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**Isolation or Restraint for Students Receiving Special Education Services, Rules**

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**The Background:**

With 2008 Public Chapter 1063, the Special Education Isolation and Restraint Modernization and Positive Behavioral Supports Act, the legislature sought:

- (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.

The Act required staff from the Board to consult with the Departments of Education, Mental Health and Developmental Disabilities, and Children's Services in promulgating rules concerning the use of isolation or restraint with these students.

A first draft of the rules was presented to the Special Education Advisory Council. A request for comments was sent to school districts, advocacy groups and other interested parties. A second draft was written after reviewing comments. After first reading of the rule in January, a hearing was held in April, and additional comments were solicited and received.

This final draft was written after all of those comments were reviewed. A list of comments from the hearing and responses from the task force is attached.

**The Master Plan Connection:**

This item provides sufficient resources, in the form of guidance, to help effective leaders and effective teachers determine when physical restraint is appropriate and how it should be administered to keep children from harming themselves or others.

**The Recommendation:**

Staff and counsel from each of the agencies listed above collaborated on the drafting of these rules and recommend approval on final reading.

## Proposed Rule Revision

Rule 0520-1-9 Special Education Programs and Services is amended by inserting the following as a new, appropriately numbered rule:

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.
  - 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 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.
  - 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.

## Isolation and Restraint for Students Receiving Special Education Services

Public Hearing Comments - July 2009

| Comments   | Response   |
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| Would like the length of time rule to include a regulation on frequency, to avoid repeated restraint multiple times with short breaks.   | IEP teams should determine what frequency triggers additional reporting. Treatment which ought to be personalized. The statute already requires recording of all restraints, and that data will be available to parents.   |
| Rules should recognize DLAC's authority to monitor the practice of restraint and isolation in schools. DLAC can look at systemic practices and report suggestions for improvement.   | DLAC is welcome to arrange for visits with each local education agency.  |
| <p>“Extended restraint” should be revised in one of two ways:</p> <ul style="list-style-type: none"> <li>- restraint lasting longer than 30 minutes or</li> <li>- longer than five minutes or longer than time indicated in IEP whichever is greater.</li> </ul> | <p>The rule defines extended restraint and isolation as follows:</p> <p>b. <i>Extended isolation</i> 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 IEP.</p> <p>c. <i>Extended restraint</i> 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.</p>   |
| Provide exception to IDEA 10 day notice requirement for convening IEP team meeting, in order to comply with statute and rule, and to avoid misunderstandings with parents used to 10 days notice prior to convening IEP team meetings.                           | <p>The rule provides this exception:</p> <p>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.</p>   |
| Going by “usual and customary” practice in LEAs (based on informal survey conducted by organization) would mean still doing things done 80 years ago.  | <p>The rule does not go by “usual and customary.” Instead, rule defines extended restraint and isolation as follows:</p> <p>b. <i>Extended isolation</i> 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 IEP.</p> <p>c. <i>Extended restraint</i> 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.</p> |

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| Parents should be notified anytime restraint or isolation is used.   | The statute (2008 P.C. 1063) provides for this notification:<br>“School personnel who must isolate or restrain a student receiving special education services, as defined by § 49-10-102(4), whether or not such isolation or restraint was in a 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 such isolation or restraint and the facts surrounding such use. A copy of such record shall be made available at individual education program meetings and upon the request of the student's parent or legal guardian.” |
| Rule should include specific details about when restraint or isolation may be included in IEP, and within what parameters. | Disagree. IEP teams should determine the details of appropriate use for each individual child.  |
| IEPs should have a separate signature line for parents to consent regarding the use of isolation or restraint.             | Disagree. Application of isolation and/or restraint procedures for a child is a component of the IEP. The IEP is accepted or declined in its entirety.  |
| Specific types of training should be utilized. Training in de-escalation should be encouraged.                             | The statute did not provide any funding for training. The rule gives LEAs authority to determine the type of training to use, based on their needs and available resources.<br>However, the statute encourages the development of “properly trained staff in order to promote positive behavioral supports that reduce dependence on isolation and restraint practices.”<br>The statute also encourages “the use of positive behavioral interventions and support methods in schools.”  |
| Data collection is a necessity.  | The statute requires reports of each incidence of isolation or restraint to be maintained.  |
| Data should be sent to a centralized location for the entire state so that the use of restraint can be monitored.          | The statute does not require collection of data.  |