

INFORMATION BULLETIN

New Requirements for Behavioral Intervention Plans Including the Use of Aversive Interventions

At their January 7, 2007 meeting, the New York state Board of Regents approved the permanent adoption of amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education, effective January 31, 2007, regarding new requirements for behavioral intervention plans and the use of aversive interventions.

- ❑ All schools must take steps to review and revise their procedures to be consistent with the new standards for functional behavioral assessments, behavioral intervention plans, use of time-out rooms and emergency interventions. These standards are essential to ensure that all schools are in compliance with the Individuals with Disabilities Education Act (IDEA) regulations.
- ❑ Schools that use aversive interventions must have their policies and procedures approved by the New York State Education Department by or before June 30, 2007.

This bulletin provides information on these regulatory requirements which:

- ❑ establish general standards for behavioral interventions, including assessments of student behavior, behavioral intervention plans, the use of time-out rooms and emergency physical restraints;
- ❑ set a general prohibition on the use of aversive interventions, with a provision and procedures for a child-specific exception to this prohibition; and
- ❑ establish standards for programs that provide aversive interventions as approved on a child-specific basis.

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I. Prohibition of Corporal Punishment and Certain Behavioral Interventions

Section 19.5 of the Rules of the Board of Regents was amended to prohibit the use of corporal punishment by a teacher, administrator, officer, employee or agent of a school district in this State, a board of cooperative educational services (BOCES), a charter school, a State-operated or State-supported school, an approved preschool program, an approved private school, an approved out-of-state day or residential school or a registered nonpublic nursery, kindergarten, elementary or secondary school.

Section 19.5 also prohibits the use of aversive interventions in public schools, BOCES, approved private schools, State-operated or State-supported schools, approved out-of-state day or residential schools and registered nonpublic nursery, kindergarten, elementary or secondary schools in this State.

Definition of Aversive Interventions

- ❑ Aversive intervention is an intervention intended to induce pain or discomfort to a student for the purpose of eliminating or reducing maladaptive behaviors including such interventions as the application of noxious, painful, intrusive stimuli or activities such as electric skin shock, ice applications, hitting, slapping, pinching, kicking, hurling, strangling, shoving, deep muscle squeezes or other similar stimuli; any form of noxious, painful or intrusive spray, inhalant or tastes; withholding sleep, shelter, bedding, bathroom facilities or clothing; contingent food programs that include withholding meals or limiting essential nutrition or hydration or intentionally altering staple food or drink in order to make it distasteful; movement limitation used as a punishment, including but not limited to helmets and mechanical restraint devices; the placement of a child unsupervised or unobserved in a room from which the student cannot exit without assistance; or other stimuli or actions similar to the interventions described above.
- ❑ An aversive intervention does not include voice control, limited to loud, firm commands; time-limited ignoring of a specific behavior; token fines as part of a token economy system; brief physical prompts to interrupt or prevent a specific behavior; interventions medically necessary for the treatment or protection of the student; or similar interventions.

Child-Specific Exception to the Prohibition on the Use of Aversive Interventions

- ❑ Section 200.22(e) of the Regulations of the Commissioner of Education authorizes child-specific exceptions to use aversive interventions for school age students to address only the display of self-injurious or aggressive behavior that threaten the physical well-being of the student or others, and only for the 2006-07, 2007-08, and 2008-09 school years, provided that a student with an Individualized Education Program (IEP) that includes aversive intervention as of June 30, 2009 maybe granted a child-specific exception in each subsequent year unless the IEP is revised to no longer include such exceptions. No child-specific exceptions shall be granted to pre-school students.
- ❑ The New York State Education Commissioner appoints an independent panel of experts to review an application requesting a child-specific exception for the use of aversive interventions submitted by a Committee on Special Education (CSE). This panel shall be comprised of three professionals with appropriate clinical and behavioral expertise to make such determinations.
- ❑ The Panel will make a recommendation to the student's CSE as to whether a child-specific exception is warranted and notify the school district and the Commissioner of its recommendation.
- ❑ For students whose current IEP does not include a child-specific exception, the Panel will provide notice within 15 business days of receipt of the application.

Human Rights Committee

- ❑ Each school that uses aversive interventions shall establish a Human Rights Committee to monitor the school's behavioral intervention program.
- ❑ The Committee shall be composed of individuals not employed by the school or agency and shall include, at least, one licensed psychologist with appropriate credentials in applied behavior analysis; one licensed physician, physician's assistant or nurse practitioner; one registered dietician or nutritionist; one attorney, law student or paralegal; one parent or parent advocate; and may include not more than two additional individuals selected by the school or agency.
- ❑ The Human Rights Committee shall meet quarterly to review the implementation of any students' behavioral intervention plans that include aversive intervention.
- ❑ A written report on the findings and recommendations of the Human Rights Committee regarding an individual student shall be provided to the CSE of the student and to the agency that placed the student in the program.
- ❑ The CSE must, based on its consideration of the recommendation of the Human Rights Committee, determine whether the student's IEP will include a child-specific exception allowing the use of aversive interventions. The school district must notify the Commissioner when a child-specific exception has been included in the student's IEP.
- ❑ The IEP must identify the specific behavior(s) to be targeted by use of the aversive intervention.
- ❑ The parent must provide informed written consent for the use of the aversive interventions which will be in effect only during the school year for which such IEP applies.

II. ***Program Standards for the Use of Aversive Interventions***

Section 200.22 of the Regulations of the Commissioner includes specific program standards that apply to a public school, BOCES, charter school, approved preschool program, approved private school, State-operated or State-supported school in this state and an approved out-of-state day or residential school. For an education program operated pursuant to section 112 of the Education Law (governing educational responsibility for students in residential care) and Part 116 of the Regulations (governing educational programs and services for students in residential care facilities operated by a state agency), if a provision of this section relating to the use of aversive interventions conflicts with the rules of the respective State agency operating such program, the rules of such State agency shall prevail and the conflicting provision of this section shall not apply.

General Requirements

- ❑ Aversive intervention procedures shall be implemented consistent with peer-reviewed, research-based practices. The aversive procedures shall not be the sole or primary intervention used with a student and shall be used in conjunction with other related services, as determined by the CSE such as verbal or other counseling services, speech and language therapy and/or functional communication training, as determined by the CSE and stated in the student's IEP and behavioral intervention plan.
- ❑ Whenever possible, the use of aversive interventions shall apply the lowest intensity for the shortest duration that is effective to treat the problem behavior and employ strategies that increase the effectiveness of mild levels of aversive interventions.
- ❑ No program may use an aversive intervention on a student while the student is in a physical or mechanical restraint, it shall provide for the humane and dignified treatment of the student.
- ❑ All personnel involved in the development, application, monitoring, data collection or review of a behavioral intervention plan that includes the use of aversive interventions shall be appropriately certified in accordance with the provisions of Part 80 and sections 200.6 and 200.7 of the Regulations.

- ❑ In the event the aversive intervention fails to result in a suppression or reduction of the behavior over time, alternative procedures shall be considered that do not include increasing the magnitude of the aversive intervention.
- ❑ The use of any aversive conditioning device used to administer an electrical shock or other noxious stimuli to a student to modify undesirable behavioral characteristics shall be limited to devices tested for safety and efficacy and approved for such use by the United States Food and Drug Administration where such approval is required by federal regulation.
- ❑ Only those schools with policies and procedures relating to the use of aversive interventions that are approved pursuant to section 200.22(f)(8) of the Regulations on or before June 30, 2007 shall be authorized to use such interventions with New York state students.
- ❑ Any State-operated or State-supported schools or approved private school that fails to meet these requirements shall be immediately closed to new admissions of New York state students and shall be prohibited from using aversive interventions with any New York state student placed in such program.
- ❑ Non-compliance will result in termination of private school approval. A school may be removed from the approved list five business days after written notice by the Commissioner.

Supervision and Training Requirements

- ❑ Appropriate training shall be provided on a regular, at least annual, basis to any person who uses aversive interventions on students.

Parent Consent

- ❑ Aversive interventions shall be provided only with the informed written consent of the parent and no parent shall be required by the program to remove the student from the program if he or she refuses consent for an aversive intervention.

Quality Assurance Reviews and Progress Monitoring

- ❑ The program's use of aversive interventions, including a review of all incident reports relating to such interventions, shall be subject to quality assurance reviews. A program using aversive interventions must provide ongoing monitoring of students' progress and submit quarterly written progress reports on the implementation of the students' behavioral intervention program to the CSE and to the agency that placed the student in the program.

School District Responsibilities

- ❑ Each school district that proposes to use aversive interventions pursuant to a child-specific exception must submit its policies and procedures for approval to SED on or before June 30, 2007. A school district is responsible for ensuring that the student's IEP and behavioral intervention plan are implemented.

III. Program Standards for the Use of Behavioral Interventions

Sections 200.1, 200.4 and 200.22 of the Regulations of the Commissioner of Education establish standards for assessments of student behaviors, behavioral intervention plans, the use of time-out rooms, and emergency use of physical restraints.

Assessment of Student Behaviors

- ❑ Functional behavioral assessments (FBA) must be conducted as required in section 200.4 and section 201.3 of the Regulations of the Commissioner of Education. Section 200.1(r) of the Regulations of the Commissioner of Education defines FBA to mean the process of determining why a student engages in behaviors that impede learning and how the student's behavior relates to the environment.

Behavioral Intervention Plans

- ❑ A student's need for a behavioral intervention plan must be documented in the IEP and it must be reviewed at least annually by the CSE. The plan shall include intervention strategies to be used to alter the student's behavior. Regular progress monitoring and the results of the progress monitoring shall be documented and reported to the student's parent and to the CSE.

Use of Time-Out Rooms

- ❑ Each school which uses a time-out room as part of its behavior management approach shall ensure that the school's policy and procedures on the use of the time-out room are developed and consistently implemented. The policy and procedures should address physical and monitoring requirements, parental rights and IEP requirements for students with disabilities.

Emergency Use of Physical Restraints

- ❑ The use of physical force to restrain a student from engaging in behaviors shall not be used as a substitute for systematic behavioral interventions that are designed to change, replace, modify or eliminate a targeted behavior. It shall be used only when other methods of controlling the student's behavior not involving the use of physical force cannot be reasonably employed.
- ❑ Staff who may be called upon to implement emergency interventions shall be provided with appropriate training in safe and effective restraint interventions in accordance with sections 100.2(1)(1)(g) and 200.5 (f)(1) of the Commissioner's Regulations.
- ❑ For an education program operated pursuant to section 112 of the Education Law and Part 116 of the Regulations, if a provision of this section relating to the emergency use of physical restraints conflicts with the rules of the respective State agency operating such program, the rules of such State agency shall prevail and the conflicting provision of this section shall not apply.

IV. Advice to Local Leaders

- ❑ Work with school district administrators to develop and/or revise policies and procedures for the use of time-out rooms and the emergency use of physical restraint consistent with these requirements.
- ❑ School districts must provide training for teachers who may be called upon to implement emergency intervention, such as the use of physical restraints and/or aversive interventions. This type of training must be given on a regular basis or at least annually and must be part of the school district's professional development plan (PDP).
- ❑ Personnel involved in the development, application, monitoring, data collection or review of behavioral intervention plans, including the use of aversive interventions, must be appropriately certified.
- ❑ Aversive interventions, upon the recommendation of the Human Rights Committee, are to be determined by the CSE and noted on the student's IEP and behavioral intervention plan. Teachers and other school personnel must be provided copies of these documents and informed of their implementation responsibilities consistent with Section 200.2 of the Regulations.
- ❑ The school district is responsible for ensuring that the student's IEP and behavioral plan are being implemented.