

**RULES
OF
STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-09
SPECIAL EDUCATION PROGRAMS AND SERVICES**

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0520-01-09-.02 DEFINITIONS.

- (1) "Behavior Intervention Plan" or "BIP" means an individualized plan based on the results of a Functional Behavior Assessment that is designed to assist a student to decrease inappropriate behavior and increase or teach an alternative appropriate behavior.
- (2) "Charter School" means a public charter school as defined at T.C.A. § 49-13-104.
- (3) "Child with a Disability" means a child between three (3) and twenty-one (21) years of age, both inclusive, who has been evaluated and determined as having a state-identified disability of functional delay or intellectually gifted, or as having one (1) or more of the following disabilities as defined in 34 C.F.R. §§ 300.8: an intellectual disability; a hearing impairment, including deafness; a speech or language impairment; a visual impairment, including blindness; emotional disturbance; an orthopedic impairment; autism; traumatic brain injury; other health impairment; a specific learning disability; developmental delay; deaf-blindness; or multiple disabilities and who, by reason thereof, needs special education and related services. Any child with a disability who turns twenty-two (22) years of age between the commencement of the school year and the conclusion of the school year continues to be a child with a disability for the remainder of that school year.
- (4) "Department" means the Tennessee Department of Education.
- (5) "FAPE" means a free appropriate public education in compliance with the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq.;
- (6) "Functional Behavior Assessment" or "FBA" means a process rooted in applied behavior analysis that focuses on determining why a student engages in behaviors that impede learning and how the student's behavior relates to the environment.

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- (7) Individualized Education Program” or “IEP” means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR §§ 300.320 through 300.324;
- (8) “IEP Team” means a group of individuals described in 34 CFR § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability;
- (9) “LEA” means a Tennessee local education agency and has the same meaning given in T.C.A. § 49-1-103(2);
- (10) “Licensed Behavior Analyst” means an individual who is certified as a board certified behavior analyst (BCBA) or board certified behavior analyst-doctoral (BCBA-D) and is licensed by the Applied Behavior Analyst Licensing Committee of the Tennessee Department of Health to practice applied behavior analysis as an independent practitioner.
- (11) “Parent” means:
- (a) The biological or adoptive parent;
 - (b) A legal guardian;
 - (c) A person who has custody of the child;
 - (d) A surrogate parent appointed in accordance with 34 C.F.R. § 300.519 and Rule 0520-01-09-.20 to represent a child in all matters relating to:
 - 1. The identification, evaluation, and educational placement of the child; and
 - 2. The provision of FAPE to the child; or
 - (e) A person with caregiving authority for the child, including but not limited to, a foster parent if the biological or adoptive parent’s authority to make educational decisions on the child’s behalf has been terminated under Tennessee law and the foster parent:
 - 1. Is willing to make the educational decisions required of parents under the law;
 - 2. Has no interest that would conflict with the interest of the child; and
 - 3. Has been the foster parent to the child for more than one (1) year in duration. If he or she has been the foster parent to the child for less than one (1) year in duration, he or she may be appointed by the LEA as a surrogate parent for the child.
- (12) “Related Services” means:
- (a) Transportation and such developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education, including, but not limited to, speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; transition services, including job placement; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling with a focus on career development, employment preparation, achieving independence, and integration in the workplace and community of a child with a disability; orientation and mobility services; and medical services for diagnostic or evaluation purposes; or

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- (b) School health services and school nurse services, social work services in schools, and parent counseling and training.
 - 1. Parent counseling and training means:
 - (i) Assisting parents in understanding the special needs of their child;
 - (ii) Providing parents with information about child development; and
 - (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.
- (13) "School Year" means July 1 to June 30 for the purposes of determining eligibility and services for a child with a disability.
- (14) "Special Education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, home, hospitals, institutions, and other settings, and instruction in physical education.

Authority: T.C.A. §§ 49-10-101 et seq., 49-10-1301, et seq., and 34 C.F.R. Part 300. **Administrative History:** Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed August 13, 2010; effective January 29, 2011. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021.

0520-01-09-.23 ISOLATION AND RESTRAINT FOR STUDENTS RECEIVING SPECIAL EDUCATION SERVICES.

- (1) Definitions:
 - (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 IEP.
 - (b) "Extended Restraint" means a physical holding restraint lasting longer than five (5) minutes or a physical holding restraint which lasts longer than the time provided in the child's IEP.
 - (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. Pursuant to T.C.A. § 49-10-1305, administering a Noxious Substance to a student receiving special education services is prohibited.
- (2) LEAs 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.

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- (3) LEAs are authorized to determine an appropriate level of training commensurate with the job descriptions and responsibilities of school personnel.
- (4) LEAs shall develop policies and procedures governing:
 - (a) Personnel authorized to use isolation and restraint;
 - (b) Training requirements; and
 - (c) Incident reporting procedures.
- (5) If school personnel impose isolation or restraint, then the school personnel shall immediately contact the school principal, or the principal's designee. The principal or the principal's designee shall observe and evaluate the student's condition within a reasonable time after the isolation or restraint was used. As needed, the school nurse shall also observe and evaluate the student's condition within a reasonable time after the isolation and restraint was used. The school principal, or principal's designee, shall notify the student's parent or guardian orally or by written or printed communication the same day the isolation or restraint was used.
- (6) When the use of isolation or restraint is proposed at an IEP meeting, the parent 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 team meeting shall be convened within ten (10) days of use of restraint if:
 - (a) The student's IEP does not provide for the use of a physical holding restraint generally;
 - (b) The student's IEP does not provide for the use of restraint for the behavior precipitating the use of the restraint; or
 - (c) An Extended Restraint is used.
- (8) An IEP team meeting shall be convened within ten (10) days of use of isolation if:
 - (a) The student's IEP does not provide for the use of an isolation generally;
 - (b) The student's IEP does not provide for the use of isolation for the behavior precipitating the use of the isolation; or
 - (c) An Extended Isolation is used.
- (9) 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 rules and policies in such educational settings which conform to the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) state standards as applicable and at least one (1) of the following national standards: American Correctional Association (ACA), Council on Accreditation (COA), Centers for Medicare & Medicaid Services (CMS), Joint Commission for Accreditation of Healthcare Organizations (JCAHO), Commission on Accreditation of Rehabilitation Facilities (CARF), as they apply in the educational environment. Development of, and adherence to, such rules and policies shall be overseen by a licensed qualified physician or licensed doctoral level psychologist.
- (10) School personnel who must isolate or restrain a student receiving special education services shall report each individual incident of isolation or restraint to the school principal or the principal's

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designee. The Department 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 shall be submitted for each individual incident and shall 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 school personnel who administered the isolation or restraint;
 6. Whether the school personnel who administered the isolation or restraint were certified for completing a behavior intervention training program;
 7. Names and job titles of other school 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 were in continuous direct visual contact at all times with a student who was 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 during the isolation or restraint;
 14. Medical care provided to the student, school personnel or both during the isolation or restraint;
 15. Description of property damage, if relevant;
 16. Date, time, and method of parent notification;
 17. Whether an IEP team meeting is required pursuant to T.C.A. § 49-10-1304; and
 18. A determination whether the student has a Functional Behavior Assessment and Behavior Intervention Plan for the behavior precipitating the use of isolation or restraint.

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- (b) A copy of the report must be submitted to the Department within five (5) calendar days of incident.

Authority: T.C.A. §§ 49-10-1301, et seq. **Administrative History:** Original rule filed October 20, 2009; effective January 18, 2010. Amendments filed March 21, 2012; effective August 29, 2012. Emergency rules filed June 29, 2017; effective through December 26, 2017. Amendments filed August 11, 2017; effective November 9, 2017. Amendments filed May 14, 2021; effective August 12, 2021.

0520-01-09-.24 FUNCTIONAL BEHAVIOR ASSESSMENTS AND BEHAVIOR INTERVENTION PLANS.

- (1) A Functional Behavior Assessment shall be conducted by a group of at least three (3) individuals knowledgeable about the student, which may include as appropriate:
 - (a) The Parent of the child;
 - (b) At least one (1) special education teacher of the child;
 - (c) At least one (1) general education teacher of the child;
 - (d) Related Service provider(s);
 - (e) School psychologist;
 - (f) Other school personnel; and
 - (g) The student.
- (2) To the extent possible, the FBA process shall be led by a school psychologist, Licensed Behavior Analyst, or other school personnel trained to conduct FBAs.
- (3) An FBA shall be conducted to inform the development or revision of a Behavior Intervention Plan in any of the following situations:
 - (a) When a student receiving Special Education and Related Services engages in conduct that results in a change of placement as defined by 34 C.F.R. 300.356 and the LEA, the Parent, and relevant members of the IEP team determine that the student's conduct that gave rise to the change in placement was a manifestation of the child's disability;
 - (b) When an IEP provides for the use of restraint or isolation, as required by T.C.A. 49-10-1304(b);
 - (c) When the student exhibits a pattern of behaviors that impede their learning or that of others;
 - (d) When the student exhibits a pattern of behavior that places the student or others at risk of harm or injury;
 - (e) When the student's IEP team is considering a more restrictive placement as a result of the student's behavior; or
 - (f) When determined appropriate by the student's IEP team.

(Rule 0520-01-09-.24, continued)

- (4) An FBA shall be conducted, as appropriate, to inform the development or revision of a BIP in the following situations:
- (a) When a student receiving Special Education and Related Services is removed from their current placement for more than ten (10) consecutive school days for behavior not determined to be a manifestation of the student's disability; or
 - (b) When a student receiving Special Education and Related Services is removed to an interim alternative education setting for up to forty-five (45) school days for weapons, drugs, or serious bodily injury, irrespective of whether the student's behavior is a manifestation of the student's disability;
- (5) An FBA shall include, at a minimum:
- (a) Description of the problem or targeted behavior(s);
 - (b) Systematic observation of the events that immediately precede each display of the targeted behavior(s) and are associated with the display of the behavior(s);
 - (c) Systematic observation and analysis of the consequences following the display of the targeted behavior(s);
 - (d) Analysis of the antecedent/setting(s) or environment(s) in which the targeted behavior(s) occurs and the frequency of those behavior(s);
 - (e) Review of the student's educational and disciplinary records;
 - (f) Structured interviews with or surveys completed by the student's teachers, Parents, or school personnel, as determined by the group of individuals conducting the FBA, who regularly interact with the student, and when applicable, a student interview;
 - (g) Review of the history of the targeted behavior(s) to include the effectiveness of any intervention previously used; and
 - (h) Determination of whether a skill deficit is a contributing factor to the behavior(s).
 - 1. If the results of the FBA determine that a skill deficit is contributing to the target behavior(s), the IEP must include measurable annual goal(s) to address the skill deficit.
- (6) The group of individuals that conducts the FBA shall review the description of the problem or targeted behavior(s), the results of the assessment, and a hypothesis of the function of the behavior to develop a BIP.
- (7) The BIP shall include, at a minimum:
- (a) A description of the behavior(s) and the frequency;
 - (b) A restatement of the hypothesized function of behavior(s);
 - (c) Measurable replacement behavior goals that align to the hypothesized function of behavior(s);

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- (d) Strategies for intervention, including but not limited to antecedent-based interventions, mitigating the consequences that reinforce the targeted behavior(s), and/or reinforcing identified replacement behavior(s) based on the results of the FBA;
 - (e) Identification of team members to teach appropriate replacement behaviors;
 - (f) A progress monitoring plan, including regular and frequent data collection and fidelity checks;
 - (g) A plan to train school personnel who interact regularly with the student on the intervention strategies identified in the student's BIP; and
 - (h) A description of the responses (i.e., consequences) or strategies required when the challenging behavior occurs (responses or strategies may include, but are not limited to extinction procedures, de-escalation, re-direction, or cost-response).
- (8) The BIP shall be based on the student's most recent FBA.
- (9) The student's IEP team shall review the BIP at least annually during the student's annual IEP team meetings and revise the BIP as needed.
- (10) Nothing in this chapter shall prohibit an LEA from developing an informal behavior plan for a student when the IEP team determines an FBA is not warranted due to the student's lower intensity behaviors.

Authority: T.C.A. § 49-10-1301 et seq . **Administrative History:** Emergency rules filed April 16, 2020; effective through October 13, 2020. Emergency rules expired effective October 14, 2020, and the rules reverted to their previous statuses. Emergency rule filed June 10, 2020; effective through December 7, 2020. Emergency rule expired effective December 8, 2020, and the rule reverted to its previous status.