

**The Special Education Behavioral Supports Act
Effective June 10, 2011**

by

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Public Chapter 457 of the Acts of 2011 amended T.C.A. Title 49, Chapter 10, Section 13 concerning the isolation and restraint of children with disabilities, effective June 10, 2011. This document is designed for illustrative purposes and contains the language of the law as it existed prior and subsequent to the effective date.

Language that was deleted from the law is indicated by ~~strikethrough~~.

Language that was added to the law is indicated in **bold underline** type.

All other language in the law remains in effect and is unchanged.

§49-10-1301 Short title. -

This part shall be known and may be cited as the ~~'Special Education Isolation and Restraint Modernization and Positive Behavioral Supports Act.'~~ **Special Education Behavioral Supports Act.**

§49-10-1302 Purpose of part. -

The purposes of this part are:

- (1) To ensure that every student receiving special education services is free from the unreasonable, unsafe and unwarranted uses of isolation and restraint practices;
- (2) To encourage the use of positive behavioral interventions and support methods in schools;
- (3) To develop properly trained staff in order to promote positive behavioral supports that reduce dependence on isolation and restraint practices; and
- (4) To ensure that teachers of students receiving special education services are properly trained to protect the student, teacher and others from physical harm, if isolation or restraint is necessary.

§49-10-1303 Part definitions. -

For the purposes of this part, unless the context otherwise requires:

(1) "Behavior intervention training program" means a training program in positive behavioral supports, crisis intervention and the safe use of restraint and isolation;

(42) 'Chemical restraint' means a medication that is prescribed to restrict a student's freedom of movement for the control of extreme violent physical behavior. Chemical restraints are medications used in addition to, or in replacement of, a student's regular drug regimen to control extreme violent physical behavior. The medications that comprise the student's regular medical regimen, including PRN medications, are not considered chemical restraints, even if their purpose is to treat ongoing behavioral symptoms;

(3) "Emergency situation" means that a child's behavior poses a threat to the physical safety of the student or others nearby;

~~(2) 'Isolation' or 'seclusion' means the confinement of a student alone in a room or an area where the student is physically prevented from leaving. This definition is not limited to instances in which a student is confined by a locked or closed door. Isolation does not include time-out, a behavior management procedure in which the opportunity for positive reinforcement is withheld, contingent upon the demonstration of undesired behavior. Time-out may involve the voluntary separation of an individual student from others;~~

(4) "Isolation" or "seclusion": (A) Means the confinement of a student alone in a room with or without a door, or other enclosed area or structure pursuant to § 49-10-1305(g) where the student is physically prevented from leaving; and

(B) Does not include time-out, a behavior management procedure in which the opportunity for positive reinforcement is withheld, contingent upon the demonstration of undesired behavior; provided, time-out may involve the voluntary separation of an individual student from others;

(5) "Isolation room" means any space, structure, or area pursuant to § 49-10-1305(g) used to isolate a student;

(36) 'Mechanical restraint' means the application of a mechanical device, material or equipment attached or adjacent to the student's body, including ambulatory restraints, which the student cannot easily remove and that restrict freedom of movement or normal access to the student's body. Mechanical restraint does not include the use of restraints for medical immobilization, adaptive support, or medical protection;

(47) 'Noxious substance' means the use of any defense spray or substance as defined by departmental rule;

(58) 'Physical holding restraint' means the use of body contact by school personnel with a student to restrict freedom of movement or normal access to the student's body; and

(9) "Positive behavioral supports" means a systematic approach using evidence-based practices to improve school environments, and to prevent and respond to problem behavior that:

(A) Is proactive and instructional, rather than reactive and punitive;

(B) Operates on the following three (3) levels:

(i) Individual;

(ii) Group or classroom; and

(iii) The whole school;

(C) Includes a system of continual data collection;

(D) Utilizes data-based decision-making;

(E) Applies research-validated positive behavioral interventions; and

(F) Improves academic and social outcomes for all students, including those with the most complex and intensive behavioral needs;

(610) 'School personnel' means an individual employed on a full-time or part-time basis by a public school.

§49-10-1304 Isolation or restraint of student - Reports and record. -

~~_(a) A student receiving special education services, as defined by § 49-10-102, may be restrained or isolated, only if the restraint or isolation is provided for in the student's individual education program, except that the student may be restrained or isolated in emergency situations, if necessary to assure the physical safety of the student or others nearby.~~

(a) A student receiving special education services, as defined by § 49-10-102, may be restrained or isolated only in emergency situations.

(b) Individualized education programs that provide for the use of restraint or isolation in emergency situations shall also contain a data driven functional behavior assessment and a plan for modification of the behavior developed and implemented by a qualified team of professionals.

(c) In the event that restraint or isolation is imposed on a student, it shall be imposed by:

(1) School personnel who have been certified for completing a behavior intervention training program; or

(2) Other school personnel when trained personnel are not immediately available.

~~(bd)~~ (1) If school personnel impose restraints or isolation in an emergency situation, the school shall immediately contact appropriate school personnel who are designated under department rules to authorize the isolation or restraint. Such school personnel authorized by department rules shall see and evaluate the student's condition within a reasonable time after the intervention and the student's parent or guardian shall be notified, orally or by written or printed communication, the same day the isolation or restraint was used. ~~School personnel shall be held harmless if reasonable effort has been made to comply with this subdivision (b)(1).~~ School personnel shall be held harmless for failure to notify if reasonable effort has been made to notify the student's parent or guardian in compliance with this subdivision (b)(1).

(2) If the student's individualized education program does not provide for the use of isolation or restraint for the behavior precipitating such action or if school personnel are required to use isolation or restraint over an extended period of time as determined by department rules, then an individual education program meeting shall be convened within ten (10) days following the use of the isolation or restraint. If the behavior precipitating such action also warrants a change of placement, the child will have all rights provided under applicable state and federal law.

(3) (A) School personnel may report a suspected crime by calling a law enforcement official;

(B) School personnel may file a juvenile petition against a student receiving special education, only after conducting a manifestation determination that results in a determination that the behavior that resulted in the act requiring disciplinary action was not caused by the student's disability; or

(C) A school resource officer (SRO), as defined by § 49-6-4202, may, upon witnessing an offense, take the student into custody.

~~(c) (1) School personnel who must isolate or restrain a student receiving special education services, as defined by § 49-10-102, whether or not the isolation or restraint was in an emergency situation or provided for in the student's individual education program, shall report the incident to the school principal or the principal's designee who shall record the use of the isolation or restraint and the facts surrounding such use. A copy of the record shall be made available at individual education program meetings and upon the request of the student's parent or legal guardian.~~

~~(2) If the school principal, other school personnel designated under department rules to authorize the isolation or restraint, or any person having knowledge of the isolation or restraint have reason to believe that the isolation or restraint was unreasonable, unsafe or unwarranted, and the isola-~~

~~tion or restraint caused injury to the student, the incident shall be reported pursuant to § 37-1-403.~~

~~(3) School personnel shall remain in the physical presence of any restrained student and shall continuously observe a student who is in isolation or being restrained to monitor the health and well-being of the student.~~

(e)(1) School personnel who must isolate or restrain a student receiving special education services, as defined by § 49-10-102, shall report the incident to the school principal or the principal's designee who shall record the use of the isolation or restraint and the facts surrounding such use. The state board of education shall promulgate rules that mandate a standard reporting format to be used by LEAs.

(2) Whenever possible, an additional school staff member should serve as an observer to any act of physical restraint performed on a student to monitor the health and safety of all involved. School personnel shall maintain a continuous direct line of sight to a student who is in isolation to monitor the health and well-being of the student.

(f) To the extent possible within the local education agency's funds, the local board of education should address § 49-6-3004(c)(1) by incorporating the following components into its behavior intervention training program:

(1) Training in evidence-based techniques shown to be effective in the prevention of isolation and physical restraint;

(2) Training in evidence-based techniques shown to be effective in keeping both school personnel and students safe when imposing physical restraint or isolation;

(3) Evidence-based skills training on positive behavioral interventions and supports, conflict prevention, functional behavior assessments, de-escalation, and conflict management;

(4) Information describing state statutes, policies, rules, and procedures on restraint and isolation;

(5) Training in the identification and reporting of abuse and neglect in the school setting; and

(6) Certification for school personnel who have completed a behavior intervention training program which should be renewed on a periodic basis.

NOTE: §49-6-3004(c)(1) provides: *In-service days shall be used according to a plan recommended by the local director of schools in accordance with provisions of this section and other applicable statutes and adopted by the local board of education, a copy of which plan shall be filed with the commissioner of education on or before June 1 of the preceding school year and approved by the commissioner..... The commissioner shall also encourage*

the use of two (2) of the in-service training days to provide training to teachers, principals and other school personnel, and, to the extent possible, school board members, on issues of prevention and intervention strategies for students in the area of behavioral/emotional disorders. The training shall place an emphasis on understanding the warning signs of early-onset mental illness in children and adolescents and may be conducted by school counseling personnel, such as psychologists, social workers, guidance counselors or health faculty, by mental health clinicians or by approved personnel from mental health advocacy organizations using curricula approved by the departments of education and mental health.

§49-10-1305 Restrictions on administration of, or use of, isolation or restraint. -

(a) Administering a chemical restraint to a student receiving special education services, as defined by § 49-10-102, is prohibited; provided, that nothing in this subsection (a) shall prohibit the administration of a chemical restraint when administered for therapeutic purposes under the direction of a physician and with the child's parent or guardian's consent to administer such chemical restraint.

(b) Administering a noxious substance to a student receiving special education services, as defined by § 49-10-102, is prohibited.

(c) The use of any mechanical restraint on any student receiving special education services, as defined by § 49-10-102, is prohibited.

(d) Any form of life threatening restraint, including restraint that restricts the flow of air into a person's lungs, whether by chest compression or any other means, to a student receiving special education services, as defined by § 49-10-102, is prohibited.

(e) (1) The use of isolation or physical holding restraint as a means of coercion, punishment, convenience or retaliation on any student receiving special education services, as defined by § 49-10-102, is prohibited.

(2) Removing or disabling any equipment or device that a student requires, including, but not limited to, a power wheelchair, brace, augmentative communication device, or walker, as a means of coercion, punishment, convenience, or retaliation on any student receiving special education services, as defined by § 49-10-102, is prohibited.

(23) (A) The use of physical holding restraint in the following circumstances is not prohibited:

(i) The brief holding by an adult in order to calm or comfort;

(ii) The minimum contact necessary to physically escort a student from one area to another;

(iii) Assisting a student in completing a task or response if the student does not resist, or resistance is minimal in intensity or duration; or

(iv) Holding a student for a brief time in order to prevent any impulsive behavior that threatens the student's immediate safety.

(B) The school is not required to notify the student's parent or guardian pursuant to § 49-10-1304 in any of the circumstances listed in subdivision (e)(2)(A).

~~(f) The use of a locked door, or use of any physical structure that substantially accomplishes the intent of locking a student in a room or structure, to isolate or seclude a student, as defined in § 49-10-1303, is prohibited.~~

(f) The use of a locked door, or any physical structure, mechanism, or device that substantially accomplishes the function of locking a student in a room, structure, or area, is prohibited.

(g) Any space used as an isolation room shall be:

(1) Unlocked and incapable of being locked;

(2) Free of any condition that could be a danger to the student;

(3) Well ventilated and temperature controlled;

(4) Sufficiently lighted for the comfort and well-being of the student;

(5) Where school personnel are in continuous direct visual contact with the student at all times;

(6) At least forty square feet (40 sq. ft.); and

(7) In compliance with all applicable state and local fire, health, and safety codes.

(gh) Notwithstanding this section, actions undertaken by school personnel to break up a fight or to take a weapon from a student are not prohibited; however, these acts shall be reported.

§49-10-1306 Promulgation of rules and regulations.

(a) Each school shall maintain all records of isolation and restraint.

(b) On a semiannual basis, using existing student-level data collection systems to the extent feasible, each school shall submit a report to the local education agency that includes:

(1) The number of incidents involving the use of isolation and restraint since the previous semiannual report;

(2) The number of instances in which the school personnel imposing physical restraint or isolation were not trained and certified;

(3) Any injuries, deaths, or property damage that occurred;

(4) The timeliness of parental notification; and

(5) Demographic information to determine whether disproportionate use of these interventions exists.

(c) The local education agency shall use the information obtained from records of isolation and restraint in developing its behavior intervention training program.

(d) The local education agency shall submit information to the department of education each year on the use of isolation and restraint in the school district.

(e) Annually, this information shall be reported to the state advisory council for the education of students with disabilities established pursuant to § 49-10-105. This information must also be made readily available to the public. The council shall use this information to report annually to the state board of education with recommendations to reduce the use of isolation and restraint in public education programs. The state board of education shall use these recommendations as well as data, documentation and reports to establish policy or strategies or both to reduce or eliminate the use of isolation and restraint in schools.

(f) The state board of education, in consultation with the departments of education, mental health, intellectual and developmental disabilities, and children's services, shall promulgate rules and regulations concerning the use of isolation or restraint with students who receive special education services so that isolation or restraint is not used when such procedures are unsafe, unreasonable or unwarranted. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

49-10-1307 Contracting with Private Schools and Agencies

If a private school or agency contracts with an LEA to provide services for students with disabilities, then such private school or agency shall, in the contract for services, certify that the staff of the facility or program has received training in the appropriate use of restraint and isolation. Further, the contracting agency shall report to a designated LEA representative each instance of the use of restraint and isolation to accomplish the parental notification provided in this part.

**RULES
OF
STATE BOARD OF EDUCATION
CHAPTER 0520-01-09
SPECIAL EDUCATION PROGRAMS AND SERVICES**

0520-01-09-.23 ISOLATION AND RESTRAINT FOR STUDENTS RECEIVING SPECIAL EDUCATION SERVICES.

(1) Definitions

(a) “Emergency situation” means that a child’s behavior places the child or others at risk of violence or injury if no intervention occurs. **NOTE: This definition is superseded by the new definition at T.C.A. §49-10-1303(3).**

(b) “Extended isolation” means isolation which lasts longer than one (1) minute per year of the student’s age or isolation which lasts longer than the time provided in the child’s individualized education program (IEP).

(c) “Extended restraint” means a physical holding restraint lasting longer than five (5) minutes or physical holding restraint which lasts longer than the time provided in the child’s IEP.

(d) “Isolation room” means a space designed to isolate a student that is unlocked, cannot be locked from the inside, without structural barriers to exit, free of any condition that could be a danger to the student, well ventilated, sufficiently lighted, and where school personnel are in direct visual contact with the student at all times. Such spaces must comply with all applicable state and local fire codes. **NOTE: This definition is superseded by the new definition at T.C.A. §49-10-1305(g).**

(e) “Noxious substance” means a substance released in proximity to the student’s face or sensitive area of the body for the purpose of limiting a student’s freedom of movement or action, including but not limited to Mace and other defense sprays.

(2) Local education agencies are authorized to develop and implement training programs that include:

(a) Use of positive behavioral interventions and supports;

(b) Nonviolent crisis prevention and de-escalation;

- (c) Safe administration of isolation and restraint; and
 - (d) Documentation and reporting requirements.
- (3) Local education agencies are authorized to determine an appropriate level of training commensurate with the job descriptions and responsibilities of school personnel.
- (4) Local education agencies shall develop policies and procedures governing:
- (a) Personnel authorized to use isolation and restraint;
 - (b) Training requirements; and
 - (c) Incident reporting procedures.
- (5) Only the principal, or the principal's designee, may authorize the use of isolation or restraint.
- (6) When the use of restraint or isolation is proposed at an IEP meeting, parents/guardians shall be advised of the provisions of T.C.A. § 49-10-1301, et seq., this rule and the IDEA procedural safeguards.
- (7) An IEP meeting convened pursuant to T.C.A. § 49-10-1304(b) may be conducted on at least twenty-four (24) hours notice to the parents.
- (8) State agencies providing educational services within a residential therapeutic setting to children in their legal and physical custody shall develop and adhere to isolation and restraint policies in such educational settings which conform to the TDMHDD (Tennessee Department of Mental Health and Developmental Disabilities) state standards as applicable and at least one of the following national standards: ACA (American Correctional Association), COA (Council on Accreditation), CMS (Centers for Medicare & Medicaid Services), JCAHO (Joint Commission for Accreditation of Healthcare Organizations), CARF (Commission on Accreditation of Rehabilitation Facilities), as they apply in the educational environment. Development of, and adherence to, such policies shall be overseen by a licensed qualified physician or licensed doctoral level psychologist.