RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-09
SPECIAL EDUCATION PROGRAMS AND SERVICES

TABLE OF CONTENTS

0520-01-09-.01	General Regulations. Adoption by Reference	0520-01-09-.13	Repealed
0520-01-09-.02	Definitions	0520-01-09-.14	Repealed
0520-01-09-.03	Recognized Disability Categories	0520-01-09-.15	Parent Participation in IEP Meetings
0520-01-09-.04	Consent	0520-01-09-.16	Repealed
0520-01-09-.05	Child Find and Free Appropriate Public Education	0520-01-09-.17	Mediation
0520-01-09-.06	Repealed	0520-01-09-.18	Impartial Due Process Hearing
0520-01-09-.07	Educational Homebound Placements for Students with Disabilities	0520-01-09-.19	Civil Action
0520-01-09-.08	State Advisory Council	0520-01-09-.20	Surrogate Parents
0520-01-09-.09	LEA Eligibility for Federal IDEA Part B Funds	0520-01-09-.21	Transfer of Parental Rights at Age of Majority
0520-01-09-.10	Funding Requirements	0520-01-09-.22	Amendment of Records at Parent's Request
0520-01-09-.11	Evaluation Procedures	0520-01-09-.23	Isolation and Restraint for Students Receiving Special Education Services
0520-01-09-.12	Individualized Education Program (IEP) Requirements	0520-01-09-.24	Functional Behavior Assessments and Behavior Intervention Plans

0520-01-09-.03 RECOGNIZED DISABILITY CATEGORIES.

(1) Autism.

(a) "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. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an Emotional Disturbance, as defined in this Rule.

~~(b) Eligibility for autism also includes students who have been diagnosed with an Autism Spectrum Disorder such as Autism, a Pervasive Developmental Disorder, or Asperger's Syndrome when the child's educational performance is adversely affected. Autism may exist concurrently with other areas of disability.~~

~~(c) A child may be found eligible as having Autism if the child manifests both of the following characteristics in early childhood (as social demands increase):~~

~~1. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by all of the following:~~

~~(i) Deficits in social-emotional reciprocity (including, but not limited to abnormal social approach, failure of normal back and forth conversation, reduced sharing of interests, reduced sharing of emotions/affect, lack of initiation of social interaction, and poor social imitation);~~

~~(ii) Deficits in nonverbal communicative behaviors used for social interaction (including but not limited to impairments in social use of eye contact, use and understanding of body~~

postures, use and understanding of gestures; abnormal volume, pitch, intonation, rate, rhythm, stress, prosody, and/or volume of speech; abnormal use and understanding affect, lack of coordinated verbal and nonverbal communication, and lack of coordination nonverbal communication); and

(iii) Deficits in developing and maintaining relationships appropriate to developmental level; ranging from difficulties adjusting behavior to social contexts, through difficulties in sharing imaginative play, to an apparent absence of interest in people; and

2. Restricted, repetitive patterns of behavior, interests, or activities as manifested by at least two (2) of the following:

(i) Stereotyped or repetitive speech, motor movements, or use of objects (including but not limited to echolalia, repetitive use of objects, idiosyncratic language, simple motor stereotypies);

(ii) Excessive adherence to routines, ritualized patterns of verbal or nonverbal behavior, or excessive resistance to change (including but not limited to motor rituals, insistence on same route or food, repetitive questioning, or extreme distress at small changes);

(iii) Highly restricted, fixated interests that are abnormal in intensity or focus (including but not limited to strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests); or

(iv) Hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of environment (including but not limited to apparent indifference to pain/heat/cold, adverse response to sounds or textures, excessive smelling or touching of objects, fascination with lights or spinning objects).

(2) Deaf-Blindness.

(a) "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 (1) of the impairments and adversely affects a child's educational performance. A child may be found eligible as having Deaf-Blindness if the child:

1. Meets criteria for Deafness or Hearing Impairment and Visual Impairment; and

2. 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

3. Has 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.

(3) Deafness.

(a) "Deafness" means the presence of a hearing loss in the a hearing impairment that is so severe to profound range of loss or a hearing loss resulting in the limited ability to comprehend that the child is impaired in processing linguistic information through hearing alone, with or without amplification, that adversely affects a child's educational

performance. ~~A child may be found eligible as having Deafness if the child has one (1) or more of the following characteristics:~~

~~1. An inability to communicate effectively due to deafness;~~

~~2. An inability to perform academically on a level commensurate with the expected level because of deafness; or~~

~~3. Delayed speech and/or language development due to deafness.~~

(4) Developmental Delay.

(a) "Developmental Delay" refers to children aged three years, zero months (3:0) through nine years, eleven months (9:11) who are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas: physical (gross motor and/or fine motor), cognitive, communication, social or emotional, or adaptive development that adversely affects a child's educational performance.

(b) Other disability categories shall be used if they are more descriptive of a child's strengths and needs. Initial eligibility for Developmental Delay shall be determined before the child's seventh birthday. The use of Developmental Delay as a disability category is optional for LEAs.

~~1. Physical (gross motor and/or fine motor);~~

~~2. Cognitive;~~

~~3. Communication;~~

~~4. Social or emotional; or~~

~~5. Adaptive development that adversely affects a child's educational performance.~~

~~(b) Initial eligibility as Developmental Delay shall be determined before the child's seventh birthday.~~

~~(c) Other disability categories shall be used if they are more descriptive of the young child's strengths and needs.~~

~~(d) The use of Developmental Delay as a disability category is optional for LEAs.~~

(5) Emotional Disturbance.

(a) "Emotional Disturbance" means a condition exhibiting one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

1. Inability to learn which cannot be explained by intellectual, sensory, or health factors;

2. Inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

3. Inappropriate types of behavior or feelings under normal circumstances;

4. A general pervasive mood of unhappiness or depression; or

5. A tendency to develop physical symptoms or fears associated with personal or school problems.

(b) Emotional Disturbance includes psychiatric diagnoses, including, ~~such as~~ but not limited to, schizophrenia. Emotional Disturbance does not apply to children who are socially maladjusted, unless it is determined that they ~~have an emotional disturbance~~exhibit one or more of the characteristics of Emotional Disturbance as described above.

(6) Functional Delay.

(a) "Functional Delay" means a ~~continuing~~ significant disability in intellectual functioning and achievement that adversely affects a~~the student's ability to progress in the general education programchild's educational performance~~, but the ~~student's~~ child's adaptive behavior in the home and~~or~~ community is not significantly impaired and is at or near a level appropriate to the student's chronological age.~~, including all of the following:~~

~~1. Significantly impaired intellectual functioning which is two (2) or more standard deviations below the mean, and difficulties in the following areas cannot be the primary reason for significantly impaired scores on measures of intellectual functioning:~~

~~(i) Limited English proficiency;~~

~~(ii) Cultural factors;~~

~~(iii) Medical conditions that impact school performance;~~

~~(iv) Environmental factors; and~~

~~(v) Communication, sensory or motor disabilities;~~

~~2. Deficient academic achievement which is at or below the fourth percentile in two (2) or more total or composite scores on a norm referenced test in the following areas:~~

~~(i) Basic reading skills;~~

~~(ii) Reading fluency skills;~~

~~(iii) Reading comprehension;~~

~~(iv) Mathematics calculation;~~

~~(v) Mathematics problem solving; or~~

~~(vi) Written expression; and~~

~~3. Home or school adaptive behavior scores that fall above the level required for meeting Intellectual Disability eligibility standards.~~

(b) Prior to identification of Functional Delay, the student's IEP team must determine that underachievement is not primarily the result of ~~Visual, Motor, or Hearing Disability~~Visual or Hearing Impairments, Orthopedic Impairment, Deafness, Intellectual Disability, Speech or Language Impairment, or a Specific Learning Disability.

(c) Other disability categories shall be used if they are more descriptive of the student's strengths and needs.

(d) A child who is evaluated solely for the purpose of determining whether the child is Functionally Delayed is not entitled to an independent educational evaluation at public expense pursuant to 34 C.F.R § 300.502.

(7) Hearing Impairment.

(a) "Hearing Impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but does not include Deafness.

~~(b) A child may be found eligible as having Hearing Impairment if the child has one (1) or more of the following characteristics:~~

~~1. Inability to communicate effectively due to a hearing impairment;~~

~~2. Inability to perform academically on a level commensurate with the expected level because of a hearing impairment; or~~

~~3. Delayed speech and/or language development due to a hearing impairment.~~

(8) Intellectually Gifted.

(a) "Intellectually Gifted" means a child whose intellectual abilities, creativity, and potential for achievement are so outstanding that the child's needs exceed differentiated general education programing and~~,~~ adversely affects a child's educational performance~~,~~ ~~and require specifically designed instruction or support services.~~

(b) Children from all populations (including but not limited to all cultural, racial, and ethnic groups, English Learners, all economic strata, twice-exceptional, etc.) can be found eligible for Intellectually Gifted.

(c) 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.

(d) A child who is evaluated solely for the purpose of determining whether the child is Intellectually Gifted is not entitled to an independent educational evaluation at public expense pursuant to ~~, as~~ 34 C.F.R. § 300.502.

(9) Intellectual Disability.

(a) "Intellectual Disability" ~~means~~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.

(10) Multiple Disabilities.

(a) "Multiple Disabilities" means concomitant impairments of Intellectual Disability and one or more additional disabilities (~~including but not limited to~~such as Intellectual disability-Deafness, Intellectual disability- Orthopedic Impairment), the combination of which ~~causes~~results in such severe educational needs that ~~they cannot be accommodated by addressing only one (1) of the impairments~~ the student's educational program cannot be appropriately designed or implemented by addressing the Intellectual Disability or the additional disability in isolation. The multidisciplinary evaluation team shall determine that the combined effects of the disabilities create unique educational needs that adversely affect the child's educational ~~.~~performance. Multiple Disabilities does not include Deaf-Blindness.

(11) Orthopedic Impairment.

(a) "Orthopedic Impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes, but is not limited to, impairments caused by congenital anomaly ~~(including but not limited~~e.g. to club foot, absence of some member), impairments caused by disease (~~including but not limited to~~e.g. poliomyelitis, bone tuberculosis), and impairments from other causes (~~including but not limited to~~e.g. cerebral palsy, amputations, and fractures or burns that cause contractures).

(12) Other Health Impairment.

(a) "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 ~~including but not limited to~~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.

~~(b) A child may~~~~shall~~ ~~be found eligible as having an Other Health Impairment if the child has a chronic or acute health problem that requires specially designed instruction due to:~~

~~1. Impaired organizational or work skills;~~

~~2. Inability to manage or complete tasks;~~

~~3. Excessive health -related absenteeism; or~~

~~4. Medications that affect cognitive functioning.~~

(13) Specific Learning Disability.

(a) "Specific Learning Disability" means a disorder in one (1) 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. Specific Learning Disability includes conditions such as perceptual disabilities (~~including but not limited to~~e.g.~~,~~ visual processing), brain injury that is not caused by an external physical force, minimal brain dysfunction, dyslexia, and developmental aphasia.

(b) Specific Learning Disability does not include a learning problem that is primarily the result of Visual Impairment, Hearing Impairment, Orthopedic Impairment, Intellectual

(Rule 0520-01-09-.10, continued)

Disability, Emotional Disturbance, Limited English Proficiency, or environmental, cultural, or economic disadvantage.

(14) Speech or Language Impairment.

(a) "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.

~~(b) Speech or Language Impairment includes demonstration of impairments in one (1) or more of the following areas:~~

~~1. Language ImpairmentA significant deficiency in comprehension and/or use of spoken language that may also impair written and/or other symbol systems and is negatively impacting the child's ability to participate in the classroom environment. The impairment may involve any or a combination of the following: the form of language (phonology, morphology, and syntax), the content of language (semantics) and/or the use of language in communication (pragmatics) that is adversely affecting the child's educational performance;~~

~~2. Articulation (Speech Sound Production) Impairment. A significant deficiency in the ability to produce sounds in conversational speech not consistent with chronological age. This includes a significant atypical production of speech sounds characterized by substitutions, omissions, additions, or distortions that interfere with intelligibility in conversational speech and obstruct learning and successful verbal communication in the educational setting. Speech sound errors may be a result of impaired phonology, oral motor or other issues;~~

~~3. Voice Impairment. An excess or significant deficiency in pitch, intensity, resonance, or quality resulting from pathological conditions or inappropriate use of the vocal mechanism; or~~

~~4. Fluency Impairment. Abnormalinterruption in the flow of speech characterized by an atypical rate or rhythm, and/orrepetitions in sounds, syllables, words, and phrasesthat significantlyreducesthe speaker's ability to participate within the learning environment.~~

~~(c) Speech or Language deficiencies identified cannot be attributed to characteristics of second language acquisition, cognitive referencing, and/or dialectic differences.~~

(15) Traumatic Brain Injury.

(a) "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 (1) 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. Traumatic Brain Injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

~~(b) Traumatic Brain Injury may include the following:~~

~~1. An insult to the brain caused by an external force that may produce a diminished or altered state of consciousness; and~~

~~2. The insult to the brain induces a partial or total functional disability resulting in one (1) or more of the following:~~

~~(i) Physical impairments such as, but not limited to:~~

~~(I) Speech, vision, hearing, and other sensory impairments;~~

~~(II) Headaches;~~

~~(III) Fatigue;~~

~~(IV) Lack of coordination;~~

~~(V) Spasticity of muscles;~~

~~(VI) Paralysis of one or both sides; or~~

~~(VII) Seizure disorder.~~

~~(ii) 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; or~~

~~(IX) Ability to process information/processing speed.~~

~~(iii) 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 ability;~~

~~(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);~~

(Rule 0520-01-09-.10, continued)

~~(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; or~~

~~(XII) Intensification of pre-existing maladaptive behaviors or disabilities.~~

~~(c) Traumatic Brain Injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.~~

(16) Visual Impairment.

(a) "Visual Impairment," including ~~either partial sight or~~ blindness, means impairment in vision that, even with correction, adversely affects a child's educational performance. ~~A child may be found eligible as having a visual impairment if the child has at least one (1) of the following:~~

~~1. Visual acuity in the better eye or both eyes with best possible correction:~~

~~(i) Legal blindness – 20/200 or less at distance and/or near; or~~

~~(ii) Low vision – 20/70 or less at distance and/or near;~~

~~2. Visual field restriction with both eyes:~~

~~(i) Legal blindness – remaining visual field of 20 degrees or less;~~

~~(ii) Low vision – remaining visual field of 60 degrees or less; or~~

~~(iii) Medical and educational documentation of progressive loss of vision, which may in the future affect the student's ability to learn visually; or~~

~~3. Other Visual Impairment, not perceptual in nature, resulting from a medically documented condition (For example, but not limited to, cortical visual impairment).~~

Authority: T.C.A. §§ 49-10-101, et seq., and 34 C.F.R. Part 300. Administrative History: Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021.

0520-01-09-.11 EVALUATION PROCEDURES.

The Department, in consultation with the Advisory Council for the Education of Students with Disabilities and other stakeholders with expertise in each disability category, shall establish standards for determining program eligibility criteria, evaluation procedures, and evaluation participants. These standards shall be submitted by the Department to the State Board for final review and approval. Upon approval, the standards shall be binding upon all ~~local education agencies~~LEAs and public charter schools responsible for the identification, evaluation, and eligibility determination of students with disabilities. The Department shall

(Rule 0520-01-09-.24, continued)

have authority to monitor and enforce compliance with the approved standards, including requiring corrective action or other appropriate measures when an LEA or public charter school fails to implement the standards consistent with applicable state and federal law.

Authority: T.C.A. §§ 49-10-101, et seq. Administrative History: Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendments filed May 14, 2021; effective August 12, 2021. Amendments filed January 6, 2023; effective April 6, 2023.