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**For Department of State Use Only**

Sequence Number: 10-15-09  
 Rule ID(s): 4504  
 File Date: 10/20/2009  
 Effective Date: 01/18/2010

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	
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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. Please enter only ONE Rule Number/RuleTitle 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
Rule Number	Rule Title

Chapter Number	Chapter Title
Rule Number	Rule Title

Rule 0520-01-09 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 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.
  - 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.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Jim Ayers	X				
Flavius Barker	X				
Vernita Justice	X				
Carolyn Pearre	X				
Richard Ray	X				
Jean Anne Rogers	X				
Fielding Rolston	X				
Theresa Sloyan	X				
Melvin Wright				X	
Brittni England	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education on 07/31/2009, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/06/09

Rulemaking Hearing Conducted on: 04/30/09

Date: 9-15-09

Signature: *Gary L. Nixon*

Name of Officer: Gary L. Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 9/18/09

Notary Public Signature: *Phyllis E. Childress*

My commission expires on: \_\_\_\_\_

All rulemaking hearing 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

10-13-09  
 Date

Department of State Use Only

Filed with the Department of State on: 10/22/09

Effective on: 10/18/10

Tre Hargett  
Tre Hargett  
Secretary of State

RECEIVED  
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PUBLICATIONS

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comments	Response
<p>Would like the length of time rule to include a regulation on frequency, to avoid repeated restraint multiple times with short breaks.</p>	<p>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.</p>
<p>Rules should recognize the Disability Law and Advocacy Center's (DLAC) authority to monitor the practice of restraint and isolation in schools. DLAC can look at systemic practices and report suggestions for improvement.</p>	<p>DLAC is welcome to arrange for visits with each local education agency.</p>
<p>"Extended restraint" should be revised in one of two ways:</p> <ul style="list-style-type: none"> <li>- restraint lasting longer than thirty(30) minutes or</li> <li>- longer than five (5) 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. "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.</p> <p>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.</p>
<p>Provide exception to IDEA ten (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 ten (10) days notice prior to convening IEP team meetings.</p>	<p>The rule provides this exception: 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>
<p>Going by "usual and customary" practice in local education agencies (LEA) (based on informal survey conducted by organization) would mean still doing things done eighty (80) years ago.</p>	<p>The rule does not go by "usual and customary." Instead, rule defines extended restraint and isolation as follows:</p> <p>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.</p> <p>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.</p>

<p>Parents should be notified anytime restraint or isolation is used.</p>	<p>The statute (2008 P.C. 1063) provides for this notification:          "School personnel who must isolate or restrain a student receiving special education services, as defined by T.C.A. § 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."</p>
<p>Rule should include specific details about when restraint or isolation may be included in IEP, and within what parameters.</p>	<p>Disagree. IEP teams should determine the details of appropriate use for each individual child.</p>
<p>IEPs should have a separate signature line for parents to consent regarding the use of isolation or restraint.</p>	<p>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.</p>
<p>Specific types of training should be utilized. Training in de-escalation should be encouraged.</p>	<p>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. 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." The statute also encourages "the use of positive behavioral interventions and support methods in schools."</p>
<p>Data collection is a necessity.</p>	<p>The statute requires reports of each incidence of isolation or restraint to be maintained.</p>
<p>Data should be sent to a centralized location for the entire state so that the use of restraint can be monitored.</p>	<p>The statute does not require collection of data.</p>

**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.

(If applicable, insert Regulatory Flexibility Addendum here)

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to TCA § 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;

With 2008 Public Chapter 1063 (codified at T.C.A. § 49-10-1305), 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.

The Act specifically required the rules to define which personnel may authorize restraint, and to define "extended restraint" and "extended isolation."

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. The legislative mandated task force met following the public hearing and prepared the final draft, which was then approved by the Board.

- (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;

T.C.A. § 49-10-1304-1305.

- (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;

Local education agencies, administrators, teachers, parents and students, and advocacy groups. All of these individuals and organizations commented on the proposed rule drafts and at the rulemaking hearing.

- (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;

Minimal.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Bill Wilson  
State Department of Education

Rich Haglund  
State Board of Education

Nancy Clark  
Department of Children's Services

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

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State Department of Education

Rich Haglund  
State Board of Education

Nancy Clark  
Department of Children's Services

(H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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