



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES
STATEWIDE COORDINATOR FOR SPECIAL EDUCATION
Room 1624 One Commerce Plaza • Albany, NY 12234
www.nysed.gov

Telephone (518) 402-3353 Fax: (518) 473-5769

June 22, 2006

TO: District Superintendents
Superintendent of Schools
Presidents of Boards of Education
Superintendents of State-Operated and State-Supported Schools
Executive Directors of Approved Private Schools
New York City Board of Education
Organizations, Parents and Individuals Concerned with Special Education
Commissioner's Advisory Panel for Special Education Services
SETRC Program Development Specialists
Regional School Support Centers
Impartial Hearing Officers
Mediators
Other State Agencies

FROM: James P. DeLorenzo

SUBJECT: New requirements for behavioral intervention plans, including the use of aversive behavioral interventions

The Board of Regents, at their June 2006 meeting, approved the emergency adoption of amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education, effective June 23, 2006. These regulations:

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

Attached is a summary of the amendments to the regulations that were adopted at the June Regents meeting. A more comprehensive guidance document will be forthcoming. A full copy of the amendments may be found at <http://www.vesid.nysed.gov/specialed/timely.htm>.



All schools should carefully review these new requirements and take steps to revise policies and procedures to align with the new standards for behavioral interventions.

- Effective June 23, 2006, all schools must take steps to review and revise their procedures 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 appropriately assess and address student behaviors consistent with the requirements of the Individuals with Disabilities Education Act (IDEA).
- Effective June 23, 2006, schools using aversive behavioral interventions must take steps to revise their procedures consistent with the standards for the use of aversive behavioral interventions. By August 15, 2006, programs using aversive behavioral interventions must submit to the State Education Department (SED) their revised procedures consistent with the new standards.
- As of the effective date of the regulations, aversive behavioral interventions will be prohibited for all New York State (NYS) students except as follows:
 - For students whose individualized education programs (IEPs) currently indicate the need for aversive behavioral interventions, such interventions would be allowed to continue (unless the Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) revises the IEP). For these students, requests for child-specific exceptions must be submitted by October 1, 2006.
 - Effective on or after October 1, 2006, a request by a school district for a child-specific exception must be submitted to the Commissioner prior to a CSE/CPSE recommendation for aversive behavioral interventions.
- As of the effective date of the regulations (June 23), no program may use the combination of physical/mechanical restraints and another aversive intervention (e.g., mechanical restraints while administering shock). No program may use an automated aversive conditioning device.
- By October 1, 2006, SED will have the independent panel and procedures for the child-specific exception in place for the timely review of any requests for aversive behavioral interventions as an exception to the Regents prohibition.

To ensure dissemination to appropriate individuals within a school district, I ask Superintendents to please share this memorandum with other individuals such as Building Principals, Directors of Special Education, School Psychologists, CSE and CPSE Chairpersons, Guidance Counselors and Directors of Pupil Personnel.

Questions regarding this memorandum may be directed to the Special Education Policy and Partnerships Unit at 518-473-2878 or to the Special Education Quality Assurance Office in your region:

| | |
|-------------------------------|----------------|
| Central Regional Office | (315) 428-3287 |
| Eastern Regional Office | (518) 486-6366 |
| Hudson Valley Regional Office | (914) 245-0010 |
| Long Island Regional Office | (631) 884-8530 |
| New York City Regional Office | (718) 722-4544 |
| Western Regional Office | (585) 344-2002 |

Attachment

Summary of Amendments to the Regulations of the Commissioner of Education

Effective June 23, 2006

BEHAVIORAL INTERVENTIONS, INCLUDING THE USE OF AVERSIVE BEHAVIORAL INTERVENTIONS

I. Prohibition of corporal punishment and certain behavioral interventions

Section 19.5 of the Rules of the Board of Regents was amended as follows:

- The prohibition of corporal punishment applies to a teacher, administrator, officer, employee or agent of a school district in this State, a board of cooperative educational service (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.
- The use of aversive behavioral interventions is prohibited for use 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.
- Aversive behavioral interventions are defined to mean:
 - application of noxious, painful, intrusive stimuli or activities intended to induce pain 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.
- Aversive behavioral interventions do not include such interventions as 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.

II. Child-specific exception to the prohibition on the use of aversive behavioral interventions.

- Section 19.5 of the Rules of the Board of Regents allows for a child-specific exception to the prohibition on the use of aversive behavioral interventions.
- Section 200.22(e) of the Regulations of the Commissioner of Education establishes the procedures for a child-specific exception to use aversive behavioral interventions to reduce or modify student behaviors.
 - Effective on or after October 1, 2006, whenever a CSE or CPSE is considering whether a child-specific exception to the prohibition of the use of aversive behavioral interventions is warranted, the school district must submit an application to the Commissioner of Education for a child-specific exception.
 - For any student with an IEP in effect prior to October 1, 2006 that includes the use of aversive behavioral interventions, the school district must submit an application to the Commissioner of Education for a child-specific exception prior to the next scheduled review of the student's IEP, but not later than October 1, 2006.
 - The Commissioner will refer the application to an independent panel of experts appointed by the Commissioner or Commissioner's designee. The panel will be comprised of three professionals with appropriate clinical and behavioral expertise to make such determinations.
 - The panel will review the written application, the student's IEP, the student's diagnosis, the student's functional behavioral assessment (FBA); any proposed, current and/or prior behavioral intervention plans for the student, including documentation of the implementation and progress monitoring of the effectiveness of such plans; and other relevant individual evaluations and medical information that allow for an assessment of the student's cognitive and adaptive abilities and general health status, including any information provided by the student's parent.
 - The panel will make a recommendation to the student's CSE or CPSE as to whether a child-specific exception is warranted within 15 business days¹. The recommendation of the panel shall be based on the professional judgment of the panel that:
 - the student is displaying self-injurious or aggressive behaviors that threaten the physical well-being of the student or that of others and a full range of evidence-based positive behavioral interventions have been consistently employed over an appropriate period of time and have failed to result in sufficient improvement of a student's behavior; or
 - the student's self-injurious or aggressive behaviors are of such severity as to pose significant health and safety concerns that warrant the use of aversive behavioral interventions to effect rapid suppression of the behavior and a range

¹ The 15 business day timeline does not apply to students with an IEP in effect prior to October 1, 2006 that includes the use of aversive behavioral interventions.

of nonaversive prevention strategies have been employed and have failed to provide a sufficient level of safety.

- The panel will notify the school district and the Commissioner of its recommendation as to whether a child-specific exception is warranted and the reasons for that recommendation.
- The CSE or CPSE must, based on its consideration of the recommendation of the panel, determine whether the student's IEP will include a child-specific exception allowing the use of aversive behavioral interventions. The school district must notify the Commissioner when a child-specific exception has been included in the student's IEP.
- Any IEP providing for a child-specific exception allowing the use of aversive behavioral interventions must identify the specific:
 - behavior(s) to be targeted by use of the aversive intervention;
 - aversive behavioral intervention(s) to be used to address the behavior(s); and
 - aversive conditioning device(s) where the aversive behavioral intervention(s) include the use of such devices.
- A parent must provide informed written consent for the use of the aversive behavioral interventions.
- An exception to the child-specific exception shall be in effect only during the school year for which such IEP applies.
- If the CSE or CPSE amends the student's IEP to no longer permit the aversive behavioral intervention, the school district does not need to notify the Commissioner.
- For an education program operated by another State agency, if any of the above rules relating to the use of aversive behavioral interventions conflicts with the rules of the respective State agency operating the education program, the rules of that State agency shall prevail and the conflicting provision of section 200.22(e) of the Regulations of the Commissioner of Education shall not apply.
- These rules do not authorize a school or agency to provide aversive behavioral interventions that are otherwise prohibited by the State agency licensing a program.
- Any program providing aversive behavioral interventions must meet the standards established in section 200.22(f) of the Regulations of the Commissioner of Education.

III. Program standards for 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. The FBA includes, but is not limited to:
 - identification of the problem behavior;
 - definition of the behavior in concrete terms;
 - identification of the contextual factors that contribute to the behavior (including cognitive and affective factors); and
 - formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it.
- The FBA must, as appropriate, be based on multiple sources of data including, but not limited to:
 - information obtained from direct observation of the student;
 - information from the student, the student's teacher(s) and/or related service provider(s): and
 - a review of available data and information from the student's record and other sources including any relevant information provided by the student's parent.
- The FBA cannot be based solely on the student's history of presenting problem behaviors.
- The FBA must provide:
 - a baseline of the student's problem behaviors with regard to frequency, duration, intensity and/or latency across activities, settings, people and times of the day; and
 - include the information required in section 200.1(r) of this Part in sufficient detail to form the basis for a behavioral intervention plan for the student that addresses:
 - antecedent behaviors;
 - reinforcing consequences of the behavior;
 - recommendations for teaching alternative skills or behaviors; and

- an assessment of student preferences for reinforcement.

Behavioral intervention plans

- The CSE or CPSE must consider the development of a behavioral intervention plan for a student with a disability:
 - whenever the student exhibits persistent behaviors that impede his or her learning or that of others, despite consistently implemented general school-wide or classroom-wide interventions;
 - when the student's behavior places the student or others at risk of harm or injury;
 - when the CSE or CPSE is considering more restrictive programs or placements as a result of the student's behavior; and
 - as required pursuant to section 201.3 of this Regulations of the Commissioner of Education relating to discipline procedures for students with disabilities.
- In the case of a student whose behavior impedes his or her learning or that of others, the CSE or CPSE must consider strategies, including positive behavioral interventions and supports and other strategies to address that behavior.
- If a particular device or service, including an intervention, accommodation or other program modification is needed to address the student's behavior that impedes his or her learning or that of others, the IEP shall so indicate.
- A student's need for a behavioral intervention plan must be documented in the IEP and the behavioral intervention plan must be reviewed at least annually by the CSE or CPSE.
- Unless a child-specific exception for the use of aversive behavioral interventions has been provided by the CSE or CPSE after review by the panel's recommendation, a behavioral intervention plan shall not include the use of aversive behavioral interventions.
- The behavioral intervention plan must identify:
 - the baseline measure of the problem behavior, including the frequency, duration, intensity and/or latency of the targeted behaviors. Such baseline shall, to the extent practicable, include data taken across activities, settings, people and times of the day. The baseline data shall be used as a standard to establish performance criteria and against which to evaluate intervention effectiveness;
 - the intervention strategies to be used to alter antecedent events to prevent the occurrence of the behavior, teach individual alternative and adaptive behaviors to

the student, and provide consequences for the targeted inappropriate behavior(s) and alternative acceptable behavior(s); and

- a schedule to measure the effectiveness of the interventions, including the frequency, duration and intensity of the targeted behaviors at scheduled intervals.
- The implementation of a student's behavioral intervention plan must include regular progress monitoring of the frequency, duration and intensity of the behavioral interventions at scheduled intervals, as specified in the behavioral intervention plan and in the student's IEP.
- The results of the progress monitoring shall be documented and reported to the student's parents and to the CSE or CPSE and shall be considered in any determination to revise a student's behavioral intervention plan or IEP.

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 implemented consistent with the following standards, including the physical and monitoring requirements, parental rights and IEP requirements for students with disabilities.
- A student's IEP shall specify when a behavioral intervention plan includes the use of a time out room for a student with a disability, including the maximum amount of time a student will need to be in a time out room as a behavioral consequence as determined on an individual basis in consideration of the student's age and individual needs.
- Except for emergency interventions, the use of a time out room shall only be used in conjunction with a behavioral intervention plan that is designed to teach and reinforce alternative appropriate behaviors.
- Parents shall be informed prior to the initiation of a behavioral intervention plan which will incorporate the use of a time out room. Upon request, parents must be shown the physical space that will be used as a time out room.
- The physical space used as a time out room must meet certain standards.
 - The room must provide a means for continuous visual and auditory monitoring of the student and be of adequate width, length and height to allow the student to move about and recline comfortably.
 - Wall and floor coverings should be designed to prevent injury to the student and there shall be adequate lighting and ventilation.
 - The temperature of the room shall be within the normal comfort range and consistent with the rest of the building.

- The room shall be clean and free of objects and fixtures that could be potentially dangerous to a student and shall meet all local fire and safety codes.
- The time out room shall be unlocked and the door must be able to be opened from the inside. The use of locked rooms or spaces for purposes of time out or emergency interventions is prohibited.
- Staff shall be assigned to continuously monitor the student in a time out room. The staff must be able to see and hear the student at all times.
- The school shall establish and implement procedures to document the use of the time out room, including information to monitor the effectiveness of the use of the time out room to decrease specified behaviors.
- For an education program operated pursuant to section 112 of the Education Law and Part 116 of this Title, if a provision of this section relating to use of time out rooms conflicts with the rules of the respective State agency operating such program, the rules of such State agency shall prevail and the conflicting provisions of this section shall not apply.

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.
- Staff who may be called upon to implement emergency interventions shall be provided with appropriate training in safe and effective restraint interventions.
- Emergency use of physical restraints shall be used only when no other methods of controlling the student's behaviors would be effective.
- For an education program operated pursuant to section 112 of the Education Law and Part 116 of this Title, 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. Program Standards for the Use of Aversive Behavioral Interventions

The following requirements 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 and Part 116 of this Title, if a provision of this section relating to the use of aversive behavioral 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

Any program that employs the use of aversive behavioral interventions to modify an individual student's behavior must comply with the following standards:

- The program shall provide for the humane and dignified treatment of the student and for the development of such student's full potential at all times. The program shall promote respect for the student's personal dignity and right to privacy and shall not employ the use of threats of harm, ridicule or humiliation, nor implement behavioral interventions in a manner that shows a lack of respect for basic human needs and rights.
- Aversive behavioral intervention procedures may be used only if such interventions are recommended by the CSE or CPSE consistent with the student's IEP and behavioral intervention plan as determined by the CSE or CPSE.
- Aversive behavioral intervention 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 or CPSE, such as verbal or other counseling services, speech and language therapy and/or functional communication training.
- Aversive behavioral interventions shall be combined with reinforcement procedures, as individually determined based on an assessment of the student's reinforcement preferences.
- Aversive behavioral interventions shall be implemented consistent with peer-reviewed research based practices and shall include individualized procedures for generalization and maintenance of behaviors and for the fading of the use of such aversive behavioral interventions.
- The use of aversive behavioral interventions shall be limited to those self-injurious or aggressive behaviors identified for such interventions in the student's IEP.
- Whenever possible, the use of aversive behavioral interventions shall apply the lowest intensity for the shortest duration and period of time that is effective to treat the problem behavior and employ strategies that increase the effectiveness of mild levels of aversive behavioral interventions.
 - In the event the aversive behavioral 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 behavioral 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.

- The magnitude, frequency and duration of any administration of aversive stimulus from such a device must have been shown to be safe and effective in clinical peer-reviewed studies.
- The use of automated aversive conditioning devices is prohibited.
- No program may use an aversive behavioral intervention on a student while the student is in a physical or mechanical restraint.
- Behavioral intervention plans shall be designed and supervised by qualified professionals in accordance with their respective areas of professional competence. All personnel involved in the development, application, monitoring, data collection or review of a behavioral intervention plan that includes the use of aversive behavioral interventions shall be appropriately certified in accordance with the provisions of Part 80 of this Title and sections 200.6 and 200.7 of this Part.

Human Rights Committee

Each school that uses aversive behavioral interventions with students with disabilities shall establish a Human Rights Committee to monitor the school's behavioral intervention program for any student being considered for or receiving aversive behavioral interventions to ensure the protection of legal and human rights of individuals.

- The Human Rights Committee shall be comprised of individuals not employed by the school or agency, which 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; and
 - one parent or parent advocate.
- In addition, when the purpose of the Human Rights Committee meeting includes a review of an individual NYS student's program, a representative of the school district or agency placing the student in the program and a representative of the Department shall be invited to participate.

- The Human Rights Committee shall meet at least quarterly to review, monitor and investigate the implementation of students' behavioral intervention plans that include aversive behavioral interventions.
- A written report on the findings and recommendations of the Human Rights Committee regarding an individual student shall be provided to the CSE or CPSE of the student and to the agency that placed the student in the program.

Supervision and training requirements

Any person who uses aversive behavioral interventions on students shall receive appropriate supervision, including direct observation. Appropriate training shall be provided on a regular, at least annual, basis which shall include, but not be limited to, training on:

- safe and therapeutic emergency physical restraint interventions;
- data collection of the frequency, duration and latency of behaviors;
- identification of antecedent behaviors and reinforcing consequences of the behavior;
- approaches to teach alternative skills or behaviors including functional communication training;
- assessment of student preferences for reinforcement;
- assessing and responding to the collateral effects of the use of aversive behavioral interventions including, but not limited to, effects on a student's health, increases in aggression, increases in escape behaviors and/or emotional reactions;
- privacy rights of students; and
- documentation and reporting of incidents, including emergency restraints and injuries.

Parent consent

Aversive behavioral 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 behavioral intervention.

Quality assurance reviews

The program's use of aversive behavioral interventions, including a review of all incident reports relating to such interventions, shall be subject to quality assurance reviews to ensure that practices are clinically sound, supported by proper documentation and

consistent with these program standards and the school's policies and procedures as approved by the Department.

Progress monitoring

The program using aversive behavioral interventions must:

- provide for ongoing monitoring of student progress, including the collection and review of data and information. Such information shall include reports on the assessment of and strategies implemented to address any indirect or collateral effects the use of aversive behavioral interventions may be having on the student. These would include, but not limited to, increases in aggressive or escape behaviors, health-related effects and/or emotional reactions; and
- submit quarterly written progress reports on the implementation of the student's behavioral intervention program to the CSE or CPSE and to the agency that placed the student in the program.

Policies and procedures

Each school that proposes to use aversive behavioral interventions pursuant to a child-specific exception must submit its policies and procedures related to such use to SED for approval prior to the use of such interventions.

School district responsibilities

- A school district that places a student in a program that uses aversive behavioral interventions with such student is responsible to ensure that the student's IEP and behavioral intervention plan are being implemented.
- The CSE or CPSE must convene at least every six months, or more frequently as needed, to review the student's educational program and placement for any student for whom the CSE or CPSE has recommended the use of aversive behavioral interventions.
- Such review must include the review of written progress monitoring and incident reports, at least annual observations of and, as appropriate, interviews with the student in the program and regular communication with the student's parent.

IV. Requirements relating to approved private schools, State-supported schools and State-operated schools

Section 200.7 of the Regulations of the Commissioner of Education was amended as follows:

- A school applying for approval must include with its application a copy of the school's procedures regarding behavioral interventions, including, if applicable, procedures for the use of aversive behavioral interventions.
- An approved private school, a State-operated school or a State-supported school is prohibited from using corporal punishment and, unless provided through a child-specific exception, aversive behavioral interventions to reduce or eliminate maladaptive behaviors of students.
- Not later than August 15, 2006, a private school that proposes to use or to continue to use aversive behavioral interventions in its program must submit its written policies and procedures on behavioral interventions to the Department with certification that the school's policies, procedures and practices are demonstrably in compliance with the standards established in section 200.22(f) for the use of aversive behavioral intervention. Any school that fails to meet this requirement shall be immediately closed to new admissions of New York students and shall be prohibited from using aversive behavioral interventions with any NYS student placed in such program. Failure to comply with this requirement may result in termination of private school approval.
- Schools may be removed from the approved list five business days after written notice by the Commissioner indicating that there is a clear and present danger to the health or safety of students attending the school, and listing the dangerous conditions at the school, including, but not limited to, evidence that an approved private school is using aversive behavioral interventions to reduce or eliminate maladaptive behaviors of students without a child-specific exception or that an approved private school is using aversive behavioral interventions in a manner inconsistent with the standards as established in section 200.22 (f) of the Regulations of the Commissioner of Education.