

HOUSE BILL 1336

By Jones S

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 Special Education Behavioral Supports Act."

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

(2) "Isolation" or "seclusion" 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. Isolation 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. Time-out may involve the voluntary separation of an individual student from others.

SECTION 3. Tennessee Code Annotated, Section 49-10-1303(6), is amended by inserting the language "or by a private school or facility with which a local or state education agency contracts for special education services" immediately after "by a public school."

SECTION 4. Tennessee Code Annotated, Section 49-10-1303, is amended by inserting the following new definitions and redesignating the current subdivisions accordingly:

() "Emergency situation" means that a child's behavior poses an imminent danger of bodily injury to the student or others;

() “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;

() “State-approved training program” means a training program in positive behavioral supports, crisis intervention, and the safe use of physical restraint and isolation that, at a minimum, meets the requirements established in Section 11 of this act.

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

(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 inserting the following new subsections immediately after subsection (a) and by redesignating the subsequent subsections accordingly:

(b) The use of restraint or isolation in emergency situations may be provided for in a student's individualized education program when:

(1) The use of physical restraint and isolation complies with the minimum standards of this section and any other applicable state law, including regulations, regarding physical restraint or isolation;

(2) The student has a documented history showing a series of behaviors within the preceding two (2) years that has created an imminent danger of bodily injury in school; and

(3) A comprehensive, data-driven functional behavior assessment has been conducted, and a behavioral intervention plan 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 trained and certified by a state-approved training program; or

(2) Other school personnel when trained personnel are not immediately available. In such circumstances, the individual imposing the restraint or isolation shall be trained within thirty (30) school days.

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 existing subsection in its entirety and by substituting instead the following new subsections:

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(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. A copy of the record shall be provided to the student's parent or legal guardian. The record shall include:

(A) The names and job titles of the staff who administered the restraint or isolation, any witnesses, and the name of the administrator or designee who was informed following the isolation or restraint;

(B) The date of the isolation or restraint, the time of initiation, ending time, duration, and location;

(C) A description of the antecedents that immediately preceded the use of isolation or restraint and the specific behavior being addressed;

(D) The alternative methods used to de-escalate the situation prior to the use of the isolation or restraint;

(E) How the restraint ended, including physical or mental injuries, to the student, staff or both, and any medical care provided;

(F) Suggestions for strategies to be used in future incidents to avoid the use of isolation and restraint;

(G) The signature of the person initiating the action;

(H) The date and time that parental notification took place;

(I) Whether the individuals imposing the restraint or isolation were trained through a state-approved training program;

(J) The identification of any medical personnel involved in the incident, if applicable; and

(K) The signature of the person completing the report.

(2) If the school principal, other school personnel designated under department rules to authorize the isolation or restraint, or any person having knowledge of the isolation or restraint has reason to believe that the isolation or restraint was unreasonable, unsafe, or unwarranted, and the isolation or restraint caused injury to the student, the incident shall be reported pursuant to § 37-1-403. In addition, the incident shall be reported to the state's federally designated protection and advocacy agency that has the responsibility to investigate and monitor allegations of abuse or neglect of persons with disabilities.

(3) Whenever possible, an additional school staff 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.

() A state-approved training program must be approved by the department of education and, at a minimum, provide the following:

(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 in the techniques and skills described in subdivisions (1)-(5), which shall be required to be renewed on a periodic basis.

SECTION 9. Tennessee Code Annotated, Section 49-10-1305(e), is amended by inserting the following 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, is amended by deleting subsection (f) 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 inserting the following 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 50 (fifty) square feet (50 sq. ft.); and

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

SECTION 12. Tennessee Code Annotated, Title 49, Chapter 10, Part 13, is amended by adding the following as a new section 49-10-1306 and by redesignating subsequent section accordingly:

49-10-1306.

(a) On a quarterly basis, the department of education shall collect and compile data regarding the use of isolation and restraint. The data and documentation shall include at minimum:

(1) The number of incidents involving the use of isolation and restraint;

(2) The number of instances in which the school personnel imposing physical restraint or isolation were not trained and certified;

(3) The number of instances in which restraint or isolation were imposed in a way that did not meet the minimum standards established by this part and any other applicable statute, rule, or regulation;

(4) The location and duration of each incident, identifying both specific schools and districts;

(5) Demographic information to determine whether disproportionate use of these interventions exists, including:

(A) Socioeconomic status;

(B) Race;

(C) Ethnicity;

(D) Age;

(E) Disability status as determined under the Disability Eligibility Standards adopted by the state board of education. This information shall not be required in a case in which the number of students in a category would reveal personally identifiable information about an individual student;

(6) Any injuries, deaths, or property damage that occurred; and

(7) The timeliness of parental notification and administrative review;

(b) The data shall be reported to the state advisory council for the education of students with disabilities established pursuant to § 49-10-105. This information shall 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 the data, documentation, and reports to establish policy and strategies 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.