment – A significant deficiency not consistent with the student's chronological age in one or more of the following areas:
1. A deficiency in receptive language skills to gain information;
 2. A deficiency in expressive language skills to communicate information;
 3. A deficiency in processing (auditory perception) skills to organize information.
- (b) Articulation Impairment – A significant deficiency in ability to produce sounds in conversational speech not consistent with chronological age.
- (c) Voice Impairment – An excess or significant deficiency in pitch, intensity, or quality resulting from pathological conditions or inappropriate use of the vocal mechanism.
- (d) Fluency Impairment – Abnormal interruption in the flow of speech by repetitions or prolongations of a sound, syllable, or by avoidance and struggle behaviors.

Speech or Language deficiencies identified cannot be attributed to characteristics of second language acquisition and/or dialectic differences.

- (18) "Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

Traumatic Brain Disorder may include all of the following:

- (a) An insult to the brain caused by an external force that may produce a diminished or altered state of consciousness; and
- (b) The insult to the brain induces a partial or total functional disability and results in one or more of the following:
1. Physical impairments such as, but not limited to:
 - (i) Speech, vision, hearing, and other sensory impairments,
 - (ii) Headaches,
 - (iii) Fatigue,
 - (iv) Lack of coordination,

(Rule 0520-01-09-.02, continued)

- (v) Spasticity of muscles,
 - (vi) Paralysis of one or both sides,
 - (vii) Seizure disorder.
2. Cognitive impairments such as, but not limited to:
- (i) Attention or concentration,
 - (ii) Ability to initiate, organize, or complete tasks,
 - (iii) Ability to sequence, generalize, or plan,
 - (iv) Flexibility in thinking, reasoning or problem solving,
 - (v) Abstract thinking,
 - (vi) Judgment or perception,
 - (vii) Long-term or short term memory, including confabulation,
 - (viii) Ability to acquire or retain new information,
 - (ix) Ability to process information/processing speed.
3. Psychosocial impairments such as, but not limited to:
- (i) Impaired ability to perceive, evaluate, or use social cues or context appropriately that affect peer or adult relationships,
 - (ii) Impaired ability to cope with over-stimulation environments and low frustration tolerance,
 - (iii) Mood swings or emotional lability,
 - (iv) Impaired ability to establish or maintain self-esteem,
 - (v) Lack of awareness of deficits affecting performance,
 - (vi) Difficulties with emotional adjustment to injury (anxiety, depression, anger, withdrawal, egocentricity, or dependence),
 - (vii) Impaired ability to demonstrate age-appropriate behavior,
 - (viii) Difficulty in relating to others,
 - (ix) Impaired self-control (verbal or physical aggression, impulsivity),
 - (x) Inappropriate sexual behavior or disinhibition,
 - (xi) Restlessness, limited motivation and initiation,
 - (xii) Intensification of pre-existing maladaptive behaviors or disabilities.

The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.