



State of Tennessee

PUBLIC CHAPTER NO. 457

HOUSE BILL NO. 1336

By Representatives Jones, Brown, Favors, Maggart

Substituted for: Senate Bill No. 1993

By Senators Stewart, Harper, Barnes

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 10, Part 13, relative to the use of restraint and isolation on students receiving special education services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, 49-10-1301, is amended by deleting the language "Special Education Isolation and Restraint Modernization and Positive Behavioral Supports Act", and by substituting instead the language "Special Education Behavioral Supports Act".

SECTION 2. Tennessee Code Annotated, Section 49-10-1303(2), is amended by deleting the subdivision in its entirety, and by substituting instead the following:

(2) "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;

SECTION 3. Tennessee Code Annotated, Title 49, Chapter 10, Part 13, is amended by adding the following language as a new, appropriately designated section:

49-10-13___. 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.

SECTION 4. Tennessee Code Annotated, Section 49-10-1303, is amended by adding the following language as new, appropriately designated subdivisions:

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

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

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

() "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;

SECTION 5. Tennessee Code Annotated, Section 49-10-1304(a), is amended by deleting the subsection in its entirety, and by substituting instead the following:

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

SECTION 6. Tennessee Code Annotated, Section 49-10-1304, is amended by adding the following new subsections immediately after subsection (a) and by redesignating the subsequent subsections accordingly:

(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.

SECTION 7. Tennessee Code Annotated, Section 49-10-1304(b)(1), is amended by deleting the language "School personnel shall be held harmless if reasonable effort has been made to comply with this subdivision (b)(1)." in its entirety, and by substituting instead the language "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).".

SECTION 8. Tennessee Code Annotated, Section 49-10-1304(c), is amended by deleting the subsection in its entirety, and by substituting instead the following:

(c)

(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.

(d) 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.

SECTION 9. Tennessee Code Annotated, Section 49-10-1305(e), is amended by adding the following language as a new subdivision immediately after subdivision (e)(1) and redesignating the subsequent subdivisions accordingly:

(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.

SECTION 10. Tennessee Code Annotated, Section 49-10-1305(f), is amended by deleting the subsection in its entirety, and by substituting instead the following:

(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.

SECTION 11. Tennessee Code Annotated, Section 49-10-1305, is amended by adding the following language as a new subsection immediately after subsection (f) and by redesignating the subsequent subsection accordingly:

(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

HB 1336

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

SECTION 12. Tennessee Code Annotated, Section 49-10-1306, is amended by designating the current language in the section as a new subsection (f), and by adding the following language as new subsections (a)-(e):

(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.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

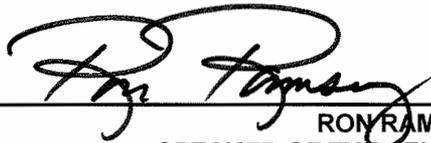
SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it.

HOUSE BILL NO. 1336

PASSED: May 21, 2011



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 10th day of June 2011



BILL HASLAM, GOVERNOR