

Restraint and Isolation in Tennessee Schools

January 17, 2012

holly lu conant rees

Disability Coalition on Education, Chair
The Arc Davidson County



Agenda

- Revised Restraint and Isolation statute, PC 457, T.C.A. § 49-10-1301
 - What's changed
 - What's new
 - What's still the same
 - Emergency situations only
 - Reporting
 - Training
- What if your student is restrained or isolation?
- Federal Keeping All Students Safe Act

- Government Accountability Office 2009 report
 - Hundreds of cases of alleged abuse & death over 2 decades
 - In 10 cases with criminal conviction, liability finding or large settlement, at least 5 teachers/staff are still employed

- National Disability Rights Network
 - 19 states have no laws or requirements
 - No single data collection point
 - 87.5% allow prone restraint
 - Only 45% require parental notification
 - “Students across the country were being killed, confined, tied up, pinned down and battered through the use of restraint and seclusion.”

Changes to TN's law on Restraint and Isolation

- Title of statute

The Special Education Isolation and Restraint Modernization
and Positive Behavioral Supports Act



The Special Education
Behavioral Supports Act

Purposes

- NOT changed:
 - To ensure that students receiving special ed services are not subjected to unreasonable, unsafe or unwarranted use of isolation & restraint
 - To encourage the use of positive behavioral interventions & supports
 - To develop properly trained staff to promote positive behavioral supports
 - To ensure that staff are properly trained to protect the student, teacher & others from physical harm if R/I are necessary.



Definitions

- "*Behavior intervention training program*" means a training program in:
 - positive behavioral supports
 - crisis intervention and
 - the safe use of restraint and isolation

- *“Positive behavioral supports” means a systematic approach using evidence-based practices to improve school environments, and to prevent & 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.*

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

Changed definitions

- “*Emergency situation*” previously meant that a child's behavior places the child or others “at risk of violence” or injury if no intervention occurs.



- ...a child’s behavior poses a threat to the physical safety of the student or others nearby.

- “Isolation” means the confinement of a student alone in a room **with or without a door, or other enclosed area or structure that meets the requirements of an isolation room** where the student is physically prevented from leaving.
- Continues to exclude “time-out” which may include the voluntary separation of a student from others.

- 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**.



Same Definition

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

- "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. **PROHIBITED**
- Mechanical restraint does not include the use of restraints for medical immobilization, adaptive support, or medical protection.

- "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.

PROHIBITED

- The use of R/I as coercion, punishment, convenience or retaliation is **PROHIBITED**.
- Any form of life-threatening restraint which restricts the flow of air into a person's lungs is **PROHIBITED**.

- Removing or disabling any equipment or device which 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 is **PROHIBITED**.



Same definition

- *"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.
- *"Extended isolation"* means isolation which lasts longer than one minute per year of the student's age or isolation which lasts longer than the time provided in the student's IEP.
- *"Extended restraint"* means a physical holding restraint lasting longer than five minutes or lasting longer than the time provided in the child's IEP.

Not considered to be restraint

- Brief holding to calm or comfort
- Minimum contact to escort a student from one area to another
- Assisting a student to complete a task if the student doesn't resist or resists minimally
- Holding a student for a brief time to prevent impulsive behavior that threatens the student's immediate safety.
- Actions taken to break up a fight or take a weapon away are not prohibited but must be reported.

- Student may be isolated or restrained **ONLY** in emergency situations, *whether or not isolation or restraint is written into the student's IEP.*
- Isolation or restraint may be written into a student's IEP **ONLY** for use in an emergency situation.

Restraint and Isolation in the IEP


- An IEP which provides for use of R/I MUST 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.”
- FBAs must be data-based.
- Informed parental consent must be sought before conducting an FBA.
- Families may seek an IEE if in disagreement with FBA.
- BIP MUST be developed and implemented by qualified personnel.



Using restraint/isolation in emergency situations

- MUST immediately contact the principal or principal's designee (designated to authorize R/I)
- Principal/designee MUST see and evaluate the student's condition within a reasonable time after R/I
- **NEW** Parent or guardian MUST be notified (orally, written or printed communication) the same day the R/I was used. School is held harmless if reasonable efforts have been made to contact parent/guardian.



- 
- Whenever possible, an additional staff member should observe any use of restraint to monitor the health & safety of all involved.
 - Personnel MUST maintain a continuous direct line of sight to any student who is isolated.
 - The use of R/I must be reported to the principal/designee who MUST record the use and “the facts surrounding the use.”

- An IEP team meeting must be convened within 10 days and at least 24 hour notice to the family IF:
 - Restraint/isolation is not written in the student's IEP OR
 - Extended restraint/isolation are used.

SAME

- School personnel may **STILL** report a suspected crime
- Before filing a juvenile petition, a manifestation determination must be held.
- A school resource officer may upon witnessing an offense take the student into custody.



NEW

- The law also applies to private schools or agencies which contract with an LEA to provide services for students with disabilities.
- Private entities **MUST** certify that the staff have received training in appropriate use of R/I.
- **MUST** report each instance to a designated LEA representative.

Reporting

- Rulemaking
- 4 elements:
 - Parental notification
 - Record of “facts surrounding the use” maintained at building
 - Report from building to LEA
 - Report from LEA to department of education and to state advisory council



- Parental notification & building record may be the same/similar.
- Will probably include:
 - The names/job titles/signatures of staff who administered, authorized or witnessed
 - Date, time, duration and location
 - Description of antecedents and specific behavior
 - Alternative methods used for de-escalation
 - How the R/I ended, including any injuries
 - Suggestions for preventative measures
 - Date and time of parental notification
 - Whether the individuals imposing the R/I were trained

- Twice yearly, the LEA must report:
 - (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.



Training

- 1) evidence-based techniques shown to be effective in the prevention of R/I
- (2) evidence-based techniques shown to be effective in keeping both school personnel and students safe when imposing R/I
- (3) 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 & procedures on R/I
- (5) Training in the identification & reporting of abuse & neglect in the school setting;
- (6) Certification for school personnel who have completed a behavior intervention training program which should be renewed on a periodic basis.

Training

- A “behavior intervention training program” is encouraged but not mandated.
- As part of the LEA’s PD plan
- Restraint or isolation should be administered by trained personnel if available.
- If not, untrained personnel may administer.
- Must report whether the personnel are trained.
- Emphasis is on PBIS, crisis prevention and de-escalation.
- Must be evidence-based.

What if the school wants to write r/i into your student's IEP?

- ask for information about the rights and protections your child and you have under Tennessee's restraint and isolation law
- ask to see your school system's policies on restraint and isolation
- ask what training the school staff have had

What if...

- ask that the shortest time appropriate be applied
- ask in what specific circumstances restraint or isolation would be used (ONLY in emergency situations where there is a threat to physical safety)
- ask to see the room used for isolation (sometimes called a “quiet” or “calming” room)

What if...

- ask to bring the team back together if your child is restrained or isolated frequently
- ask that all these points be put in writing in:
 - the Behavior Intervention Plan
 - the Crisis Intervention/Safety Plan
 - the *Prior Written Notice* you should receive at the conclusion of every IEP meeting

What if you don't agree?

- ask that the team meet again to consider your objections
- ask to talk with someone in your local special education office
- ask that the school pay for an outside evaluation, if you disagree with a behavior assessment done by the school
- talk to an advocate
- if these steps are not successful, you can file a request for a due process hearing.

Remember...


- In Tennessee, if you refuse to sign an IEP which the school system presents to you, the school can start using the IEP on the 15th day after you've refused, unless you file for due process.

If your child has been harmed

- seek medical attention immediately
- take photographs of any injuries
- notify the school
- contact the Disability Law & Advocacy Center
1-800-342-1660
- if appropriate, make a report to Child Protective Services: toll-free 1-877-237-0004
- if appropriate, make a police report

Keeping All Students Safe Act S2020

- Introduced by Senator Tom Harkin (Chair, HELP Committee) in December. The bill would:
 - ban physical restraint except in emergency situations when there is an immediate threat of serious bodily injury.
 - ban seclusion (confinement) of children in locked rooms or rooms from which they cannot exit.


- 
- ban life-threatening restraint that interferes with breathing or the ability to communicate
 - ban mechanical and chemical restraints.
 - require schools to notify parents within 24 hours of restraint
 - require training and certification for personnel using restraint

Keeping All Students Safe Act Senate Bill 2020

- http://www.senate.gov/general/contact_information/senators_cfm.cfm?State=TN
- Senator Lamar Alexander (202) 224-4944 Web Form: www.alexander.senate.gov/public/index.cfm?p=Email
- [Senator Bob Corker](http://www.corker.senate.gov/public/index.cfm?p=ContactMe) (202) 224-3344 Web Form: www.corker.senate.gov/public/index.cfm?p=ContactMe



- The Special Education Behavioral Supports Act
<http://state.tn.us/sos/acts/107/pub/pc0457.pdf>
- Disability Coalition on Education, DCE
hlu1055@comcast.net
- The Arc Tennessee Legislative Monitor thearc.tn.org
- *School Is Not Supposed to Hurt*, National Disability Rights Network
[http://www.nationaldisabilityrightsnetwork.org/sr/srjan10/Schoo-%20is-Not-Supposed-to-Hurt-\(NDRN\).pdf](http://www.nationaldisabilityrightsnetwork.org/sr/srjan10/Schoo-%20is-Not-Supposed-to-Hurt-(NDRN).pdf)
- *Seclusions and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers*
U.S. Government Accountability Office
<http://www.gao.gov/new.items/d09719t.pdf>



holly lu conant rees
Disability Coalition on Education, DCE
The Arc Davidson County
615-812-2338
hlu1055@comcast.net