



Tennessee Association of Administrators

in Special Education Advisor

Volume 2, Issue 4

October 2007

Proposed special education regulations pass Tennessee SBOE

The proposed special education regulations passed the second reading for the **Tennessee State School Board** Aug. 10. Unless the attorney general determines that some portion of the regulations is illegal, the new rules will become effective in spring 2008. The following is a summary of changes which are detailed in the new regulations:

Definitions:

- **“Intellectually Gifted”** means a child whose intellectual abilities

and potential for achievement are so outstanding the child’s educational performance is adversely affected. “Adverse affect” means the general curriculum alone is inadequate to appropriately meet the student’s educational needs.

- **Eligibility for homebound placements.**

(a) Children with medical conditions of a short duration or temporary nature, and not previously cer-

tified as eligible pursuant to IDEA and state regulations, shall not be eligible for homebound placements pursuant to this regulation, and special education funds shall not be used to fund homebound placements for such children.

(b) The IEP team shall consider a medical homebound placement only upon certification by a licensed doctor of medicine or osteopathy that a child

(See **REGULATIONS** on page 4)

In This Issue

RESPONSE TO INTERVENTION

The General Assembly is considering the passage of Senate Bill 1662. Learn about the implications enactment would have on your district. **Page 2**

Review a sampling of the most recent cases on restraint from OCR and the courts. **Page 3**

A recent report from the National High School Center says struggling students can benefit from increased instructional intervention and monitoring. Gain insight on how to make RTI succeed in high school. **Page 5**

Tier III of response to intervention is not special education, experts advise. Instead, it should be viewed as intensive care for students in ‘academic arrest’ that must be administered before considering if they are entitled to special ed services. **Page 6**

Use RTI to raise student achievement, improve instruction

Effective response to intervention can limit students’ academic failure and increase the accuracy of special education evaluations. It also can reduce the number of children who receive inadequate instruction and are mistakenly identified as having learning disabilities.

“The key to making RTI work is to have a collaborative leadership team within your district,” said **Janet Graden**, a school psychology professor at the **University of Cincinnati** who is coprincipal investigator of a grant to study an RTI model for services delivery.

IDEA 2004 explicitly encourages districts to begin using RTI to help identify whether a student has a specific learning disability, referring to the “use of a process that determines if a child responds to scientific, research-based intervention as part of

... evaluation procedures.”

Of course, your district will have to adapt a policy and select and define the specific structure and components of your RTI program, within the parameters of your state law. You’ll need to develop more specific regulations and procedures.

Among other things, you and your staff must decide on the criteria for determining the levels of intervention for students, the types of interventions, the amount and nature of student performance data to be collected, and the manner and frequency for progress monitoring. Your district should also take appropriate steps to ensure that staff members have the knowledge and skills necessary to implement an RTI program, and that the program actually comes to fruition. **Learn more on pages 5-6.**

Tennessee Senate Bill 1662: The ‘physical restraint’ bill

Recently, all Tennessee LEAs received an e-mail from **Christy Ratzlaff** requesting data from the schools on the number of restraints and the use of seclusion. This action was taken in response to a mandate from the **General Assembly** as it considers the passage of Senate Bill 1662. It is the intent of all school systems to keep all students safe — whether they receive special education services or not.

The enactment of this bill would have serious implications:

- Imagine being in a class with children with autism or other sensory disorders. A child charges at the teacher and attempts to bite, head butt and kick the her. How does she keep this child and herself safe until she can find a witness “to monitor skin color and respiration?” This witness would be required if the bill is passed.
- What about a child who requires seclusion to regain self-control? How many school systems have a 50-square-foot room available for this purpose? This is the minimum size room permissible.
- The “Human Rights Committee” and required documentation is yet another layer of oversight by people who were not present at the crisis. Required members are family members of students with disabilities, advocacy representatives, and school district employees. Why should a committee of people who were not present during the crisis, who get the “facts” of the situation secondhand, and who may or may not be aware of the complicated issues surrounding school safety, judge the appropriateness of the intervention? Many of the horror stories involving students receiving special education services are born through this type of process. In fact, it would be reasonable to assume that this bill was born out of such stories. When inappropriate events do occur, the court system has proven to be an effective deterrent. The current parent notification procedures followed by school principals are both reasonable and sufficient.

An affront to public school systems

Senate Bill 1662 is currently under committee review. Findings are to be reported to “each member of the general assembly.” No date was specified by which such reporting must be accomplished.

The first stated purpose of this statute is to ensure that every student receiving special education services is free

from unreasonable, unsafe and unwarranted use of restraint procedures. The obvious implication appears to be that the schools are not currently meeting this purpose.

This bill is an affront to the public school systems across the state. Do the schools need to be ordered not to tie a child to a chair or not to use drugs to settle them down? Are we not aware that restraint should be used as a last resort? Are children being locked in unlighted, unventilated seclusion rooms?

The overwhelming majority of general and special educators are well aware of the risks of touching a child in any way — whether a hug or a restraint. We are also well aware of the necessity of balancing the need to keep our schools safe against the individual rights of the student. Although the intentions of this bill may be admirable, in reality, it is yet another obstacle to keeping all children and staff safe and an insult to our professionalism. General Assembly members should be contacted to hear your opinions. All addresses are available at the TAASE Web site, www.taase.org.

Excerpts from the bill

The following are excerpts from the bill. Several definitions are included, which are critical to its understanding:

“Human Rights Committee” means a committee each school district board shall establish that reviews documentation of the use of seclusion rooms and restraint which is composed of family members of students with disabilities who receive special education services, advocacy representatives and school district employees.

“Seclusion Room” means a room that is unlocked and monitored but is designed to isolate a person and is at least 50 square feet, free of any condition that could be a danger to the student, well ventilated, temperature controlled and sufficiently lighted.

“Timeout” means a behavior management technique that involves removing a student from sources of reinforcement following an inappropriate behavior for a limited period of time that does not involve the use of a seclusion room.

The use of a seclusion room is permitted only if:

- (1) The student poses an imminent risk of substantial physical harm to self or others.*
- (2) There is no medical contraindication for its use.*
- (3) Staff using seclusion has been trained to safely implement the intervention.*
- (4) The space is unlocked and there is no physical impediment.*

(See **PHYSICAL** on page 3)

Publisher: Kenneth F. Kahn, Esq.
V.P., Editorial: Claude Werder
Editorial Director: Stephen Bevilacqua
Marketing Director: Marcy Witt

© 2007 by LRP Publications.
 All rights reserved by the copyright owner.
 Any signed article is the personal expression of the author and is not necessarily endorsed by LRP Publications.
 Reproduction without written consent of LRP Publications is prohibited. Responsible comment is invited.

Restraint/Seclusion

PHYSICAL (continued from page 2)

ment to the exit of the room.

(5) School staff is in visual contact with the student at all times, not to exceed a distance of two (2) feet from the room.

(6) The duration is limited to one (1) minute or less per year of age of the student. Seclusion shall not be used with preschool students. Durations greater than this amount shall be considered extended seclusion and are permissible only by following the requirements of this act.

(7) Prior written parental consent has been obtained including the specific behaviors that will result in the use of a seclusion room; and

(8) Use of a seclusion room is expressly included in the child's Individualized Education Program (IEP).

The use of physical restraint is limited to times when:

(A) The student poses an imminent risk of substantial physical harm to self or others.

(B) There is not medical contraindication for its use.

(C) The staff applying restraint have been trained pursuant to Section 7 (specialized individual training in nonviolent crisis intervention developed by the crisis prevention institute, and demonstrate competency) to safely implement the intervention.

(D) A person administering a physical restraint used the least amount of force necessary to protect the student or others from physical injury or harm. It must be performed in a manner that is safe, proportionate, appropriate to the severity of the behavior, and the student's chronological and developmental age, size, gender, physical, medical, psychiatric condition and personal history including and history of emotional trauma, physical abuse or sexual abuse.

(E) Supporting documentation is completed within twenty-

four (24) hours;

(F) Prior written informed parent consent has been obtained including the specific behaviors that will result in use of restraint; and

(G) Use of restraint is on the student's behavior intervention plan, noting specific behaviors that will warrant the use of the seclusion room and it is incorporated into the individualized education plan (IEP).

Physical restraint is prohibited as a means of punishment or as a response to:

(A) Insubstantial property destruction.

(B) Disruption of school order.

(C) A student's refusal to comply with a school rule or staff directive; or

(D) Verbal threats that do not constitute a threat of imminent, serious physical harm.

The administration of a restraint shall be witnessed by at least one adult who does not participate in the restraint... (the staff member who is not involved in the restraint shall monitor the physical status of the student and teacher, including skin color and respiration.

A form documenting the use of a seclusion room or physical restraint must be completed and sent to the building administrator, the parents and the human rights committee within twenty-four (24) hours of each incident.

"Mechanical Restraints" such as the use of a blanket are prohibited.

This act is not intended to forbid actions undertaken to break up a fight or actions undertaken to take a weapon away from a student. ■

View most recent cases on restraint

From OCR:

Physical restraint of kindergartner complies with district's procedures for intervention

Case name: *Knox County (TN) Sch. Dist.*, 47 IDELR 140 (OCR 2006).

Ruling: Determining that a Tennessee district followed its therapeutic physical intervention procedures when administrator used a "basket hold" restraint on a kindergartner with autism, OCR concluded the district did not discriminate against the student in violation of Section 504 or the ADA. OCR closed the parent's complaint for lack of evidence.

From the courts:

Use of time-outs, passive restraints exposes IEU teacher to civil rights suit

Case name: *Colon by Disen-Colon v. Colonial Intermediate Unit 20*, 46 IDELR 75 (M.D. Pa. 2006).

Ruling: A teacher at an intermediate education unit will have to defend charges that he violated a third-grader's civil rights by

placing the student in time-outs and using passive restraints on him even though his IEP did not contain a behavioral management plan. Because the evidence was not clear as to whether the teacher acted to protect the student's safety or to punish him for behavior arising out of his emotional disability, the teacher was not entitled to a judgment in his favor. A federal court also determined that the student could seek punitive damages from the teacher.

Using harness on bus to control 11-year-old's outbursts doesn't deny FAPE

Case name: *P. T. by Mrs. T. v. Jefferson County Bd. of Educ.*, 46 IDELR 3 (11th Cir. 2006).

Ruling: In an unpublished decision, the **11th U.S. Circuit Court of Appeals** upheld a decision that an Alabama district did not deny FAPE to a student with autism by placing the student in a harness during her bus rides to and from school. Because the harness prevented the student from walking around the bus, hitting the driver and aide, and throwing her shoes, the 11th Circuit concluded that it was an appropriate safety precaution. ■

REGULATIONS (continued from page 1)

with a disability needs a homebound placement, is expected to be absent from school due to a physical or mental condition for at least (10) consecutive school days, and that the child can receive instruction in a homebound placement without endangering the health of personnel providing it.

- **Use of homebound placement.**

(a) All homebound placements shall be temporary. Homebound placements shall not exceed thirty (30) school days duration. The IEP shall contain a goal of returning the child to a less restrictive environment within the school year, unless there is a medical necessity that requires extended homebound instruction, in which case additional homebound placements of thirty (30) school days or less may be instituted.

(b) An IEP containing a homebound placement shall be reviewed at intervals of thirty (30) school days by the child's IEP team to ensure appropriateness of the provision of instruction and appropriateness of continuing the homebound placement.

(c) Where behavioral and/or disciplinary issued cannot be safely addressed in any other educational setting, the IEP team may consider a homebound placement. Such changes in placement may be instituted strictly on an emergency basis and for a temporary period of time not to exceed thirty (30) school days to determine how to best address the child's needs.

(d) The frequency and duration of instruction necessary to provide a free appropriate public education (FAPE) during a homebound placement will be determined by the IEP team.

(e) IDEA Part B funds may be expended only for instruction in homebound placements of children with disabilities who are eligible for special education pursuant to IDEA and state regulations.

- **Local education agency eligibility.** School improvement plans must include a continuum of educational services, programs, and interventions to address the educational needs of all students, including the needs of children with disabilities.

- **Definitions of IEP.** (1)(a) A statement of measurable annual goals, including benchmarks or short-term objectives ...

(2) Strategies that are effective in realizing the child's goals and either measurable, intermediate steps (short-term objectives) or major milestones (benchmarks) (... for each annual goal ...) that will enable parents, students, and educators to monitor progress during the year, and, if appropriate, to revise the IEP consistent with the student's instructional needs.

(3) Prior to the ninth grade or age fourteen (14) ... all students will develop an initial four-year plan of focused and purposeful high school study.

(4) For each student beginning at age sixteen (16) the plan of study will be revised to ensure the completion of the child's high school program of study and a smooth transition from high school.

- **Prior notice by local education agency.** Written notice must be given to the parents of a child suspected to have a disability or a child with a disability at least ten (10) school days prior to a local education agency proposing or refusing to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

- **Mediation.** All special education mediations shall be conducted by mediators listed by the **Alternative Dispute Resolution Commission** as general civil or family mediators pursuant to Tennessee Supreme Court Rule 31 and employed by or contracted by the secretary of state. The administrative office of the courts shall provide legal training in special education law to the mediators who conduct special education mediations. All parties shall participate in mediation in good faith.

- **Impartial due process hearing.** Special education due process cases shall be heard by administrative law judges employed by the secretary of state. ■

Your 2007 TAASE board members

Sandie Earnest, president

Barbara Bolton, president-elect

John McCook

Bruce Beaty

Louise Smith

Ann Burlison

Vicki Beaty

Paula Davidson

Joe Marlin

Anit Brewer

Brenda Hughey

Ginger Woods

Beverly Taylor

Jeff Romanczuk

Pam Hudson

Chip Fair

Jill Micco

Jo Bellanti

Send your TAASE news to Jo Bellanti, secretary, at jbellanti@ortmemphis.com. ■

Report: High schools slow to pick up on RTI movement

State education departments and school districts are moving slowly in implementing a response-to-intervention system for high schools, but that doesn't mean it is not needed or impossible to initiate.

Key points

- RTI in high school requires administrative support, teacher training.
- System must adapt to unique structure of high schools.
- Strengthen Tier I through general and special education coordination. ■

According to a new report from the **National High School Center**, written by **Helen Duffy** of the **American Institutes for Research**, students who are performing below grade level when they enter high school can benefit from increased attention to instructional intervention and progress monitoring.

Application of RTI in high schools, however, presents unique challenges and would look different than it does for elementary schools.

For example, RTI may need to be accelerated or more flexible at the high school level. Also, support from administrators is essential — more so than at the elementary school level.

"It's legitimate to put the focus on intervention as early as possible and to prevent the cycle of failure; however, we don't want to lose track that there are struggling learners all the way up to grade 12," said **Kathleen Whitmire**, director of the newly created **RTI Action Network**, headed by the **National Center for Learning Disabilities**.

Individualized, data-driven support needed for high school students

The RTI movement has been slow to get to high schools because many districts put all their focus on elementary grades first. Even IDEA emphasizes early intervening services in kindergarten through third grade.

RTI implementation in high school also is slower because of certain characteristics of secondary school systems, such as the pressure on teachers to cover content areas. RTI's focus remains on teaching and learning. The high school structure of students switching classes and having a variety of teachers also makes the collaboration for RTI interventions by teachers more difficult.

But the need for individualized, data-driven support is obvious when looking at the following statistics, Whitmire said:

- Less than one-third of eighth-graders and 12th-graders are reading at proficient levels for their grades.
- Half of high-poverty ninth-graders read at a sixth- or seventh-grade level.

Issues to address for RTI in high schools

Here are topics to consider when implementing RTI in high schools, according to the **National High School Center's Meeting the Needs of Significantly Struggling Learners in High School**:

- Identify screening and progress monitoring tools for high school level students across subject areas.
- Identify high school appropriate intervention models that work across subjects.
- Consider implementation issues unique to high schools, such as program structure and the sequencing of activities within tiers.
- Examine the changing roles for special and general educators, including training general educators in techniques that support more targeted instruction.
- Determine universal instruction across content areas, including giving educators training for differentiated instructional techniques.
- Ensure structural supports for professional collaboration, including giving teams of educators opportunities to meet and review student progress.
- Ensure ongoing professional development.
- Expand parent communication. ■

- The average black or Hispanic 12th-grader reads on the same level as a white eighth-grader.

"Support is needed for these students other than special education," Whitmire said.

High school RTI implementation is few and far between, not because schools don't know how to make a change, but because they are unwilling to do so, said **Mark Shinn**, director of the **Northern Region at Illinois ASPIRE**.

"The solution [for struggling learners] is to put them in special education, but the older you get, the less likely a special education program will meet your needs," Shinn said.

Shinn travels around northern Illinois to consult with school districts on RTI practices. For high schools, he has administrators and teachers examine a course syllabus to make sure class expectations are clear and meet the needs of diverse learners.

He also stressed the importance of strengthening Tier I supports, which means the movement is dependent on collaboration with general educators.

"The good news is that we are better prepared than ever before to provide for the needs of kids and design classes for diverse learners," Shinn said. "The bad news is that not enough administrators are coming forward willing to make the change." ■

Head off student ‘academic arrest’ in Tier III of RTI model

There’s a misconception that Tier III in a response-to-intervention model is special education.

Key points

- Banish idea that Tier III in RTI is special education.
- Observe educational progress, discrepancy, instructional needs.
- Use varying levels of assessments in Tier III to determine student needs. ■

Instead, according to RTI experts at the **Heartland Area Education Agency 11** in Johnston, Iowa, you should view Tier III as intensive, individualized instruction and special education as a possible outcome of those interventions.

“If you have a heart attack and you find yourself in intensive care, you’re

going to get very intensive diagnostics, very intensive individualized interventions, and [health care professionals are] going to be monitoring your progress second by second by second,” said **W. David Tilly III**, the agency’s director of innovation and accountability.

“Without getting melodramatic, I’d offer the observation that we have some kids that are in academic arrest. For those kids, we need to do individual diagnostics, individual intensive instruction, and monitor their progress at least weekly to get feedback about what’s going on.”

Students requiring these intensive Tier III interventions might include English-language learners, gifted kids, or

students going through a crisis, who wouldn’t necessarily qualify for “special education,” said Tilly.

“If you define Tier III as special education, you’re going to have a whole bunch of kids who need intensive instruction with nowhere to get it,” he said.

Defining need for special ed

It is only after these intense interventions that you should begin to consider if a student is entitled to special education, said Randy Allison, the agency’s director of special education.

You have to evaluate the effects of past and current interventions to see if you have identified an appropriate instructional plan and if the student remains significantly different from his peers and your educational expectations, Allison said.

If interventions have significantly improved a student’s learning, but are too demanding to implement without special education resources, or if a student learns at a significantly lower level than his peers, you may have to go down the path of special ed. If a student’s curriculum, instruction and learning environment needs to be significantly different from those of other students in the general education environment, he also might require special ed.

“It’s really important that we in an entitlement process focus on knowing how to make the student more successful,” Allison said. “Simply saying they are now in special education but not knowing any more about why they have a problem or what to do with them really has not been very successful.” ■

Q&A: Consider when you will offer intensive instruction, diagnostic testing

Here are some other issues discussed by RTI experts **W. David Tilly III, Sharon Kurns** and **Randy Allison** of **Heartland Area Education Agency 11** in Johnston, Iowa:

Q: *You say Tier III instruction is not special education, but can we place students diagnostically in a special education class as part of individualized intensive education and assess things from there?*

Allison: We try not to do that. You [would be] treating them as if they’re in special education without all the proper procedural safeguards ... People are going to tell you the reason [the intervention] worked is because [the student] was in special ed and you will never get yourself out of that particular loop. So we’ve tried to look at where can those resources, those staff, be used in the intervention process rather than simply assuming that anyone would ever have to go to special education to get that kind of support.

Q: *When in the day should additional intensive intervention take place?*

Kurns: Intensive intervention is ... in addition to the core instruction. We don’t want to have students receiving instruc-

tion in the area of reading taken out of reading class for that intervention to occur. At the middle school level, [students] might receive intensive instruction during their electives. Or we’ve seen schools rearrange their schedules so that independent study time is translated to time for students to work on intensive instruction.

You can schedule students in a way that allows them to receive this instruction, but many times that means you have to make changes. You can’t leave things as they are and try to fit things in. You have to really look at, ‘Are we doing what it takes for all kids?’

Q: *Are there any pitfalls to avoid in diagnostic testing?*

Kurns: One of the things we have seen happen that can make it very difficult to implement an RTI model is when we overassess kids. You want to look for those things that can be administered frequently when doing screenings and progress monitoring. When doing your diagnostics you want to use the data that you have to only give the assessments that you need to give, so that lends itself to making sure you’re asking the right questions. ■