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For Department of State Use Only

Sequence Number: 03-17-12
 Rule ID(s): 5172
 File Date: 03/21/2012
 Effective Date: 08/29/2012

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: | Dannelle F. Walker |
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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-.23 | Isolation and Restraint for Students Receiving Special Education Services |
| | |

| Chapter Number | Chapter Title |
|----------------|---------------|
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| Rule Number | Rule Title |
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CHAPTER 0520-01-09
Special Education Programs and Services
Amendment

Rule 0520-01-09-.23(1) Isolation and Restraint for Students Receiving Special Education Services is amended by deleting subsections (a) and (d) in their entirety and re-numbering the remaining subsections.

Rule 0520-01-09-.23(7) Isolation and Restraint for Students Receiving Special Education Services is amended by deleting the language "T.C.A. § 49-10-1304(b)" and substituting instead the language "T.C.A. § 49-10-1304".

Rule 0520-01-09-.23 Isolation and Restraint for Students Receiving Special Education Services is amended by adding the following new subsection:

(9) Reports.

School personnel who must isolate or restrain a student shall report the incident to the school principal or the principal's designee. The Department of Education shall develop a report form which shall be used by school personnel when reporting isolation or restraint to the school principal or the principal's designee.

(a) The report form must include the following information:

1. Student's name, age and disability;
2. Student's school and grade level;
3. Date, time and location of the isolation or restraint;
4. Length of time student was isolated or restrained;
5. Names, job titles and signatures of the personnel who administered the isolation or restraint;
6. Whether the personnel who administered the isolation or restraint were certified for completing a behavior intervention training program;
7. Names and job titles of other personnel who observed or witnessed the isolation or restraint;
8. Name of the principal or designee who was notified following the isolation or restraint and time of notification;
9. Description of the antecedents that immediately preceded the use of isolation or restraint and the specific behavior being addressed;
10. A certification that any space used for isolation is at least forty (40) square feet;
11. A certification that school personnel are in continuous direct visual contact at all times with a student who is isolated;

12. How the isolation or restraint ended, including the student's demeanor at the cessation of the isolation or restraint;
13. Physical injury or death to the student, school personnel or both;
14. Medical care provided to the student, school personnel or both;
15. Description of property damage, if relevant; and
16. Date, time and method of parent notification.

(b) A copy of the report form must be provided to the local education agency's director of special education who shall determine whether an Individualized Education Program (IEP) Team meeting must be convened pursuant to T.C.A. § 49-10-1304.

* 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) |
|----------------|-----|----|---------|--------|-------------------------|
| Ayers | X | | | | |
| Edwards | X | | | | |
| Justice | X | | | | |
| Pearre | X | | | | |
| Roberts | X | | | | |
| Rogers | X | | | | |
| Rolston | X | | | | |
| Sloyan | X | | | | |
| Wright | X | | | | |
| Student Member | X | | | | |

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on 1/27/12, and is in compliance with the provisions of T.C.A. § 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: February 6, 2012

Signature: Gary Nixon

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 2/24/12

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.

Robert E. Cooper, Jr.
Attorney General and Reporter

3-9-12

Date

Department of State Use Only

Filed with the Department of State on: 03/21/2012

Effective on: 08/29/2012



Tre Hargett
Secretary of State

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PUBLICATIONS

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.

Not Applicable

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)

This will have no 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 T.C.A. § 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;

The proposed rules mandate a standard reporting format to be used by LEAs when reporting incidents of isolation or restraint of children with disabilities.

- (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;

Public Chapter 457 of the Acts of 2011 amended the Special Education Behavioral Supports Act to require the State Board of Education to promulgate these rules.

- (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;

State Department of Education, Local Education Agencies (LEAs) overseen by the Department of Education, special education educators

- (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;

None.

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

Dannelle F. Walker
State Board of Education

- (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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State Board of Education
9th Floor, 710 James Robertson Pkwy
Nashville, Tennessee 37243
615-253-5707
Dannelle.Walker@tn.gov

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

None.

CHAPTER 0520-01-09
Special Education Programs and Services
0520-01-09-.23 ISOLATION AND RESTRAINT FOR STUDENTS RECEIVING SPECIAL EDUCATION
SERVICES.
Amendment

(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)(a) "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).~~

~~(e)(b) "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)(c) "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.

(9) Reports.

School personnel who must isolate or restrain a student shall report the incident to the school principal or the principal's designee. The Department of Education shall develop a report form which shall be used by school personnel when reporting isolation or restraint to the school principal or the principal's designee.

(a) The report form must include the following information:

1. Student's name, age and disability;
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4. Length of time student was isolated or restrained;
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6. Whether the personnel who administered the isolation or restraint were certified for completing a behavior intervention training program;
7. Names and job titles of other personnel who observed or witnessed the isolation or restraint;
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 13. Physical injury or death to the student, school personnel or both;
 14. Medical care provided to the student, school personnel or both;
 15. Description of property damage, if relevant; and
 16. Date, time and method of parent notification.
- (b) A copy of the report form must be provided to the local education agency's director of special education who shall determine whether an IEP Team meeting must be convened pursuant to T.C.A. § 49-10-1304.

Authority: T.C.A. §§ 49-10-1306.